

VOLUME 6
Titles 53 through 70

2008
REVISED CODE OF WASHINGTON

Published under the authority of chapter 1.08 RCW.

Containing all laws of a general and permanent nature through the 2008 regular session, which adjourned sine die March 13, 2008.

REVISED CODE OF WASHINGTON

2008 Edition

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CERTIFICATE

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MARTY BROWN, Chair
STATUTE LAW COMMITTEE

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PREFACE

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

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

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

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

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

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

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

Index: Titles 1 through 91 are indexed in the RCW General Index. Separate indexes are provided for the Rules of Court and the State Constitution.

Sections repealed or decodified; Disposition table: Memorials to RCW sections repealed or decodified are tabulated in numerical order in the table entitled "Disposition of former RCW sections."

Codification tables: To convert a session law citation to its RCW number (for Laws of 1951 or later) consult the codification tables. A similar table is included to relate the disposition in RCW of sections of Remington's Revised Statutes.

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

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

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53.04.010 Port districts authorized—Purposes—Powers—Public hearing. (1) Port districts are hereby authorized to be established in the various counties of the state for the purposes of acquisition, construction, maintenance, operation, development and regulation within the district of harbor improvements, rail or motor vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and terminal facilities, or any combination of such transfer and terminal facilities, and other commercial transportation, transfer, handling, storage and terminal facilities, and industrial improvements.

(2) Powers of a port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, shall be exercised within the district, except as otherwise provided by statute or pursuant to an interlocal cooperation agreement with another public agency as defined in chapter 39.34 RCW. In addition to other requirements of chapter 39.34 RCW, such an interlocal cooperation agreement may involve the exercise of a port district's powers for a port district that is located in a county that has contiguous borders with another state, and a population between fifty and seventy thousand, outside the boundaries of the state of Washington in whole or in part only if found, by resolution of the port district commission exercising such authority, to be reasonably necessary for the effective exercise of the port district's statutory powers and for the benefit of the inhabitants of the district and the state of Wash-

ington. The resolution may be adopted only after a public hearing of which notice has been published in a newspaper of general circulation within the district at least ten days in advance. [1999 c 306 § 2; 1963 c 147 § 1; 1911 c 92 § 1; RRS § 9688.]

Purpose—1999 c 306: "Article VIII, section 8 of the Washington state Constitution authorizes the use of public funds by port districts in such manner as the legislature may prescribe for industrial development or trade promotion. The legislature recognizes a growing need for a Washington port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, to participate with other public agencies of this state and an adjoining state to attract, encourage, and develop industry and promote trade on both sides of their borders, for the economic benefit to the state of Washington. RCW 53.08.240 authorizes agreements between two or more port districts for the exercise of powers both within and outside their districts, and further authorizes contracts by port districts with other governmental entities. The interlocal cooperation act, chapter 39.34 RCW, also authorizes joint agreements and contracts between port districts and other state and local public agencies including political subdivisions of other states. However, there is uncertainty as to whether or not a port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, may exercise industrial development or trade promotion powers outside the district or state boundaries except jointly with another Washington port district.

The purpose of this act is to define and clarify the authority of a Washington port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, to exercise those powers jointly or in cooperation with other public agencies when found to be necessary and beneficial to the people of this state." [1999 c 306 § 1.]

Construction—1911 c 92: "This act shall not be construed to repeal, amend or modify any law heretofore enacted providing a method of harbor improvement, regulation or control in this state, but shall be held to be an additional and concurrent method providing for such purpose." [1911 c 92 § 14.]

Establishment of harbor lines: State Constitution Art. 15 § 1 (Amendment 15).

53.04.015 Port districts in areas lacking appropriate bodies of water—Authorized—Purposes. In areas which lack appropriate bodies of water so that harbor improvements cannot be established, port districts are hereby authorized to be established under the laws of the state, for the purposes for which port districts may be established under RCW 53.04.010, and such port districts shall have all of the powers, privileges and immunities conferred upon all other port districts under the laws of this state, including the same powers and rights relating to municipal airports that other port districts now have or hereafter may be granted. [1963 c 147 § 2; 1959 c 94 § 1.]

53.04.016 Port districts in areas lacking appropriate bodies of water—Authority an additional and concurrent method. RCW 53.04.015 shall not be construed to repeal, amend or modify any law heretofore enacted providing a method of harbor improvement, regulation or control; acquisition, maintenance and operation of municipal airports; or industrial development; but shall be held to be an additional and concurrent method providing such purposes. [1959 c 94 § 2.]

53.04.017 Port districts in areas lacking appropriate bodies of water—Elections. All elections with respect to any such port districts authorized by RCW 53.04.015 and 53.04.016 shall be held, conducted and the results canvassed

in the same manner and at the same time as now or hereafter provided by law for other port districts. [1959 c 94 § 3.]

53.04.020 Formation of county-wide district. At any general election or at any special election which may be called for that purpose, the county legislative authority of any county in this state may, or on petition of ten percent of the registered voters of such county based on the total vote cast in the last general county election, shall, by resolution submit to the voters of such county the proposition of creating a port district coextensive with the limits of such county. Such petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereof and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed port district. If such petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his or her certificate thereto. No person having signed such petition shall be allowed to withdraw his or her name therefrom after the filing of the same with the county auditor. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his or her certificate of sufficiency attached thereto, to the legislative authority of the county, who shall submit such proposition at the next general election or, if such petition so requests, the county legislative authority shall, at their first meeting after the date of such certificate, by resolution, call a special election to be held in accordance with *RCW 29.13.010 and 29.13.020. The notice of election shall state the boundaries of the proposed port district and the object of such election. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot substantially in the following terms:

"Port of, Yes." (giving the name of the principal seaport city within such proposed port district, or if there be more than one city of the same class within such district, such name as may be determined by the legislative authority of the county).

"Port of, No." (giving the name of the principal seaport city within such port district, or if there be more than one city of the same class within such district, such name as may be determined by the legislative authority of the county). [1992 c 147 § 1; 1990 c 259 § 15; 1986 c 262 § 1; 1971 ex.s. c 157 § 1; 1913 c 62 § 1; 1911 c 92 § 2; RRS § 9689. Formerly RCW 53.04.020 through 53.04.040.]

***Reviser's note:** RCW 29.13.010 and 29.13.020 were recodified as RCW 29A.04.320 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

Severability—1992 c 147: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 147 § 4.]

Effective date—1971 ex.s. c 157: "The effective date of this act shall be May 1, 1972." [1971 ex.s. c 157 § 4.]

53.04.023 Formation of less than county-wide district. A less than county-wide port district with an assessed valuation of at least one hundred fifty million dollars may be created in a county that already has a less than county-wide port district located within its boundaries. Except as provided in this section, such a port district shall be created in accordance with the procedure to create a county-wide port district.

The effort to create such a port district is initiated by the filing of a petition with the county auditor calling for the creation of such a port district, describing the boundaries of the proposed port district, designating either three or five commissioner positions, describing commissioner districts if the petitioners propose that the commissioners represent districts, and providing a name for the proposed port district. The petition must be signed by voters residing within the proposed port district equal in number to at least ten percent of such voters who voted at the last county general election.

A public hearing on creation of the proposed port district shall be held by the county legislative authority if the county auditor certifies that the petition contained sufficient valid signatures. Notice of the public hearing must be published in the county's official newspaper at least ten days prior to the date of the public hearing. After taking testimony, the county legislative authority may make changes in the boundaries of the proposed port district if it finds that such changes are in the public interest and shall determine if the creation of the port district is in the public interest. No area may be added to the boundaries unless a subsequent public hearing is held on the proposed port district.

The county legislative authority shall submit a ballot proposition authorizing the creation of the proposed port district to the voters of the proposed port district, at any special election date provided in *RCW 29.13.020, if it finds the creation of the port district to be in the public interest.

The port district shall be created if a majority of the voters voting on the ballot proposition favor the creation of the port district. The initial port commissioners shall be elected at the same election, from districts or at large, as provided in the petition initiating the creation of the port district. The election shall be otherwise conducted as provided in RCW 53.12.172, but the election of commissioners shall be null and void if the port district is not created. [1997 c 256 § 1; 1994 c 223 § 84; 1993 c 70 § 1; 1992 c 147 § 2.]

***Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Effective date—1997 c 256: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 1997]." [1997 c 256 § 2.]

Severability—1992 c 147: See note following RCW 53.04.020.

53.04.031 Initiating petition, commissioner district descriptions—Initial election of commissioners. Three commissioner districts, each with approximately the same population, shall be described in the petition proposing the creation of a port district under RCW 53.04.020, if the process to create the port district was initiated by voter petition, or shall be described by the county legislative authority, if the process to initiate the creation of the port district was by action of the county legislative authority. However, commis-

sioner districts shall not be described if the commissioner districts of the proposed port district shall be the same as the county legislative authority districts.

The initial port commissioners shall be elected as provided in RCW 53.12.172. [1994 c 223 § 83.]

53.04.060 District declared formed. Within five days after an election held under the provisions of RCW 53.04.020, the board of county commissioners shall canvass the returns, and if at such election a majority of the voters voting upon the proposition shall vote in favor of the formation of the district, the board of county commissioners shall so declare in its canvass of the returns of such election, and the port district shall then be and become a municipal corporation of the state of Washington and the name of such port district shall be "Port of" (inserting the name appearing on the ballot). [1959 c 17 § 2. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.04.070 Expense of election. All expenses of elections for the formation of such port districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the port district, if formed. [1959 c 17 § 6. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.04.080 Annexation of territory—Petition—Election. At any general election or at any special election which may be called for that purpose the county legislative authority of any county in this state in which there exists a port district which is not coextensive with the limits of the county, shall on petition of the commissioners of such port district, by resolution, submit to the voters residing within the limits of any territory which the existing port district desires to annex or include in its enlarged port district, the proposition of enlarging the limits of such existing port districts so as to include therein the whole of the territory embraced within the boundaries of such county, or such territory as may be described in the petition by legal subdivisions. Such petition shall be filed with the county auditor, who shall forthwith transmit the same to the county legislative authority, who shall submit such proposition at the next general election, or, if such petition so request, the county legislative authority, shall at their first meeting after the date of filing such petition, by resolution, call a special election to be held in accordance with *RCW 29.13.010 and 29.13.020. The notice of election shall state the boundaries of the proposed enlarged port district and the object of the special election. In submitting the question to the voters of the territory proposed to be annexed or included for their approval or rejection, the proposition shall be expressed on the ballots substantially in the following terms:

"Enlargement of the port of, yes." (Giving then [the] name of the port district which it is proposed to enlarge);

"Enlargement of the port of, no." (Giving the name of the port district which it is proposed to enlarge).

Such election, whether general or special, shall be held in each precinct wholly or partially embraced within the lim-

its of the territory proposed to be annexed or included and shall be conducted and the votes cast thereat counted, canvassed, and the returns thereof made in the manner provided by law for holding general or special county elections. [1990 c 259 § 16; 1935 c 16 § 1; 1921 c 130 § 1; RRS § 9707. Formerly RCW 53.04.080 and 53.04.090.]

***Reviser's note:** RCW 29.13.010 and 29.13.020 were recodified as RCW 29A.04.320 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

Elections: Title 29A RCW.

53.04.085 Petition for annexation to port district. If an area, not currently part of an existing port district desires to be annexed to a port district in the same county, upon receipt of a petition bearing the names of ten percent of the registered voters residing within the proposed boundaries of the area desiring to be annexed who voted in the last general municipal election, the commissioners of such port district shall petition the county legislative authority to annex such territory, as provided in RCW 53.04.080. [1990 c 259 § 17; 1971 ex.s. c 157 § 2.]

Effective date—1971 ex.s. c 157: See note following RCW 53.04.020.

53.04.100 Order of annexation—Liability of area annexed. If a majority of all the votes cast at any such election upon the proposition of enlarging such port district shall be for the "Enlargement of the port of, yes" then and in that event the board of county commissioners shall enter an order declaring such port district enlarged so as to embrace within the limits thereof the territory described in the petition for such election, and thereupon the boundaries of said port district shall be so enlarged and the commissioners thereof shall have jurisdiction over the whole of said district as enlarged to the same extent, and with like power and authority, as though the additional territory had been originally embraced within the boundaries of the existing port district: PROVIDED, HOWEVER, That none of the lands or property embraced within the territory added to and incorporated within such port district shall be liable to assessment for the payment of any outstanding bonds, warrants or other indebtedness of such original port district, but such outstanding bonds, warrants or other indebtedness, together with interest thereon, shall be paid exclusively from assessments levied and collected on the lands and property embraced within the boundaries of the preexisting port district. [1921 c 130 § 2; RRS § 9708.]

53.04.110 Change of name. Any port district now existing or which may hereafter be organized under the laws of the state of Washington is hereby authorized to change its corporate name under the following conditions and in the following manner:

(1) On presentation of a petition to the commissioners of any port district now existing or which may hereafter be established under the laws of the state of Washington, signed by at least ten percent of the total number of voters of the port district who voted at the last general port election and asking that the corporate name of the port district be changed, it shall be the duty of the commissioners to submit to the voters of

the port district the proposition as to whether the corporate name of the port shall be changed. The proposition shall be submitted at the next general port election according to RCW 29A.04.330.

(2) The petition shall contain the present corporate name of the port district and the corporate name which is proposed to be given to the port district.

(3) On submitting the proposition to the voters of the port district it shall be the duty of the port commissioners to cause to be printed on the official ballot used at the election the following proposition:

"Shall the corporate name, 'Port of ' be changed to 'Port of ' YES
"Shall the corporate name, 'Port of ' be changed to 'Port of ' NO"

(4) At the time when the returns of the general election shall be canvassed by the commissioners of the port district, it shall be the duty of the commissioners to canvass the vote upon the proposition so submitted, recording in their record the result of the canvass.

(5) Should a majority of the registered voters of the port district voting at the general port election vote in favor of the proposition it shall be the duty of the port commissioners to certify the fact to the auditor of the county in which the port district shall be situated and to the secretary of state of the state of Washington, under the seal of the port district. On and after the filing of the certificate with the county auditor as aforesaid and with the secretary of state of the state of Washington, the corporate name of the port district shall be changed, and thenceforth the port district shall be known and designated in accordance therewith. [2006 c 344 § 35; 1998 c 240 § 1; 1990 c 259 § 18; 1929 c 140 § 1; RRS § 9689-1.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

53.04.120 Transfer of port district property to adjacent district—Procedure—Boundary changes—Jurisdiction. Property may be acquired and owned by any port district, at least one boundary of which property is contiguous to or within one-quarter air mile of such port district and is also located in an adjacent port district, and such property may be transferred to the owning port district upon unanimous resolution of the boards of commissioners of both port districts authorizing the same. The resolution of the port district within which such property is located shall be a resolution to permit the acquisition and to make the transfer, while the resolution of the port district which owns the property shall be a resolution to acquire and own the property and to accept the transferred property. Upon the filing of both official resolutions with the legislative authority and the auditor of the county or counties within which such port districts lie, together with maps showing in reasonable detail the boundary changes made, such acquisition and ownership shall be lawful and such transfer shall be effective and the commissioners of the port district acquiring, owning and receiving such property shall have jurisdiction over the whole of said enlarged port district to the same extent, and with like power and authority, as though the additional territory had been owned by and originally embraced within the boundaries of the port district. [1979 c 72 § 1; 1977 ex.s. c 91 § 1.]

Validity—Ratification—1979 c 72: "Any purchase or other acquisition of such property by any port district which occurred prior to the enactment of this 1979 amendatory act is hereby confirmed and ratified and shall not be deemed to have been ultra vires." [1979 c 72 § 2.]

Severability—1979 c 72: "If any provision of this 1979 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 72 § 4.]

53.04.150 Alternative annexation methods—Petition for resolution—Districts authorized to use—Petition requirements. A port district that is less than county-wide, and that is located in a county with a population of less than ninety thousand and located in either the Interstate 5 or Interstate 90 corridor, may petition for annexation of an area that is contiguous to its boundaries, is not located within the boundaries of any other port district, and contains no registered voters. The petition must be in writing, addressed to and filed with the port commission, and signed by the owners of not less than seventy-five percent of the property value in the area to be annexed, according to the assessed value for general taxation. The petition must contain a legal description of the property according to government legal subdivisions or legal plats, or a sufficient metes and bounds description, and must be accompanied by a plat outlining the boundaries of the property to be annexed. [2000 c 200 § 2; 1999 c 250 § 2.]

Intent—1999 c 250 §§ 2-5: "The legislature intends annexation procedures set forth in sections 2 through 5 of this act to be alternative methods available to port districts that are less than county-wide. The legislature does not intend the alternative procedures to supersede any other method authorized by chapter 53.04 RCW or other law for annexation of territory to a port district." [1999 c 250 § 1.]

53.04.160 Alternative annexation methods—Petition for resolution—Where filed—Commission’s duties. If a petition meeting the requirements set forth in RCW 53.04.150 is filed with the commission, the commission shall determine a date, time, and location for a hearing on the petition and shall provide public notice of that hearing and its nature by publishing the notice in one issue of a newspaper of general circulation in the district and by posting the notice in three public places within the territory proposed for annexation. The commission may require proof of a petition’s authenticity before complying with notice requirements imposed by this section and may require the signers of a petition to bear the costs of publishing and posting notice. [1999 c 250 § 3.]

Intent—1999 c 250 §§ 2-5: See note following RCW 53.04.150.

53.04.170 Alternative annexation methods—Petition for resolution—Hearing—Resolution. At the hearing, the commission may determine to annex all or any portion of the proposed area described in the petition. Following the hearing, the commission shall by resolution approve or disapprove annexation. Upon passage of the resolution, the commission shall file, with the board of county commissioners of the county in which the annexed property is located, a certified copy of the resolution. On the date fixed in the resolution, the area annexed becomes part of the district. [1999 c 250 § 4.]

Intent—1999 c 250 §§ 2-5: See note following RCW 53.04.150.

53.04.180 Alternative annexation methods—Annexation by written consent—Districts authorized to use—Resolution. (1) By a majority vote of the commission, and with the written consent of all the owners of the property to be annexed, a port commission of a district that is less than county-wide, and that is located in a county with a population of less than ninety thousand and located in either the Interstate 5 or Interstate 90 corridor, may annex, for industrial development or other port district purposes, property contiguous to the district’s boundaries and not located within the boundaries of any other port district.

(2) The written consent required by subsection (1) of this section must contain a full and correct legal description of the property to be annexed, must include the signature of all owners of the property to be annexed, and must be addressed to and filed with the commission.

(3) If the commission approves annexation under this section, it shall do so by resolution and shall file a certified copy of the resolution with the board of county commissioners of the county in which the annexed property is located. Upon the date fixed in the resolution, the area annexed becomes part of the district. [2000 c 200 § 1; 1999 c 250 § 5.]

Intent—1999 c 250 §§ 2-5: See note following RCW 53.04.150.

53.04.190 Alternative annexation methods—Outstanding indebtedness. No property within the territory annexed under RCW 53.04.150 through 53.04.180 may be taxed or assessed for the payment of any outstanding indebtedness of the port district as it existed before the annexation unless another law requires the tax or assessment. [1999 c 250 § 6.]

Chapter 53.06 RCW

COORDINATION OF ADMINISTRATIVE PROGRAMS AND OPERATIONS

Sections

53.06.010	Declaration of necessity.
53.06.020	Actions required of commissions—Joint reports to governor and legislature.
53.06.030	Washington public ports association as coordinating agency—Purposes, powers, and duties.
53.06.040	Dues and assessments may be paid association from district funds—Limitation on amount.
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53.06.070	Federation of Washington ports authorized—Purposes.
53.06.080	Implementation of economic development programs—Use of nonprofit corporations—Transfer of funds.
53.06.090	Nonprofit corporations—Legislative recognition.

53.06.010 Declaration of necessity. The necessity and desirability of coordinating the administration programs and operations of all the port districts in this state is recognized and declared as a matter of legislative determination. [1961 c 31 § 1.]

53.06.020 Actions required of commissions—Joint reports to governor and legislature. It shall be the duty of the port district commissions in the state to take such action to effect the coordination of the administrative programs and operations of each port district in the state and to submit to the governor and the legislature biennially a joint report or

joint reports containing the recommendations for procedural changes which would increase the efficiency of the respective port districts. [1994 c 75 § 1; 1989 c 425 § 3; 1961 c 31 § 2.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.06.030 Washington public ports association as coordinating agency—Purposes, powers, and duties. The port district commissions in this state are empowered to designate the Washington public ports association as a coordinating agency through which the duties imposed by RCW 53.06.020 may be performed, harmonized or correlated. The purposes of the Washington public ports association shall be:

(1) To initiate and carry on the necessary studies, investigations and surveys required for the proper development and improvement of the commerce and business generally common to all port districts, and to assemble and analyze the data thus obtained and to cooperate with the state of Washington, port districts both within and without the state of Washington, and other operators of terminal and transportation facilities for this purpose, and to make such expenditures as are necessary for these purposes, including the proper promotion and advertising of all such properties, utilities and facilities;

(2) To establish coordinating and joint marketing bodies comprised of association members, including but not limited to establishment of a federation of Washington ports as described in RCW 53.06.070, as may be necessary to provide effective and efficient marketing of the state's trade, tourism, and travel resources;

(3) To exchange information relative to port construction, maintenance, operation, administration and management;

(4) To promote and encourage port development along sound economic lines;

(5) To promote and encourage the development of transportation, commerce and industry;

(6) To operate as a clearing house for information, public relations and liaison for the port districts of the state and to serve as a channel for cooperation among the various port districts and for the assembly and presentation of information relating to the needs and requirements of port districts to the public. [1989 c 425 § 4; 1961 c 31 § 3.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.06.040 Dues and assessments may be paid association from district funds—Limitation on amount. Each port district which designates the Washington public ports association as the agency through which the duties imposed by RCW 53.06.020 may be executed is authorized to pay dues and/or assessments to said association from port district funds in any calendar year in an amount not exceeding a sum equal to the amount which would be raised by a levy of one cent per thousand dollars of assessed value against the taxable property within the port district. [1973 1st ex.s. c 195 § 55; 1970 ex.s. c 47 § 3; 1961 c 31 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

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53.06.050 Further action by commissions authorized—Meetings. The port district commissions are authorized to take such further action as they deem necessary to comply with the intent of this chapter, including the attendance at state and district meetings which may be required to formulate the reports provided for in RCW 53.06.020. [1961 c 31 § 5.]

53.06.060 Financial records of association and any nonprofit corporation utilized by port districts subject to audit by state auditor. The financial records of the Washington public ports association shall be subject to audit by the state auditor. The financial records of any nonprofit corporation utilized by port districts shall be subject to audit by the state auditor to determine compliance with the contractual terms and conditions under which payments or reimbursements are received under chapter 53.06 RCW. [2000 c 198 § 4; 1995 c 301 § 74; 1961 c 31 § 6.]

53.06.070 Federation of Washington ports authorized—Purposes. The Washington public ports association is authorized to create a federation of Washington ports to enable member ports to strengthen their international trading capabilities and market the region's products worldwide. Such a federation shall maintain the authority of individual ports and have the following purposes:

(1) To operate as an export trading company under the provisions enumerated in chapter 53.31 RCW;

(2) To provide a network to market the services of the members of the Washington public ports association;

(3) To provide expertise and assistance to businesses interested in export markets;

(4) To promote cooperative efforts between ports and local associate development organizations to assist local economic development efforts and build local capacity; and

(5) To assist in the efficient marketing of the state's trade, tourism, and travel resources. [1994 c 75 § 2; 1989 c 425 § 2.]

Findings—1989 c 425: "The legislature finds: (1) That the continuous development of Washington's ports should be a long-term goal for the state of Washington; (2) that Washington's ports are a valuable economic development resource, whose strength as a combined, coordinated entity for the purpose of trade and tourism development would far exceed their individual strength's in those areas; and (3) that, therefore, the ports should work together as a federation, coordinating their efforts further still with other public entities as well as the private sector.

The legislature concurs with the 1989 report of the economic development board on a long-term economic development strategy for Washington state as follows: (a) Competition for tourism dollars, as well as dollars to purchase Washington's goods and services, is global in nature and to compete, the state must identify its unique market niches, and market its trade, travel, and tourism assets aggressively; (b) the ports of the state of Washington are an integral part of the technological and physical infrastructure needed to help the state compete in the international marketplace; and (c) links among public agencies, associate development organizations, including ports, universities, and industry-oriented organizations must be strengthened in an effort to improve coordination, prevent duplication, and build local capacity." [1989 c 425 § 1.]

Severability—1989 c 425: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 425 § 12.]

53.06.080 Implementation of economic development programs—Use of nonprofit corporations—Transfer of

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funds. Port districts are authorized to utilize the services of a nonprofit corporation for the purposes of providing training, education, and general improvement to the public sector management skills necessary to implement the economic development programs of port districts. Actions taken under this section must be implemented pursuant to the powers granted in chapter 39.84 RCW. Any nonprofit corporation utilized pursuant to this section must be a tax exempt nonprofit corporation, may be a nonprofit corporation created by the Washington public ports association, and must be created for the sole purposes of education and training for port district officials and employees. Port districts are authorized to transfer to a qualified nonprofit corporation utilized pursuant to this section any funds received from an industrial development corporation created by a port district under RCW 39.84.130.

Nothing in this section shall be construed to prohibit the receipt of additional public or private funds by a nonprofit corporation established under this section. The coordination of these programs and the transfers and expenditures of funds shall be deemed to be for industrial development and trade promotion as provided for in Article VIII, section 8 of the Washington state Constitution. [2000 c 198 § 1.]

53.06.090 Nonprofit corporations—Legislative recognition. In carrying out the purposes described in this and other chapters of this title, the legislature recognizes that any nonprofit corporation created or re-created for the purposes of this chapter, is a private nonprofit corporation contracting to provide services to which port districts may subscribe. [2000 c 198 § 3.]

Chapter 53.08 RCW POWERS

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Acquisition of vacated waterways: RCW 79.120.060.

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Airport zoning: Chapter 14.12 RCW.

Deferral of special assessments: Chapter 84.38 RCW.

Emergency public works: Chapter 39.28 RCW.

Heating systems authorized: RCW 35.97.020.

Industrial development revenue bonds: Chapter 39.84 RCW.

Lien for labor and materials on public works: Chapter 60.28 RCW.

Municipal airports: Chapters 14.07 and 14.08 RCW.

Permits to use waterways within a port district: RCW 79.120.040.

Public contracts: Chapters 39.04 through 39.32 RCW.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

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

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Rural port district" means a port district formed under chapter 53.04 RCW and located in a county with an average population density of fewer than one hundred persons per square mile.

(3) "Telecommunications" has the same meaning as contained in RCW 80.04.010.

(4) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

(5) "Wholesale telecommunications services" means the provision of telecommunications services or facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers. [2000 c 81 § 6.]

Findings—2000 c 81: "The legislature makes the following findings:

(1) Access to telecommunications facilities and services is essential to the economic well-being of both rural and urban areas.

(2) Many persons and entities, particularly in rural areas, do not have adequate access to telecommunications facilities and services.

(3) Public utility districts and rural port districts may be well-positioned to construct and operate telecommunications facilities." [2000 c 81 § 1.]

53.08.010 Acquisition of property—Levy of assessments. A port district may acquire by purchase, for cash or on deferred payments for a period not exceeding twenty years, or by condemnation, or both, all lands, property, property rights, leases, or easements necessary for its purposes and may exercise the right of eminent domain in the acquirement or damaging of all such lands, property, and property rights, and may levy and collect assessments upon property for the payment of all damages and compensation in carrying out its purposes, and such right shall be exercised in the same manner and by the same procedure as provided for cities of the first class insofar as consistent with this title, and in connection therewith the county treasurer shall perform the duties of the treasurers of such cities. [1983 c 24 § 1; 1955 c 65 § 2. Prior: 1953 c 171 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by cities: Chapter 8.12 RCW.

53.08.015 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

53.08.020 Acquisition and operation of facilities. A port district may construct, condemn, purchase, acquire, add to, maintain, conduct, and operate sea walls, jetties, piers, wharves, docks, boat landings, and other harbor improvements, warehouses, storehouses, elevators, grain-bins, cold storage plants, terminal icing plants, bunkers, oil tanks, ferries, canals, locks, tidal basins, bridges, subways, tramways,

cableways, conveyors, administration buildings, fishing terminals, together with modern appliances and buildings for the economical handling, packaging, storing, and transporting of freight and handling of passenger traffic, rail and motor vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and terminal facilities, and any combination of such transfer and terminal facilities, commercial transportation, transfer, handling, storage and terminal facilities, and improvements relating to industrial and manufacturing activities within the district, and in connection with the operation of the facilities and improvements of the district, it may perform all customary services including the handling, weighing, measuring and reconditioning of all commodities received. A port district may also construct, condemn, purchase, acquire, add to and maintain facilities for the freezing or processing of goods, agricultural products, meats or perishable commodities. A port district may also construct, purchase and operate belt line railways, but shall not acquire the same by condemnation. [1963 c 147 § 3; 1961 c 126 § 1; 1955 c 65 § 3. Prior: 1953 c 171 § 2; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—1961 c 126: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 126 § 2.]

Essential rail assistance account, distribution of moneys to port districts: RCW 47.76.250.

53.08.030 Operation of foreign trade zones. A district may apply to the United States for permission to establish, operate, and maintain foreign trade zones within the district: PROVIDED, That nothing herein shall be construed to prevent such zones from being operated and financed by a private corporation(s) on behalf of such district acting as zone sponsor: PROVIDED FURTHER, That when the money so raised is to be used exclusively for the purpose of acquiring land for sites and constructing warehouses, storage plants, and other facilities to be constructed within the zone for use in the operation and maintenance of the zones, the district may contract indebtedness and issue general bonds therefor in an amount, in addition to the three-fourths of one percent hereinafter fixed, of one percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015, such additional indebtedness only to be incurred with the assent of three-fifths of the voters of the district voting thereon. [1977 ex.s. c 196 § 7; 1970 ex.s. c 42 § 31; 1955 c 65 § 4. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Effective date—1977 ex.s. c 196: See note following RCW 24.46.010.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Foreign trade zones: Chapter 24.46 RCW.

53.08.040 Improvement of lands for industrial and commercial purposes—Providing sewer and water utilities—Providing pollution control facilities. (1) A district may improve its lands by dredging, filling, bulkheading, providing waterways or otherwise developing such lands for

industrial and commercial purposes. A district may also acquire, construct, install, improve, and operate sewer and water utilities to serve its own property and other property owners under terms, conditions, and rates to be fixed and approved by the port commission. A district may also acquire, by purchase, construction, lease, or in any other manner, and may maintain and operate other facilities for the control or elimination of air, water, or other pollution, including, but not limited to, facilities for the treatment and/or disposal of industrial wastes, and may make such facilities available to others under terms, conditions and rates to be fixed and approved by the port commission. Such conditions and rates shall be sufficient to reimburse the port for all costs, including reasonable amortization of capital outlays caused by or incidental to providing such other pollution control facilities. However, no part of such costs of providing any pollution control facility to others shall be paid out of any tax revenues of the port and no port shall enter into an agreement or contract to provide sewer and/or water utilities or pollution control facilities if substantially similar utilities or facilities are available from another source (or sources) which is able and willing to provide such utilities or facilities on a reasonable and nondiscriminatory basis unless such other source (or sources) consents thereto.

(2) In the event that a port elects to make such other pollution control facilities available to others, it shall do so by lease, lease purchase agreement, or other agreement binding such user to pay for the use of said facilities for the full term of the revenue bonds issued by the port for the acquisition of said facilities, and said payments shall at least fully reimburse the port for all principal and interest paid by it on said bonds and for all operating or other costs, if any, incurred by the port in connection with said facilities. However, where there is more than one user of any such facilities, each user shall be responsible for its pro rata share of such costs and payment of principal and interest. Any port intending to provide pollution control facilities to others shall first survey the port district to ascertain the potential users of such facilities and the extent of their needs. The port shall conduct a public hearing upon the proposal and shall give each potential user an opportunity to participate in the use of such facilities upon equal terms and conditions.

(3) "Pollution control facility," as used in this section and RCW 53.08.041, does not include air quality improvement equipment that provides emission reductions for engines, vehicles, and vessels. [2007 c 348 § 103; 1989 c 298 § 1; 1972 ex.s. c 54 § 1; 1967 c 131 § 1; 1955 c 65 § 5. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Severability—1972 ex.s. c 54: "If any provision of this 1972 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this 1972 amendatory act are declared to be severable." [1972 ex.s. c 54 § 5.]

Assessments and charges against state lands: Chapter 79.44 RCW.

53.08.041 Pollution control facilities or other industrial development actions—Validation—Implementation

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of Article 8, section 8 of the Constitution. All actions heretofore taken by port districts in conformity with the provisions of this chapter, and the provisions of chapter 6, Laws of 1975 hereby made applicable thereto, relating to pollution control facilities or other industrial development, including, but not limited to, all bonds issued for such purposes, shall be deemed to have been taken pursuant to Article 8, section 8 of the Washington state Constitution and are hereby declared to be valid, legal and binding in all respects. All provisions of Title 53 RCW directly or indirectly relating to pollution control facilities or other industrial development are hereby found and declared to be legislation implementing the provisions of Article 8, section 8 of the Washington state Constitution. [1975 c 6 § 5.]

Severability—1975 c 6: See RCW 70.95A.940.

Construction—1975 c 6: See RCW 70.95A.912.

53.08.043 Powers relative to systems of sewerage. A port district may exercise all the powers relating to systems of sewerage authorized by RCW 35.67.010 and 35.67.020 for cities and towns. [1997 c 447 § 15.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

53.08.045 Facilities constructed under authority of chapter subject to taxation of leasehold interest. Facilities constructed by a port district under authority of this chapter will be subject to taxation of leasehold interest pursuant to applicable laws as now or hereafter enacted. [1972 ex.s. c 54 § 3.]

Severability—1972 ex.s. c 54: See note following RCW 53.08.040.

53.08.047 Chapter not to be construed as restricting or limiting powers of district under other laws. Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which a district might otherwise have under any laws of this state, but shall be construed as cumulative. [1972 ex.s. c 54 § 4.]

Severability—1972 ex.s. c 54: See note following RCW 53.08.040.

53.08.049 Community revitalization financing—Public improvements. In addition to other authority that a port district possesses, a port district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a port district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 18.]

Severability—2001 c 212: See RCW 39.89.902.

53.08.050 Local improvement districts—Assessments—Bonds. (1) A district may establish local improvement districts within the district, and levy special assessments, in annual installments extending over a period not exceeding ten years on all property specially benefited by the local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of the local improvement, and issue local improvement bonds to be paid from local improvement assessments. The levy and collection of such assessments and issuance of such bonds shall be as pro-

vided for the levy and collection of local improvement assessments and the issuance of local improvement bonds by cities and towns, insofar as consistent with this title: PROVIDED, That the duties of the treasurers of such cities and towns in connection therewith shall be performed by the county treasurer. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 132; 1955 c 65 § 6. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Assessments and charges against state lands: Chapter 79.44 RCW.

Cities

issuance of local improvement bonds: Chapter 35.45 RCW.

levy and collection of local improvement assessments: Chapters 35.44, 35.49 RCW.

Local improvements, supplemental authority: Chapter 35.51 RCW.

Public lands subject to local assessments: RCW 79.44.010.

53.08.055 Local improvement districts—Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 8.]

53.08.060 Improvement of waters and waterways. A district may improve navigable and nonnavigable waters of the United States and the state of Washington within the district; create and improve for harbor purposes new waterways within the district; and regulate and control all such waters and all natural or artificial waterways within the district and remove obstructions therefrom, and straighten, widen, deepen, and otherwise improve any water, watercourses, bays, lakes or streams, whether navigable or otherwise, flowing through or located within the district. [1979 ex.s. c 30 § 8; 1955 c 65 § 7. Prior: 1943 c 171 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

53.08.070 Rates and charges—Government contracts. A district may fix, without right of appeal therefrom the rates of wharfage, dockage, warehousing, and port and terminal charges upon all improvements owned and operated by it, and the charges of ferries operated by it.

It may fix, subject to state regulation, rates of wharfage, dockage, warehousing, and all necessary port and terminal charges upon all docks, wharves, warehouses, quays, and piers owned by it and operated under lease from it.

Notwithstanding any provision of this section, a port district may enter into any contract for wharfage, dockage, warehousing, or port or terminal charges, with the United States or any governmental agency thereof or with the state of Wash-

ington or any political subdivision thereof under such terms as the commission may, in its discretion, negotiate. [1995 c 146 § 1; 1955 c 65 § 8. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Utilities and transportation commission: Chapter 80.01 RCW.

53.08.080 Lease of property—Authorized—Duration. A district may lease all lands, wharves, docks and real and personal property owned and controlled by it, for such purposes and upon such terms as the port commission deems proper: PROVIDED, That no lease shall be for a period longer than fifty years with option for extensions for up to an additional thirty years, except where the property involved is or is to be devoted to airport purposes the port commission may lease said property for such period as may equal the estimated useful life of such work or facilities, but not to exceed seventy-five years: PROVIDED FURTHER, That where the property is held by the district under lease from the United States government or the state of Washington, or any agency or department thereof, the port commission may sublease said property, with option for extensions, up to the total term and extensions thereof permitted by such lease, but in any event not to exceed ninety years. [1989 c 298 § 2; 1983 c 64 § 1; 1973 c 87 § 1; 1961 ex.s. c 8 § 1; 1959 c 157 § 1; 1955 c 65 § 9. Prior: 1953 c 243 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Lease of

county property for airport purposes: RCW 36.34.180.

municipal property for airport purposes: RCW 14.08.120.

Restrictions on leases of harbor areas: State Constitution Art. 15 § 2.

53.08.085 Lease of property—Security for rent. Every lease of all lands, wharves, docks, and real and personal property of a port district for a term of more than one year shall have the rent secured by rental insurance, bond, or other security satisfactory to the port commission, in an amount equal to one-sixth the total rent, but in no case shall such security be less than an amount equal to one year's rent or more than an amount equal to three years' rent. Evidence of the existence of such insurance, bonds, or security shall be on file with the commission at all times during the term of the lease: PROVIDED, That nothing in this section shall prevent the port commission from requiring additional security on leases or provisions thereof, or on other agreements to use port facilities: PROVIDED FURTHER, That any security agreement may provide for termination on the anniversary date of such agreement on not less than one year's written notice to the port if said lease is not in default at the time of said notice: PROVIDED FURTHER, That if the security as required herein is not maintained throughout the full term of the lease, said lease shall be considered in default: PROVIDED, HOWEVER, That the port commission may in its discretion waive the rent security requirement or lower the amount of such requirement on the lease of real and/or personal port property. [1981 c 125 § 1; 1977 c 41 § 1; 1973 c 87 § 2.]

53.08.090 Sale of property. (1) A port commission may, by resolution, authorize the managing official of a port

district to sell and convey port district property of ten thousand dollars or less in value. The authority shall be in force for not more than one calendar year from the date of resolution and may be renewed from year to year. Prior to any such sale or conveyance the managing official shall itemize and list the property to be sold and make written certification to the commission that the listed property is no longer needed for district purposes. Any large block of the property having a value in excess of ten thousand dollars shall not be broken down into components of ten thousand dollars or less value and sold in the smaller components unless the smaller components be sold by public competitive bid. A port district may sell and convey any of its real or personal property valued at more than ten thousand dollars when the port commission has, by resolution, declared the property to be no longer needed for district purposes, but no property which is a part of the comprehensive plan of improvement or modification thereof shall be disposed of until the comprehensive plan has been modified to find the property surplus to port needs. The comprehensive plan shall be modified only after public notice and hearing provided by RCW 53.20.010.

Nothing in this section shall be deemed to repeal or modify procedures for property sales within industrial development districts as set forth in chapter 53.25 RCW.

(2) The ten thousand dollar figures in subsection (1) of this section shall be adjusted annually based upon the governmental price index established by the department of revenue under RCW 82.14.200. [1994 c 26 § 1; 1981 c 262 § 1; 1969 ex.s. c 30 § 1; 1965 c 23 § 1; 1955 c 65 § 10. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Restriction on sale of harbor rights and property: State Constitution Art. 15 § 1 (Amendment 15).

53.08.091 Sale of property—Contract sales—Terms and conditions. Except in cases where the full purchase price is paid at the time of the purchase, every sale of real property or personal property under authority of RCW 53.08.090 or 53.25.110 shall be subject to the following terms and conditions:

(1) The purchaser shall enter into a contract with the district in which the purchaser shall covenant that he will make the payments of principal and interest when due, and that he will pay all taxes and assessments on such property. Upon failure to make payments of principal, interest, assessments or taxes when due all rights of the purchaser under said contract may, at the election of the district, after notice to said purchaser, be declared to be forfeited. When the rights of the purchaser are declared forfeited, the district shall be released from all obligation to convey land covered by the contract, and in the case of personal property, the district shall have all rights granted to a secured party under *chapter 62A.9 RCW;

(2) The district may, as it deems advisable, extend the time for payment of principal and interest due or to become due;

(3) The district shall notify the purchaser in each instance when payment is overdue, and that the purchaser is liable to forfeiture if payment is not made within thirty days from the time the same became due, unless the time be extended by the district;

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(4) Not less than four percent of the total purchase price shall be paid on the date of execution of the contract for sale and not less than four percent shall be paid annually thereafter until the full purchase price has been paid, but any purchaser may make full payment at any time. All unpaid deferred payments shall draw interest at a rate not less than six percent per annum.

Nothing in this section shall be deemed to supersede other provisions of law more specifically governing sales of port district property. It is the purpose of this section to provide additional authority and procedures for sale of port district property no longer needed for port purposes. [1982 c 75 § 1; 1969 ex.s. c 11 § 1; 1965 c 23 § 2.]

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

53.08.092 Sale of property—Taxes and assessments against property sold by contract. A copy of all contract sales of port district property shall be filed with the county assessor within thirty days after the first payment is received by the port. The assessor shall place such property on the tax rolls of the county and the purchaser of such property shall become liable for all levies and assessments against such property. The port shall not be liable for any taxes or assessments, but if any outstanding taxes are not paid the property may be sold by the county as with other property with delinquent taxes due. Any amounts accruing from such a sale by the county, not required to pay outstanding and delinquent taxes or assessments and foreclosure costs, shall be paid to the port district. [1965 c 23 § 3.]

53.08.110 Gifts—Improvement. Port commissioners of any port district are hereby authorized to accept for and on behalf of said port district gifts of real and personal property and to expend in improvements and betterment such amount as may be necessary. [1921 c 39 § 4; RRS § 9705.]

53.08.120 Contracts for labor and material—Small works roster. (1) All material and work required by a port district not meeting the definition of public work in RCW 39.04.010(4) may be procured in the open market or by contract and all work ordered may be done by contract or day labor.

(2)(a) All such contracts for work meeting the definition of "public work" in RCW 39.04.010(4), the estimated cost of which exceeds two hundred thousand dollars, shall be awarded using a competitive bid process. The contract must be awarded at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(b) For all contracts related to work meeting the definition of "public work" in RCW 39.04.010(4) that are estimated

at two hundred thousand dollars or less, a port district may let contracts using the small works roster process under RCW 39.04.155 in lieu of advertising for bids. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster. [2008 c 130 § 1; 2000 c 138 § 210; 1999 c 29 § 1; 1998 c 278 § 6; 1993 c 198 § 13; 1988 c 235 § 1; 1982 c 92 § 1; 1975 1st ex.s. c 47 § 1; 1955 c 348 § 2. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Severability—1955 c 348: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1955 c 348 § 7.]

53.08.130 Notice—Award of contract—Low bidder claiming error. The notice shall state generally the nature of the work to be done and require that bids be sealed and filed with the commission at a time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, money order, or surety bid bond to the commission for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named the bids shall be publicly opened and read and the commission shall proceed to canvass the bids and, except as otherwise in this section provided, shall let the contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and re-advertise, and in such case all such bid proposal deposits shall be returned to the bidders; but if the contract is let, then all bid proposal deposits shall be returned to the bidders, except that of the successful bidder which shall be retained until a contract is entered into for the purchase of such materials or doing such work, and a bond given to the port district for the performance of the contract and otherwise conditioned as required by law, with sureties satisfactory to the commission, in an amount to be fixed by the commission, but not in any event less than twenty-five percent of the contract price. If the bidder fails to enter into the contract in accordance with his or her bid and furnish such bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or money order and the amount thereof shall be forfeited to the port district or the port district shall recover the amount of the surety bid bond. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. [1996 c 18 § 11; 1971 ex.s. c 258 § 2; 1955 c 348 § 3. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Severability—1971 ex.s. c 258: See note following RCW 28B.10.350.

Severability—1955 c 348: See note following RCW 53.08.120.

Contractor's bond: Chapter 39.08 RCW.

Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.

53.08.135 Construction projects over forty thousand dollars—Contracting out. Port districts shall determine if any construction project over forty thousand dollars can be accomplished less expensively by contracting out. If contracting out is less expensive, the port district may contract out such project. [1982 c 92 § 2.]

53.08.140 Leases or contracts without bond. Port districts may enter into leases and contracts of every kind and nature with the United States of America or any of its departments, the state of Washington or any of its departments, or its political subdivisions or with any municipal corporation or quasi municipal corporation of the state of Washington, without requiring said port district or public bodies to provide bonds to secure the performance thereof. All such leases or contracts heretofore entered into are hereby ratified. [1943 c 136 § 1; Rem. Supp. 1943 § 9710.]

53.08.150 Notices when no newspaper in county. Notices required in port districts in which no newspaper is published may be given by publication in any newspaper of general circulation in the county. [1921 c 39 § 3; RRS § 9704.]

53.08.160 Studies, investigations, surveys—Promotion of facilities. All port districts organized under the provisions of this act shall be, and they are hereby, authorized and empowered to initiate and carry on the necessary studies, investigations and surveys required for the proper development, improvement and utilization of all port properties, utilities and facilities, and for industrial development within the district when such agricultural and industrial development is carried out by a public agency, institution, or body for a public purpose, and to assemble and analyze the data thus obtained and to cooperate with the state of Washington, other port districts and other operators of terminal and transportation facilities for these purposes, and to make such expenditures as are necessary for said purposes, and for the proper promotion, advertising, improvement and development of such port properties, utilities and facilities: PROVIDED HOWEVER, That nothing in this section shall authorize a port district to develop its properties as an agricultural or dairy farm. [1973 1st ex.s. c 55 § 1; 1947 c 24 § 2; Rem. Supp. 1947 § 9692A.]

53.08.170 Employment—Wages—Benefits—Agents—Insurance for port district commissioners. The port commission shall have authority to create and fill positions, to fix wages, salaries and bonds thereof, to pay costs and assessments involved in securing or arranging to secure employees, and to establish such benefits for employees, including holiday pay, vacations or vacation pay, retirement and pension benefits, medical, surgical or hospital care, life, accident, or health disability insurance, and similar benefits, already established by other employers of similar employees,

as the port commissioner shall by resolution provide: PROVIDED, That any district providing insurance benefits for its employees in any manner whatsoever may provide health and accident insurance, life insurance with coverage not to exceed that provided district employees, and business related travel, liability, and errors and omissions insurance, for its commissioners, which insurance shall not be considered to be compensation.

Subject to chapter 48.62 RCW, the port commission shall have authority to provide or pay such benefits directly, or to provide for such benefits by the purchase of insurance policies or entering into contracts with and compensating any person, firm, agency or organization furnishing such benefits, or by making contributions to vacation plans or funds, or health and welfare plans and funds, or pension plans or funds, or similar plans or funds, already established by other employers of similar employees and in which the port district is permitted to participate for particular classifications of its employees by the trustees or other persons responsible for the administration of such established plans or funds: PROVIDED FURTHER, That no port district employee shall be allowed to apply for admission to or be accepted as a member of the state employees' retirement system after January 1, 1965, if admission to such system would result in coverage under both a private pension system and the state employees' retirement system, it being the purpose of this proviso that port districts shall not at the same time contribute for any employee to both a private pension or retirement plan and to the state employees' retirement system. The port commission shall have authority by resolution to utilize and compensate agents for the purpose of paying, in the name and by the check of such agent or agents or otherwise, wages, salaries and other benefits to employees, or particular classifications thereof, and for the purpose of withholding payroll taxes and paying over tax moneys so withheld to appropriate government agencies, on a combined basis with the wages, salaries, benefits, or taxes of other employers or otherwise; to enter into such contracts and arrangements with and to transfer by warrant such funds from time to time to any such agent or agents so appointed as are necessary to accomplish such salary, wage, benefit, or tax payments as though the port district were a private employer, notwithstanding any other provision of the law to the contrary. The funds of a port district transferred to such an agent or agents for the payment of wages or salaries of its employees in the name or by the check of such agent or agents shall be subject to garnishment with respect to salaries or wages so paid, notwithstanding any provision of the law relating to municipal corporations to the contrary.

Notwithstanding any provision in this section, the governing body of a port district may enter into an agreement in writing with one or more of its officers or employees or a group of such officers and employees, authorizing deductions from the officer's or employee's salary or wages of the amount of any premium specified in writing by the officer or employee, for contribution to any private pension plan, without loss of eligibility for membership in the state employees' retirement system, and may agree to remit that amount to the management of such private pension plan. However, no port district funds shall be contributed or paid to such private plan. When such authorized deductions are certified by the port commission to the port district's auditor, the auditor shall

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draw and issue a proper warrant or warrants, or check or checks if that method of payment is authorized by statute, directly to and in favor of the person, firm, corporation, or organization named in the authorization, for the total amount authorized to be deducted from the payroll, together with a list identifying the officers and employees for whom the payment is made.

Nothing in this section may be invoked to invalidate any private pension plan or any public or private contributions or payments thereto, or exclude members of any such private pension plan from membership in the state employees' retirement system, if such private plan was in operation on December 31, 2001. [2002 c 362 § 1; 1991 sp.s. c 30 § 22; 1987 c 50 § 1; 1985 c 81 § 1; 1973 1st ex.s. c 6 § 1; 1965 c 20 § 1; 1955 c 64 § 1.]

Effective date, implementation, application—Severability—1991 sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Garnishment: Chapter 6.27 RCW.

Hospitalization and medical insurance authorized: RCW 41.04.180.

Hospitalization and medical insurance not deemed additional compensation: RCW 41.04.190.

Payroll deductions: RCW 41.04.020.

Prevailing wages on public works: Chapter 39.12 RCW.

53.08.171 Employment relations—Collective bargaining and arbitration. See chapter 53.18 RCW.

53.08.175 Commissioners, officers, and employees—Reimbursement of expenses. Employees, officers, and commissioners of port districts shall, when engaged in official business of the port district, be entitled to receive their necessary and reasonable travel and other business expenses incurred on behalf of the port district. Reimbursement of such expenses may be granted, whether incurred within or without the port district, when submitted on a voucher with appropriate evidence of payment by such employee or official. [1965 c 101 § 1.]

Section headings—1965 c 101: "Section headings as used in this act do not constitute any part of the law." [1965 c 101 § 3.]

53.08.176 Commissioners, officers, and employees—Regulation of expenses. Each port district shall adopt a resolution (which may be amended from time to time) which shall establish the basic rules and regulations governing methods and amount of reimbursement payable to such port officials and employees for travel and other business expenses incurred on behalf of the district. The resolution shall, among other things, establish procedures for approving such expenses; set forth the method of authorizing the direct purchase of transportation; the form of the voucher; and requirements governing the use of credit cards issued in the name of the port district. Such regulations may provide for payment of per diem in lieu of actual expenses when travel requires overnight lodging: PROVIDED, That in all cases any per diem payment shall not exceed twenty-five dollars per day. The state auditor shall, as provided by general law, cooperate with the port district in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses. [1965 c 101 § 2.]

Section headings—1965 c 101: See note following RCW 53.08.175.

53.08.180 Federal old age and survivors' insurance for employees. As used in RCW 53.08.180 through 53.08.200, the term "employees" shall be as defined in RCW 41.48.020 and no distinction shall be made for the purposes of coverage under the social security act, between persons employed by a port district on a casual or temporary basis, or on a regular or steady basis, or between persons paid hourly wages and persons paid wages on a weekly, monthly, or other periodic basis. It being the intent of RCW 53.08.180 through 53.08.200 that all employees shall be entitled to the coverage of the federal social security act for work performed in the service of a port district, which is not covered by the state employees' retirement system. [1955 c 219 § 1.]

Public employees' retirement system: Chapter 41.40 RCW.

53.08.190 Federal old age and survivors' insurance for employees—Plan for extension of benefits. Each port district, which has not previously done so, shall within thirty days of June 8, 1955, submit for approval by the governor a plan for extending the benefits of Title II of the federal social security act, as amended, in conformity with applicable provisions of said act as set forth in chapter 41.48 RCW, to employees of such port district who are employed in positions not covered by the employees' retirement system of the state of Washington. The plan required to be submitted by this section shall be as set forth in RCW 41.48.050 and shall be in conformance therewith. [1955 c 219 § 2.]

53.08.200 Federal old age and survivors' insurance for employees—Contributions. All port districts are authorized to make contributions on employees' wages, and to impose upon their employees contributions with respect to their wages in accordance with RCW 41.48.030 through 41.48.050. [1955 c 219 § 3.]

53.08.205 Liability insurance for officials and employees. The board of commissioners of each port district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 4.]

53.08.207 Liability insurance for officers and employees authorized. See RCW 36.16.138.

53.08.208 Actions against officer, employee, or agent—Defense and costs provided by port district—Exception. Whenever any action, claim or proceeding is instituted against any person who is or was an officer, employee, or agent of a port district established under this title arising out of the performance or failure of performance of duties for, or employment with any such district, the commission of the district may grant a request by such person that the attorney of the district's choosing be authorized to defend said claim, suit or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the district's funds: PROVIDED, That costs of defense and/or judgment or settlement against

such person shall not be paid in any case where the court has found that such person was not acting in good faith or within the scope of his employment with or duties for the district. [1975 c 60 § 1.]

53.08.210 Quorum. See RCW 53.12.246.

53.08.220 Regulations authorized—Adoption as part of ordinance or resolution of city or county, procedure—Enforcement—Penalty for violation. (1) A port district may formulate all needful regulations for the use by tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, shippers, business visitors, and members of the general public of any properties or facilities owned or operated by it, and request the adoption, amendment, or repeal of such regulations as part of the ordinances of the city or town in which such properties or facilities are situated, or as part of the resolutions of the county, if such properties or facilities be situated outside any city or town. The port commission shall make such request by resolution after holding a public hearing on the proposed regulations, of which at least ten days' notice shall be published in a legal newspaper of general circulation in the port district. Such regulations must conform to and be consistent with federal and state law. As to properties or facilities situated within a city or town, such regulations must conform to and be consistent with the ordinances of the city or town. As to properties or facilities situated outside any city or town, such regulations must conform to and be consistent with county resolutions. Upon receiving such request, the governing body of the city, town, or county, as the case may be, may adopt such regulations as part of its ordinances or resolutions, or amend or repeal such regulations in accordance with the terms of the request.

(2)(a) Except as otherwise provided in this subsection, any violation of the regulations described in subsection (1) of this section is a misdemeanor which shall be redressed in the same manner as other police regulations of the city, town, or county, and it shall be the duty of all law enforcement officers to enforce such regulations accordingly.

(b) Except as provided in (c) of this subsection, violation of such a regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(c) Violation of such a regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 286; 1979 ex.s. c 136 § 103; 1961 c 38 § 1.]

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

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

53.08.230 Making motor vehicle and other police regulations applicable to district property—Filing plat with county auditor—Duty of law enforcement officers. A port district may at its option file with the county auditor a plat of any of its properties or facilities, showing thereon such private streets, alleys, access roads, parking areas, parks and other places as the port district may wish to have treated as public for purposes of motor vehicle or other police regulations. Such plat may be amended at any time by the filing of

an amendatory plat, and may be vacated at any time by the filing of a resolution of vacation. So long as any such plat or amendatory plat is on file and not vacated, the motor vehicle or other police regulations of the state, and the motor vehicle regulations of the city, town or county, as the case may be, in which the areas described in the plat are situated, shall apply to such areas as though they were public streets, alleys, access roads, parking areas, parks or other places, and it shall be the duty of all state and local law enforcement officers to enforce such regulations accordingly. [1961 c 38 § 2.]

53.08.240 Joint exercise of powers and joint acquisition of property—Contracts with other governmental entities. (1) Any two or more port districts shall have the power, by mutual agreement, to exercise jointly all powers granted to each individual district, and in the exercise of such powers shall have the right and power to acquire jointly all lands, property, property rights, leases, or easements necessary for their purposes, either entirely within or partly within or partly without or entirely without such districts: PROVIDED, That any two or more districts so acting jointly, by mutual agreement, shall not acquire any real property or real property rights in any other port district without the consent of such district.

(2) A district may enter into any contract with the United States, or any state, county, or municipal corporation, or any department of those entities, for carrying out any of the powers that each of the contracting parties may by law exercise separately.

(3)(a) A port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, may enter into any contract that each of the contracting parties may by law exercise separately with, including but not limited to, municipal corporations of adjoining states.

(b) In addition to other powers granted by statute, a port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, may enter into agreements with the United States or any of its agencies, or with any state, or with any municipal corporation of this state or of an adjoining state, for exercising jointly or cooperatively within or outside the district, in whole or in part, any of the powers that each of the contracting parties may by law exercise separately, for the promotion or development of trade or industry. Such powers may be exercised outside the boundaries of this state only after a public hearing of which notice has been published in a newspaper of general circulation within the district at least ten days in advance, and pursuant to findings and a resolution by the port district's commission that: (i) The undertaking and the district's participation in it will substantially benefit the district and the state of Washington; and (ii) the districts' share of the cost will not exceed an amount calculated by dividing the total cost of the undertaking by the number of participants. [1999 c 306 § 3; 1961 c 24 § 1.]

Purpose—1999 c 306: See note following RCW 53.04.010.

53.08.245 Economic development programs authorized. It shall be in the public purpose for all port districts to engage in economic development programs. In addition, port

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districts may contract with nonprofit corporations in furtherance of this and other acts relating to economic development. [1985 c 125 § 1.]

53.08.250 Participation in world fairs or expositions authorized. See chapter 35.60 RCW.

53.08.255 Tourism promotion and tourism-related facilities authorized. (1) Any port district in this state, acting through its commission, has power to expend moneys and conduct promotion of resources and facilities in the district or general area by advertising, publicizing, or otherwise distributing information to attract visitors and encourage tourist expansion.

(2)(a) Any port district is authorized either individually or jointly with any other municipality, or person, or any combination thereof, to acquire and to operate tourism-related facilities.

(b) When exercising the authority granted under (a) of this subsection, a port district may exercise any of the powers granted to a municipality under RCW 67.28.120, 67.28.130 through 67.28.170, and 67.28.220, but may not exercise powers granted to municipalities under RCW 67.28.180 and 67.28.181 or other powers granted to municipalities under chapter 67.28 RCW. The definitions contained in RCW 67.28.080 apply to the exercise of authority by a port district under (a) of this subsection, and for that purpose the term "municipality" includes a port district.

(c) Port districts may not use this section as the authority for the exercise of the power of eminent domain. [2007 c 476 § 1; 1984 c 122 § 10.]

53.08.260 Park and recreation facilities. A port district may construct, improve, maintain, and operate public park and recreation facilities when such facilities are necessary to more fully utilize boat landings, harbors, wharves and piers, air, land, and water passenger and transfer terminals, waterways, and other port facilities authorized by law pursuant to the port's comprehensive plan of harbor improvements and industrial development. [1965 c 81 § 1.]

Harbor improvement plan: RCW 53.20.010.

53.08.270 Park and recreation facilities—Approval of other agencies. Before undertaking any such plan for the acquisition and operation of any park or recreational facility the proposed plan therefor shall be first submitted in writing to the director of the parks and recreation commission and to the governing body of any county or municipal park agency having jurisdiction in the area. The state director and/or such county or municipal park agency shall examine the port's proposed plan, and may disapprove such proposed plan if it is found to be in conflict with state or local park and recreation plans for the same area. If such proposed port plan is disapproved the port district shall not proceed further with such plan. If the state director or the governing body of the county or municipal agency does not respond in writing to the port within sixty days, it shall be deemed that approval has been granted. [1965 c 81 § 2.]

53.08.280 Police officers—Appointment authorized—Jurisdiction. Any port district operating an airport with a police department as authorized by RCW 14.08.120 or designated as a port of entry by the federal government is authorized to appoint police officers with full police powers to enforce all applicable federal, state, or municipal statutes, rules, regulations, or ordinances upon any port-owned or operated properties or operations: PROVIDED, That such police officers must have successfully graduated from a recognized professional police academy or training institution. [1981 c 97 § 1; 1974 ex.s. c 62 § 1.]

53.08.290 Intermodal movement of interstate and foreign cargo—Restrictions. In addition to the other powers under this chapter, a port district, in connection with the operation of facilities and improvements of the district, may perform all necessary activities related to the intermodal movement of interstate and foreign cargo: PROVIDED, That nothing contained herein shall authorize a port district to engage in the transportation of commodities by motor vehicle for compensation outside the boundaries of the port district. A port district may, by itself or in conjunction with public or private entities, acquire, construct, purchase, lease, contract for, provide, and operate rail services, equipment, and facilities inside or outside the port district: PROVIDED, That such authority may only be exercised outside the boundaries of the port district if such extraterritorial rail services, equipment, or facilities are found, by resolution of the commission of the port district exercising such authority, to be reasonably necessary to link the rail services, equipment, and facilities within the port district to an interstate railroad system; however, if such extraterritorial rail services, equipment, or facilities are in or are to be located in one or more other port districts, the commission of such other port district or districts must consent by resolution to the proposed plan of the originating port district which consent shall not be unreasonably withheld: PROVIDED FURTHER, That no port district shall engage in the manufacture of rail cars for use off port property. [1981 c 47 § 1; 1980 c 110 § 2.]

Purpose—1980 c 110: "The purpose of this act is to:

(1) Clarify existing law as to the authority of port districts to perform certain cargo movement activities and to contract for or otherwise provide facilities for rail service for the movement of such cargo; and

(2) Provide authority for port districts to assist in development of the recreation-tourism industry by acquiring and operating certain watercraft in limited areas." [1980 c 110 § 1.]

53.08.295 Passenger carrying vessels. A port district may acquire, lease, construct, purchase, maintain, and operate passenger carrying vessels on Puget Sound, interstate navigable rivers of the state, and intrastate waters of adjoining states. Service provided shall be under terms, conditions, and rates to be fixed and approved by the port commission. Operation of such vessels shall be subject to applicable state and federal laws pertaining to such service. [2008 c 45 § 4; 1980 c 110 § 3.]

Purpose—1980 c 110: See note following RCW 53.08.290.

53.08.300 Rewards for arrest and conviction of persons committing criminal offenses against port district authorized. See RCW 10.85.030.

53.08.310 Moorage facilities—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 53.08.320.

(1) "Port charges" mean charges of a moorage facility operator for moorage and storage, and all other charges owing or to become owing under a contract between a vessel owner and the moorage facility operator, or under an officially adopted tariff including, but not limited to, costs of sale and related legal expenses.

(2) "Vessel" means every species of watercraft or other artificial contrivance capable of being used as a means of transportation on water and which does not exceed two hundred feet in length. "Vessel" includes any trailer used for the transportation of watercraft.

(3) "Moorage facility" means any properties or facilities owned or operated by a moorage facility operator which are capable of use for the moorage or storage of vessels.

(4) "Moorage facility operator" means any port district, city, town, metropolitan park district, or county which owns and/or operates a moorage facility.

(5) "Owner" means every natural person, firm, partnership, corporation, association, or organization, or agent thereof, with actual or apparent authority, who expressly or impliedly contracts for use of a moorage facility.

(6) "Transient vessel" means a vessel using a moorage facility and which belongs to an owner who does not have a moorage agreement with the moorage facility operator. Transient vessels include, but are not limited to: Vessels seeking a harbor of refuge, day use, or overnight use of a moorage facility on a space-as-available basis. [1986 c 260 § 1; 1983 c 188 § 1.]

Construction—Savings—1983 c 188: "Nothing contained in RCW 53.08.310 and 53.08.320 may be construed as a limitation of any rights, privileges, or remedies previously existing under any applicable laws of port districts, cities, towns, metropolitan park districts, or counties." [1983 c 188 § 3.]

Severability—1983 c 188: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 188 § 5.]

53.08.320 Moorage facilities—Rules authorized—Port charges, delinquency—Abandoned vessels, public sale. A moorage facility operator may adopt all rules necessary for rental and use of moorage facilities and for the expeditious collection of port charges. The rules may also establish procedures for the enforcement of these rules by port district, city, county, metropolitan park district or town personnel. The rules shall include the following:

(1) Procedures authorizing moorage facility personnel to take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the moorage facility so that the vessels are in the possession and control of the moorage facility operator and cannot be removed from the moorage facility. These procedures may be used if an owner mooring or storing a vessel at the moorage facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay the port charges owed or to commence legal proceedings. Notification shall be by registered mail to the owner at his or her last known address. In the case of a transient vessel, or where no address was fur-

nished by the owner, the moorage facility operator need not give such notice prior to securing the vessel. At the time of securing the vessel, an authorized moorage facility employee shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

- (a) The date and time the notice was attached;
- (b) A statement that if the account is not paid in full within ninety days from the time the notice is attached, the vessel may be sold at public auction to satisfy the port charges; and
- (c) The address and telephone number where additional information may be obtained concerning release of the vessel.

After a vessel is secured, the operator shall make a reasonable effort to notify the owner by registered mail in order to give the owner the information contained in the notice.

(2) Procedures authorizing moorage facility personnel at their discretion to move moored vessels ashore for storage within properties under the operator's control or for storage with private persons under their control as bailees of the moorage facility, if the vessel is, in the opinion of port personnel a nuisance, if the vessel is in danger of sinking or creating other damage, or is owing port charges. Costs of any such procedure shall be paid by the vessel's owner. If the owner is not known, or unable to reimburse the moorage facility operator for the costs of these procedures, the mooring facility operators may seek reimbursement of seventy-five percent of all reasonable and auditable costs from the derelict vessel removal account established in RCW 79.100.100.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the moorage facility operator for port charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the moorage facility operator for the immediate removal of the vessel from the moorage facility or for authorized moorage; and

(b) Making payment to the moorage facility operator of all port charges, or by posting with the moorage facility operator a sufficient cash bond or other acceptable security, to be held in trust by the moorage facility operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the moorage facility operator shall receive so much of the bond or other security as is agreed, or as is necessary to satisfy any judgment, costs, and interest as may be awarded to the moorage facility operator. The balance shall be refunded immediately to the owner at his or her last known address.

(4) If a vessel has been secured by the moorage facility operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this section, the vessel shall be conclusively presumed to have been abandoned by the owner.

(2008 Ed.)

(5) If a vessel moored or stored at a moorage facility is abandoned, the moorage facility operator may, by resolution of its legislative authority, authorize the public sale of the vessel by authorized personnel to the highest and best bidder for cash as prescribed by this subsection (5). Either a minimum bid may be established or a letter of credit may be required, or both, to discourage the future reabandonment of the vessel.

(a) Before the vessel is sold, the owner of the vessel shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of port charges owed with respect to the vessel. The notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the moorage facility is located. Such notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The moorage facility operator may bid all or part of its port charges at the sale and may become a purchaser at the sale.

(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of the port charges owing. Such lawsuit must be commenced within ten days of the date the notification was provided pursuant to subsection (1) of this section, or the right to a hearing shall be deemed waived and the owner shall be liable for any port charges owing the moorage facility operator. In the event of litigation, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall first be applied to the payment of port charges. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the moorage facility operator within one year of the date of the sale, the excess funds from the sale shall revert to the derelict vessel removal account established in RCW 79.100.100. If the sale is for a sum less than the applicable port charges, the moorage facility operator is entitled to assert a claim for a deficiency.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the moorage facility operator.

(6) The rules authorized under this section shall be enforceable only if the moorage facility has had its tariff containing such rules conspicuously posted at its moorage facility at all times. [2002 c 286 § 23; 1986 c 260 § 2; 1985 c 7 § 124; 1983 c 188 § 2.]

Severability—Effective date—2002 c 286: See RCW 79.100.900 and 79.100.901.

Severability—Construction—Savings—1983 c 188: See notes following RCW 53.08.310.

53.08.330 Streets, roads, and highways—Construction, upgrading, improvement, and repair authorized. Any port district in this state, acting through its commission,

may expend port funds toward construction, upgrading, improvement, or repair of any street, road, or highway that serves port facilities. [1990 c 5 § 1.]

53.08.340 Streets, roads, and highways—Expenditure of funds. The funds authorized by RCW 53.08.330 may be expended by the port commission in conjunction with any plan of improvements undertaken by the state of Washington, an adjoining state, or a county or municipal government of either, in combination with any of said public entities, and without regard to whether expenditures are made for a road located within the state of Washington or an adjoining state. [1990 c 5 § 2.]

53.08.360 Annexation of port district property—Transfer of employees engaged in fire fighting. (1) When a port district provides its own fire protection services with port district employees, and port district property is included as part of an annexation, incorporation, consolidation, or merger by a city, town, or fire protection district, and fire protection services for this port district property will be furnished by the city, town, or fire protection district, an eligible employee may transfer employment to the city, town, or fire protection district in the same manner and under the same conditions that a firefighter may transfer employment into a fire protection district pursuant to RCW 52.04.111, 52.04.121, and 52.04.131.

(2) "Eligible employee" means an employee of the port district who (a) was at the time of the annexation, merger, consolidation, or incorporation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire department of the city, town, or fire protection district, (b) will, as a direct consequence of the annexation, merger, consolidation, or incorporation, be separated from the employ of the port district, and (c) can perform the duties and meet the minimum requirements of the position to be filled. [1994 c 74 § 2.]

Intent—1994 c 74: "The legislature recognizes that it passed comprehensive legislation in 1986 to provide protection to firefighters who risk losing their jobs as a result of an annexation, incorporation, merger, or consolidation by a city, town, or fire protection district. The legislation did not, however, grant these same protections to firefighters who are employed by port districts. It is the intent of the legislature that firefighters who are employed by port districts should have the same transfer rights as other local government firefighters in the event of an annexation, consolidation, merger, or incorporation by a city, town, or fire protection district." [1994 c 74 § 1.]

53.08.370 Telecommunications facilities—Construct, purchase, acquire, etc.—Purposes—Limitations—Eminent domain. (1) A rural port district in existence on June 8, 2000, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(a) For the district's own use; and
 (b) For the provision of wholesale telecommunications services within the district's limits. Nothing in this subsection shall be construed to authorize rural port districts to provide telecommunications services to end users.

(2) A rural port district providing wholesale telecommunications services under this section shall ensure that rates,

terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a rural port district offering such rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) When a rural port district establishes a separate utility function for the provision of wholesale telecommunications services, it shall account for any and all revenues and expenditures related to its wholesale telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations. Any revenues received from the provision of wholesale telecommunications services must be dedicated to the utility function that includes the provision of wholesale telecommunications services for costs incurred to build and maintain the telecommunications facilities until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance the telecommunications facilities are discharged or retired.

(4) When a rural port district establishes a separate utility function for the provision of wholesale telecommunications services, all telecommunications services rendered by the separate function to the district for the district's internal telecommunications needs shall be charged at its true and full value. A rural port district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services.

(5) A rural port district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(6) Except as otherwise specifically provided, a rural port district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws of 2000 limits any existing authority of a rural port district under this title. [2000 c 81 § 7.]

Findings—2000 c 81: See note following RCW 53.08.005.

53.08.380 Wholesale telecommunications services—Petition for review of rates, terms, conditions. (1) A person or entity that has requested wholesale telecommunications services from a rural port district may petition the commission under the procedures set forth in RCW 80.04.110 (1) through (3) if it believes the district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential. The person or entity shall provide the district notice of its intent to petition the commission and an opportunity to review within thirty days the rates, terms, and conditions as applied to it prior to submitting its petition. In determining whether a district is providing discriminatory or preferential rates, terms, and conditions, the commission may consider such matters as service quality, technical feasibility of connection points on the district's telecommunications facilities, time of response to service requests, system capacity, and other matters reasonably related to the provision of wholesale telecommunications services. If the commission, after notice

and hearing, determines that a rural port district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential, it shall issue a final order finding non-compliance with this section and setting forth the specific areas of apparent noncompliance. An order imposed under this section shall be enforceable in any court of competent jurisdiction.

(2) The commission may order a rural port district to pay a share of the costs incurred by the commission in adjudicating or enforcing this section.

(3) Without limiting other remedies at law or equity, the commission and prevailing party may also seek injunctive relief to compel compliance with an order.

(4) Nothing in this section shall be construed to affect the commission's authority and jurisdiction with respect to actions, proceedings, or orders permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56). [2000 c 81 § 9.]

Findings—2000 c 81: See note following RCW 53.08.005.

53.08.390 Grays Harbor pilotage district—Conditions on pilotage service. A countywide port district located in part or in whole within the Grays Harbor pilotage district, as defined by RCW 88.16.050(2), may commence pilotage service with the following powers and subject to the conditions contained in this section.

(1) Persons employed to perform the pilotage service of a port district must be licensed under chapter 88.16 RCW to provide pilotage.

(2) Before establishing pilotage service, a port district shall give at least sixty days' written notice to the chairman of the board of pilotage commissioners to provide pilotage.

(3) A port district providing pilotage service under this section requiring additional pilots may petition the board of pilotage commissioners to qualify and license as a pilot a person who has passed the examination and is on the waiting list for the training program for the district. If there are no persons on the waiting list, the board shall solicit applicants and offer the examination.

(4) In addition to the power to employ or contract with pilots, a port district providing pilotage services under this section has such other powers as are reasonably necessary to accomplish the purpose of this section including, but not limited to, providing through ownership or contract pilots launches, dispatcher services, or ancillary tug services required for operations or safety.

(5) A port district providing pilotage services under this section may recommend to the board of pilotage commissioners rules of service, rates, and tariffs governing its pilotage services for consideration and adoption pursuant to RCW 88.16.035. The rules, rates, and tariffs recommended by the port district must have been approved in open meetings of the port district ten or more days after published notice in a newspaper of general circulation and after mailing a copy of the notice to the chairman of the board of pilotage commissioners.

(6) A pilot providing pilotage services under this section must comply with all requirements of the pilotage act, chapter 88.16 RCW, and all rules adopted thereunder. [2001 2nd sp.s. c 22 § 1.]

(2008 Ed.)

Construction—2001 2nd sp.s. c 22: "Nothing in this act is intended to amend chapter 88.16 RCW." [2001 2nd sp.s. c 22 § 3.]

Effective date—2001 2nd sp.s. c 22: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 13, 2001]." [2001 2nd sp.s. c 22 § 4.]

53.08.400 District may exercise powers of community renewal agency. A port district may enter into a contract with any city, town, or county for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW. [2002 c 218 § 27.]

Severability—Savings—Construction—2002 c 218: See notes following RCW 35.81.005.

53.08.410 Abandoned or derelict vessels. A port district has the authority, subject to the processes and limitation outlined in chapter 79.100 RCW, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above publicly or privately owned aquatic lands within the jurisdiction of the port district. [2002 c 286 § 18.]

Severability—Effective date—2002 c 286: See RCW 79.100.900 and 79.100.901.

53.08.420 Cooperative watershed management. In addition to the authority provided in this chapter, a port district may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other inter-governmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 16.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

53.08.440 Web site for contract database—Requirements. By January 1, 2010, each port with more than ten million dollars in annual gross revenues, excluding grant and loan funds, shall maintain a database on a public web site of all contracts, including public works and personal services. At a minimum, the database shall identify the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. [2008 c 130 § 3.]

53.08.450 Property outside jurisdiction—Future property development—Communication plan. (1) If a port district purchases property for a facility outside the port's jurisdiction, the port district or districts with responsibility for the future property development and use must prepare and implement a communication plan within sixty days after contracting with a site planning consultant. The communication plan must be reasonably calculated to provide property owners and other affected and interested individuals information for review and comment. The plan shall be made available through the planning and pre-design phase. The communication plan shall include information about:

(a) The type and scale of proposed uses on the site;

(b) The type and scale of business and industrial activities that the development is likely to later attract to the site and to the nearby area;

(c) The general character and scope of potential impacts on air and water quality, noise, and local and state transportation infrastructure, including state highways, local roads, rail, and shipping.

(2) Information included in the communication plan under subsection (1) of this section may be made available by means of web pages, office inspection and copying of materials, one or more property tours, and public meetings that allow interested citizens to comment to port officials on several occasions over time as the development plans evolve.

(3) Environmental mitigation, habitat restoration, and dredged material disposal projects are exempt from the requirements of this section. [2008 c 130 § 4.]

Chapter 53.12 RCW

COMMISSIONERS—ELECTIONS

Sections

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Elections: Title 29A RCW.

Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on, request for review of, certification, remand—Sanctions when review request frivolous: RCW 29A.76.010.

53.12.005 Definition—"Gross operating revenue."

For purposes of this chapter, "gross operating revenue" means the total of all revenues received by a port district. [1992 c 147 § 5.]

Severability—1992 c 147: See note following RCW 53.04.020.

53.12.010 Port commission—Number of commissioners, districts. (1) The powers of the port district shall be exercised through a port commission consisting of three or, when permitted by this title, five members. Every port district that is not coextensive with a county having a population of five hundred thousand or more shall be divided into the same number of commissioner districts as there are commissioner positions, each having approximately equal population, unless provided otherwise under subsection (2) of this section. Where a port district with three commissioner positions is coextensive with the boundaries of a county that has a pop-

ulation of less than five hundred thousand and the county has three county legislative authority districts, the port commissioner districts shall be the county legislative authority districts. In other instances where a port district is divided into commissioner districts, the port commission shall divide the port district into commissioner districts unless the commissioner districts have been described pursuant to RCW 53.04.031. The commissioner districts shall be altered as provided in chapter 53.16 RCW.

Commissioner districts shall be used as follows: (a) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district; and (b) only the voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire port district may vote at a general election to elect a person as a commissioner of the commissioner district.

(2)(a) In port districts with five commissioners, two of the commissioner districts may include the entire port district if approved by the voters of the district either at the time of formation or at a subsequent port district election at which the issue is proposed pursuant to a resolution adopted by the board of commissioners and delivered to the county auditor.

(b) In a port district with five commissioners, where two of the commissioner districts include the entire port district, the port district may be divided into five commissioner districts if proposed pursuant to a resolution adopted by the board of commissioners or pursuant to a petition by the voters and approved by the voters of the district at the next general or special election occurring sixty or more days after the adoption of the resolution. A petition proposing such an increase must be submitted to the county auditor of the county in which the port district is located and signed by voters of the port district at least equal in number to ten percent of the number of voters in the port district who voted at the last general election.

Upon approval by the voters, the commissioner district boundaries shall be redrawn into five districts within one hundred twenty days and submitted to the county auditor pursuant to RCW 53.16.015. The new commissioner districts shall be numbered one through five and the three incumbent commissioners representing the three former districts shall represent commissioner districts one through three. The two at large incumbent commissioners shall represent commissioner districts four and five. If, as a result of redrawing the district boundaries more than one of the incumbent commissioners resides in one of the new commissioner districts, the commissioners who reside in the same commissioner district shall determine by lot which of the numbered commissioner districts they shall represent for the remainder of their respective terms. [2002 c 51 § 1; 1994 c 223 § 81; 1992 c 146 § 1; 1991 c 363 § 128; 1965 c 51 § 1; 1959 c 17 § 3. Prior: 1913 c 62 § 2; 1911 c 92 § 3; RRS § 9690.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

53.12.021 Elimination of commissioner districts.

Any less than county-wide port district that uses commissioner districts may cease using commissioner districts as provided in this section.

A ballot proposition authorizing the elimination of commissioner districts shall be submitted to the voters of a less than county-wide port district that is divided into commissioner districts if (1) a petition is submitted to the port commission proposing that the port district cease using commissioner districts, that is signed by registered voters of the port district equal in number to at least ten percent of the number of voters who voted at the last district general election; or (2) the port commissioners adopt a resolution proposing that the port district cease using commissioner districts. The port commission shall transfer the petition or resolution immediately to the county auditor who shall, when a petition is submitted, review the signatures and certify its sufficiency. A ballot proposition authorizing the elimination of commissioner districts shall be submitted at the next district general election occurring sixty or more days after a petition with sufficient signatures was submitted. If the ballot proposition authorizing the port district to cease using commissioner districts is approved by a simple majority vote, the port district shall cease using commissioner districts at all subsequent elections. [1994 c 223 § 82.]

53.12.061 Elections to conform with general election law. All elections relating to a port district shall conform with general election law, except as expressly provided in Title 53 RCW. [1992 c 146 § 5.]

53.12.115 Increasing number of commissioners—Resolution, petition—Ballot proposition. A ballot proposition shall be submitted to the voters of any port district authorizing an increase in the number of port commissioners to five whenever the port commission adopts a resolution proposing the increase in number of port commissioners or a petition proposing such an increase has been submitted to the county auditor of the county in which the port district is located that has been signed by voters of the port district at least equal in number to ten percent of the number of voters in the port district who voted at the last general election. The ballot proposition shall be submitted at the next general or special election occurring sixty or more days after the petition was submitted or resolution was adopted.

At the next general or special election following the election in which an increase in the number of port commissioners was authorized, candidates for the two additional port commissioner positions shall be elected as provided in RCW 53.12.130, and the voters may be asked to approve the nomination of commissioners from district-wide commissioner districts as permitted in RCW 53.12.010(2). [1994 c 223 § 86; 1992 c 146 § 7.]

53.12.120 Increasing number of commissioners—Population requirements—Ballot proposition—Election of added commissioners. When the population of a port district that has three commissioners reaches five hundred thousand, in accordance with the latest United States regular or special census or with the official state population estimate, there shall be submitted to the voters of the district, at the next district general election or at a special port election called for that purpose, the proposition of increasing the number of commissioners to five.

At the next district general election following the election in which an increase in the number of port commissioners was authorized, candidates for the two additional port commissioner positions shall be elected as provided in RCW 53.12.130. [1994 c 223 § 87; 1992 c 146 § 8; 1982 c 219 § 1; 1965 c 51 § 7; 1959 c 175 § 3; 1959 c 17 § 10. Prior: 1953 c 198 § 1; 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.130 Increasing number of commissioners—Election of additional commissioners—Commencement and terms of office. Two additional port commissioners shall be elected at the next district general election following the election at which voters authorized the increase in port commissioners to five members.

The port commissioners shall divide the port district into five commissioner districts prior to the first day of June in the year in which the two additional commissioners shall be elected, unless the voters approved the nomination of the two additional commissioners from district-wide commissioner districts as permitted in RCW 53.12.010(2). The new commissioner districts shall be numbered one through five and the three incumbent commissioners shall represent commissioner districts one through three. If, as a result of redrawing the district boundaries two or three of the incumbent commissioners reside in one of the new commissioner districts, the commissioners who reside in the same commissioner district shall determine by lot which of the first three numbered commissioner districts they shall represent for the remainder of their respective terms. A primary shall be held to nominate candidates from districts four and five where necessary and commissioners shall be elected from commissioner districts four and five at the general election. The persons elected as commissioners from commissioner districts four and five shall take office immediately after qualification as defined under *RCW 29.01.135.

In a port district where commissioners are elected to four-year terms of office, the additional commissioner thus elected receiving the highest number of votes shall be elected to a four-year term of office and the other additional commissioner thus elected shall be elected to a term of office of two years, if the election is held in an odd-numbered year, or the additional commissioner thus elected receiving the highest number of votes shall be elected to a term of office of three years and the other shall be elected to a term of office of one year, if the election is held in an even-numbered year. In a port district where the commissioners are elected to six-year terms of office, the additional commissioner thus elected receiving the highest number of votes shall be elected to a six-year term of office and the other additional commissioner shall be elected to a four-year term of office, if the election is held in an odd-numbered year, or the additional commissioner receiving the highest number of votes shall be elected to a term of office of five-years and the other shall be elected to a three-year term of office, if the election is held in an even-numbered year. The length of terms of office shall be computed from the first day of January in the year following this election.

Successor commissioners from districts four and five shall be elected to terms of either six or four years, depending on the length of terms of office to which commissioners of

that port district are elected. [1994 c 223 § 88; 1992 c 146 § 9; 1965 c 51 § 8; 1959 c 17 § 11. Prior: 1953 c 198 § 2; 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

***Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

53.12.140 Vacancies. A vacancy in the office of port commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the port commission for a period of sixty days unless excused by the port commission. A vacancy on a port commission shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 54; 1959 c 17 § 9. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.172 Port commissioner terms of office. (1) In every port district the term of office of each port commissioner shall be four years in each port district that is county-wide with a population of one hundred thousand or more, or either six or four years in all other port districts as provided in RCW 53.12.175, and until a successor is elected and qualified and assumes office in accordance with *RCW 29.04.170.

(2) The initial port commissioners shall be elected at the same election as when the ballot proposition is submitted to voters authorizing the creation of the port district. If the port district is created the persons elected at this election shall serve as the initial port commission. No primary shall be held. The person receiving the greatest number of votes for commissioner from each commissioner district shall be elected as the commissioner of that district.

(3) The terms of office of the initial port commissioners shall be staggered as follows in a port district that is county-wide with a population of one hundred thousand or more: (a) The two persons who are elected receiving the two greatest numbers of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year, or three-year terms of office if the election is held in an even-numbered year, and shall hold office until successors are elected and qualified and assume office in accordance with *RCW 29.04.170; and (b) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year, or a one-year term of office if the election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with *RCW 29.04.170.

(4) The terms of office of the initial port commissioners in all other port districts shall be staggered as follows: (a) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or to a five-year term of office if the election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with *RCW 29.04.170; (b) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or to a three-year term of office if the election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with *RCW 29.04.170; and (c) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-

numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with *RCW 29.04.170.

(5) The initial port commissioners shall take office immediately after being elected and qualified, but the length of their terms shall be calculated from the first day in January in the year following their elections. [1994 c 223 § 85. Prior: 1992 c 146 § 2; (1992 c 146 § 14 repeal deleted by 1994 c 223 § 93); 1979 ex.s. c 126 § 34; 1951 c 68 § 2; prior: (i) 1935 c 133 § 2; RRS § 9691A-2. (ii) 1935 c 133 § 3; RRS § 9691A-3. (iii) 1935 c 133 § 4; RRS § 9691A-4. (iv) 1935 c 133 § 5; RRS § 9691A-5. (v) 1935 c 133 § 6; RRS § 9691A-6. (vi) 1935 c 133 § 7; RRS § 9691A-7.]

***Reviser's note:** RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

53.12.175 Reducing port commissioner terms—Ballot proposition. A ballot proposition to reduce the terms of office of port commissioners from six years to four years shall be submitted to the voters of any port district that otherwise would have commissioners with six-year terms of office upon either resolution of the port commissioners or petition of voters of the port district proposing the reduction in terms of office, which petition has been signed by voters of the port district equal in number to at least ten percent of the number of voters in the port district voting at the last general election. The petition shall be submitted to the county auditor. If the petition was signed by sufficient valid signatures, the ballot proposition shall be submitted at the next general or special election that occurs sixty or more days after the adoption of the resolution or submission of the petition.

If the ballot proposition reducing the terms of office of port commissioners is approved by a simple majority vote of the voters voting on the proposition, the commissioner or commissioners who are elected at that election shall be elected to four-year terms of office. The terms of office of the other commissioners shall not be reduced, but each successor shall be elected to a four-year term of office. [1994 c 223 § 89; 1992 c 146 § 3.]

53.12.221 Terms—Districts covering entire county with populations of one hundred thousand or more. Port commissioners of county-wide port districts with populations of one hundred thousand or more who are holding office as of June 11, 1992, shall retain their positions for the remainder of their terms until their successors are elected and qualified, and assume office in accordance with *RCW 29.04.170. Their successors shall be elected to four-year terms of office except as otherwise provided in RCW 53.12.130. [1992 c 146 § 4.]

***Reviser's note:** RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

53.12.245 Organization of commission—Powers and duties—Record of proceedings. The port commission shall organize by the election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the port commission shall be by motion or res-

olution recorded in a book or books kept for such purpose, which shall be public records. [1955 c 348 § 6.]

Severability—1955 c 348: See note following RCW 53.08.120.

Public records: Title 40 RCW, chapter 42.17 RCW.

53.12.246 Quorum. A majority of the persons holding the office of port commissioner at any time shall constitute a quorum of the port commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted unless there are in office at least a majority of the full number of commissioners fixed by law. [1959 c 17 § 12. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690.]

53.12.260 Compensation. (1) Each commissioner of a port district shall receive ninety dollars per day or portion thereof spent (a) in actual attendance at official meetings of the port district commission, or (b) in performance of other official services or duties on behalf of the district. The total per diem compensation of a port commissioner shall not exceed eight thousand six hundred forty dollars in a year, or ten thousand eight hundred dollars in any year for a port district with gross operating income of twenty-five million or more in the preceding calendar year.

(2) Port commissioners shall receive additional compensation as follows: (a) Each commissioner of a port district with gross operating revenues of twenty-five million dollars or more in the preceding calendar year shall receive a salary of five hundred dollars per month; and (b) each commissioner of a port district with gross operating revenues of from one million dollars to less than twenty-five million dollars in the preceding calendar year shall receive a salary of two hundred dollars per month.

(3) In lieu of the compensation specified in this section, a port commission may set compensation to be paid to commissioners.

(4) For any commissioner who has not elected to become a member of public employees retirement system before May 1, 1975, the compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state nor shall attendance at such meetings or other service on behalf of the district constitute service as defined in RCW 41.40.010(9): PROVIDED, That in the case of a port district when commissioners are receiving compensation and contributing to the public employees retirement system, these benefits shall continue in full force and effect notwithstanding the provisions of RCW 53.12.260 and 53.12.265.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index

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covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 3; 1998 c 121 § 3; 1992 c 146 § 12; 1985 c 330 § 3; 1975 1st ex.s. c 187 § 1.]

53.12.265 Waiver of compensation. A commissioner of any port district may waive all or any portion of his compensation payable under RCW 53.12.260 as to any month or months during his term of office, by a written waiver filed with the secretary of the commission. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which said compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [1975 1st ex.s. c 187 § 2.]

53.12.270 Delegation of powers to managing official of port district—Waiver of competitive bidding requirements. (1) The commission may delegate to the managing official of a port district such administrative powers and duties of the commission as it may deem proper for the efficient and proper management of port district operations. Any such delegation shall be authorized by appropriate resolution of the commission, which resolution must also establish guidelines and procedures for the managing official to follow.

(2) The commission shall establish, by resolution, policies to comply with RCW 39.04.280 that set forth the conditions by which competitive bidding requirements for public works contracts may be waived. [2008 c 130 § 18; 1975 1st ex.s. c 12 § 1.]

Chapter 53.16 RCW

REVISION OF COMMISSIONER DISTRICTS

Sections

53.16.015	Redrawing commissioner district boundaries—Conditions.
53.16.020	Notice of hearing on revision.
53.16.030	Change not to affect term of office.

53.16.015 Redrawing commissioner district boundaries—Conditions. The port commission of a port district that uses commissioner districts may redraw the commissioner district boundaries as provided in *chapter 29.70 RCW at any time and submit the redrawn boundaries to the county auditor if the port district is not coterminous with a county that has the same number of county legislative authority districts as the port has port commissioners. The new commissioner districts shall be used at the next election at which a

port commissioner is regularly elected that occurs at least one hundred eighty days after the redrawn boundaries have been submitted. Each commissioner district shall encompass as nearly as possible the same population. [1994 c 223 § 90; 1992 c 146 § 10.]

***Reviser's note:** Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

53.16.020 Notice of hearing on revision. The revision of boundary lines provided for in this chapter shall be made only at a meeting of the board of port commissioners with attendance of all of the members of the commission, which meeting shall be public, following notice of said meeting, and the purpose thereof published in a newspaper of general circulation within the port district, or, if there be no such newspaper published within the district, in a newspaper published at the county seat of the county in which such port district is located. Such notice shall be published not less than twice, the date of the first publication to be not less than fifteen nor more than twenty days prior to the date fixed for said hearing, and shall state the time, place and purpose of the hearing. [1933 c 145 § 3; RRS § 9708-3.]

53.16.030 Change not to affect term of office. Any change of boundary lines provided for in this chapter shall not affect the term for which a commissioner shall hold office at the time the change is made. [1992 c 146 § 11; 1933 c 145 § 4; RRS § 9704-8.]

Chapter 53.18 RCW

EMPLOYMENT RELATIONS—COLLECTIVE BARGAINING AND ARBITRATION

Sections

53.18.010	Definitions.
53.18.015	Application of public employees' collective bargaining act.
53.18.020	Agreements authorized.
53.18.030	Criteria for choice of employee organization—Procedures for resolution of controversy.
53.18.040	Incidental powers of district.
53.18.050	Agreements—Authorized provisions.
53.18.060	Restraints on agreement.

53.18.010 Definitions. "Port district" shall mean a municipal corporation of the state of Washington created pursuant to Title 53 RCW. Said port districts may also be hereinafter referred to as the "employer."

"Employee" shall include all port employees except managerial, professional, and administrative personnel, and their confidential assistants.

"Employee organization" means any lawful association, labor organization, union, federation, council, or brotherhood, having as its primary purpose the representation of employees on matters of employment relations.

"Employment relations" includes, but is not limited to, matters concerning wages, salaries, hours, vacation, sick leave, holiday pay and grievance procedures. [1967 c 101 § 1.]

53.18.015 Application of public employees' collective bargaining act. Port districts and their employees shall be

covered by the provisions of chapter 41.56 RCW except as provided otherwise in this chapter. [1983 c 287 § 1.]

Severability—1983 c 287: See note following RCW 41.56.450.

53.18.020 Agreements authorized. Port districts may enter into labor agreements or contracts with employee organizations on matters of employment relations: PROVIDED, That nothing in this chapter shall be construed to authorize any employee, or employee organization to cause or engage in a strike or stoppage of work or slowdown or similar activity against any port district. [1967 c 101 § 2.]

53.18.030 Criteria for choice of employee organization—Procedures for resolution of controversy. In determining which employee organization will represent them, employees shall have maximum freedom in exercising their right of self-organization.

Controversies as to the choice of employee organization within a port shall be submitted to the public employment relations commission. Employee organizations may agree with the port district to independently resolve jurisdictional disputes: PROVIDED, That when no other procedure is available the procedures of RCW 49.08.010 shall be followed in resolving such disputes. In such case the chairman of the public employment relations commission shall, at the request of any employee organization, arbitrate any dispute between employee organizations and enter a binding award in such dispute. [1975 1st ex.s. c 296 § 38; 1967 c 101 § 3.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Powers and duties of public employment relations commission: Chapter 41.58 RCW.

53.18.040 Incidental powers of district. Port districts exercising the authority granted by RCW 53.18.020 may take any of the following actions as incidental thereto: Make necessary expenditures; act jointly with other ports or employers; engage technical assistance; make appearances before and utilize the services of state or federal agencies, boards, courts, or commissions; make retroactive payments of wages where provided by agreements; and exercise all other necessary powers to carry this chapter into effect, including the promulgation of rules and regulations to effectuate the purposes of this chapter. [1967 c 101 § 4.]

53.18.050 Agreements—Authorized provisions. A labor agreement signed by a port district may contain:

(1) Provisions that the employee organization chosen by a majority of the employees in a grouping or unit will be recognized as the representative of all employees in the classification included in such grouping or unit;

(2) Maintenance of membership provisions including dues check-off arrangements; and

(3) Provisions providing for binding arbitration, the expenses being equally borne by the parties, in matters of contract interpretation and the settlement of jurisdictional disputes. [1967 c 101 § 5.]

53.18.060 Restraints on agreement. No labor agreement or contract entered into by a port district shall:

- (1) Restrict the right of the port district in its discretion to hire;
- (2) Limit the right of the port to secure its regular or steady employees from the local community; and
- (3) Include within the same agreements: (a) Port security personnel, or (b) port supervisory personnel. [1967 c 101 § 6.]

Chapter 53.19 RCW

PERSONAL SERVICE CONTRACTS

Sections

53.19.005	Intent.
53.19.010	Definitions.
53.19.020	Exceptions.
53.19.030	Emergency contracts.
53.19.040	Sole source contracts.
53.19.050	Compliance with chapter—Civil penalties—Auditing—Prosecution.
53.19.060	Changes in scope of work—Amendments to contracts.
53.19.070	Application of chapter restricted.
53.19.080	Management of contracts—Guidelines.
53.19.090	Commission policies—Ports to follow.
53.19.100	Training course.

53.19.005 Intent. The legislature hereby establishes a policy of open competition for all personal service contracts entered into by port districts unless specifically exempted under this chapter. It is further the intent to provide differentiation between the competitive procurement procedures for personal and professional services contracts. [2008 c 130 § 5.]

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

(1) "Commission" means the elected oversight body of an individual port.

(2) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria, in which criteria other than price may be the primary basis for consideration. The criteria may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(3) "Consultant" means an independent individual or firm contracting with a port to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the port except as to the result of the work. The port monitors progress under the contract and authorizes payment.

(4) "Emergency" means a set of unforeseen circumstances beyond the control of the port that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(5) "Evidence of competition" means documentation demonstrating that the port has solicited responses from multiple firms in selecting a consultant.

(6) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement which may not reasonably be required in connection with a public works project meeting the definition in RCW 39.04.010(4). "Personal service" does not include purchased services as defined under subsection (8) of this section or professional services procured using the competitive selection requirements in chapter 39.80 RCW.

(7) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the port.

(8) "Purchased services" means services provided by a vendor to accomplish routine, continuing, and necessary functions. "Purchased services" includes, but is not limited to, services for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(9) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on the uniqueness of the service, sole availability at the location required, or warranty or defect correction service obligations of the consultant. [2008 c 130 § 6.]

53.19.020 Exceptions. All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

(1) Emergency contracts;

(2) Sole source contracts;

(3) Contract amendments;

(4) Contracts between a consultant and a port of less than fifty thousand dollars. However, contracts of fifty thousand dollars or greater but less than two hundred thousand dollars shall have documented evidence of competition. Ports shall not structure contracts to evade these requirements; and

(5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the commission when it has been determined that a competitive solicitation process is not appropriate or cost-effective. [2008 c 130 § 7.]

53.19.030 Emergency contracts. Emergency contracts shall be filed with the commission and made available for public inspection within seven working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the commission when the contract is filed. [2008 c 130 § 8.]

53.19.040 Sole source contracts. (1) Sole source contracts shall be filed with the commission and made available for public inspection prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the commission when the contract is filed. For sole source contracts of fifty thousand dollars or more, documented justification shall include evidence that the port attempted to identify potential consultants.

(2) The commission shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of fifty thousand dollars or more are reasonable. [2008 c 130 § 9.]

53.19.050 Compliance with chapter—Civil penalties—Auditing—Prosecution. A port commissioner or employee shall not expend any funds for personal service contracts subject to this chapter unless the port has complied with the competitive procurement and other requirements of this chapter. The port commissioner or employee executing the personal service contracts is responsible for compliance with the requirements of this chapter. Willful and intentional failure to comply with the requirements of this chapter subjects the port commissioner or employee to a civil penalty in the amount of three hundred dollars. A consultant who knowingly violates this chapter in seeking or performing work under a personal services contract is subject to a civil penalty of three hundred dollars or twenty-five percent of the amount of the contract, whichever is greater. The state auditor is responsible for auditing violations of this chapter through its regular financial and accountability audits. The attorney general is responsible for prosecuting violations of this chapter. [2008 c 130 § 10.]

53.19.060 Changes in scope of work—Amendments to contracts. (1) Substantial changes in the scope of work specified in the contract or which are substantial additions to the scope of work specified in the formal solicitation document shall be submitted to the commission for a determination as to whether the change warrants the work to be awarded as a new contract.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be filed with the commission and made available for public inspection prior to the proposed starting date of services under the amendments. [2008 c 130 § 11.]

53.19.070 Application of chapter restricted. This chapter does not apply to:

(1) Contracts specifying a fee of less than fifty thousand dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for professional services which are entered into under chapter 39.80 RCW; and

(7) Contracts for the employment of expert witnesses for the purposes of litigation or legal services to supplement the expertise of port staff. [2008 c 130 § 12.]

53.19.080 Management of contracts—Guidelines. (1) The municipal research services center, in cooperation with the Washington public ports association, shall develop guidelines for the effective and efficient management of personal service contracts by all ports. The guidelines must, at a minimum, include:

(a) Accounting methods, systems, measures, and principles to be used by ports and consultants;

(b) Precontract procedures for selecting potential consultants based on their qualifications and ability to perform;

(c) Incorporation of performance measures and measurable benchmarks in contracts, and the use of performance audits;

(d) Uniform contract terms to ensure contract performance and compliance with port, state, and federal standards;

(e) Proper payment and reimbursement methods to ensure that the port receives full value for taxpayer moneys, including cost settlements and cost allowance;

(f) Postcontract procedures, including methods for recovering improperly spent or overspent moneys for disallowance and adjustment;

(g) Adequate contract remedies and sanctions to ensure compliance;

(h) Monitoring, fund tracking, risk assessment, and auditing procedures and requirements;

(i) Financial reporting, record retention, and record access procedures and requirements;

(j) Procedures and criteria for terminating contracts for cause or otherwise; and

(k) Any other subject related to effective and efficient contract management.

(2) The municipal research services center shall submit a status report on the guidelines required by subsection (1) of this section to the governor and the appropriate standing committees of the legislature no later than December 1, 2008.

(3) The Washington public ports association shall publish a guidebook for use by ports containing the guidelines developed under subsection (1) of this section.

(4) The municipal research services center and the Washington public ports association shall each make the guidelines available on their web sites. [2008 c 130 § 13.]

53.19.090 Commission policies—Ports to follow. (1) A port entering into or amending personal service contracts shall follow the policies adopted by the commission, which shall be based on guidelines developed pursuant to RCW 53.19.080.

(2) This section applies to ports entering into or renewing contracts after January 1, 2010. [2008 c 130 § 14.]

53.19.100 Training course. The Washington public ports association shall provide a training course for port personnel responsible for executing and managing personal service contracts. The course must contain training on effective and efficient contract management under the guidelines established under RCW 53.19.080. Port districts shall

require port employees responsible for executing or managing personal service contracts to complete the training course to the satisfaction of the commission. [2008 c 130 § 15.]

Chapter 53.20 RCW HARBOR IMPROVEMENTS

Sections

53.20.010	Adoption of harbor improvement plan.
53.20.020	Improvement to follow plans adopted.
53.20.030	Improvements—Ownership of.
53.20.040	Fifty percent of cost of local improvement may be paid from general fund.
53.20.050	Local improvements upon majority petition.

Joint improvement of navigable rivers: RCW 88.32.240 and 88.32.250.

53.20.010 Adoption of harbor improvement plan. It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive scheme of harbor improvement in the port district, after a public hearing thereon, of which notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the port district, and no expenditure for the carrying on of any harbor improvements shall be made by the port commission other than the necessary salaries, including engineers, clerical and office expenses of the port district, and the cost of engineering, surveying, preparation and collection of data necessary for the making and adoption of a general scheme of harbor improvements in the port district, unless and until the comprehensive scheme of harbor improvement has been so officially adopted by the port commission. [1985 c 469 § 51; 1943 c 166 § 3; 1913 c 62 § 6; 1911 c 92 § 6; Rem. Supp. 1943 § 9694.]

53.20.020 Improvement to follow plans adopted. When such general plans shall have been adopted or approved, as aforesaid, every improvement to be made by said commission shall be made substantially in accordance therewith unless and until such general plans shall have been officially changed by the port commission after a public hearing thereon, of which at least ten days' notice shall be published in a newspaper in general circulation in such port district. [1947 c 24 § 1; 1913 c 62 § 7; 1911 c 92 § 7; Rem. Supp. 1947 § 9695.]

53.20.030 Improvements—Ownership of. No improvements shall be acquired or constructed, by the port district, unless such improvements shall, when completed, be the property of such port district, the county in which such port district is located, any city within such port district, the state of Washington or the United States of America, and the funds of such port district may be expended in the acquirement or construction of any harbor improvement embraced in such general plan adopted as in this chapter provided in conjunction with the county in which such port district is located, any city in such port district, the state of Washington or the United States of America, or all or any of them. [1979 ex.s. c 30 § 9; 1913 c 62 § 8; 1911 c 92 § 8; RRS § 9696.]

53.20.040 Fifty percent of cost of local improvement may be paid from general fund. Whenever any improve-

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ment shall be ordered, payment for which shall be made in part from assessments against property specially benefited, not more than fifty percent of the cost thereof shall ever be borne by the entire port district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed [exceeding] such amount, unless a majority vote of the electors of the port district shall consent to or ratify the making of such expenditure. [1911 c 92 § 11; RRS § 9698.]

53.20.050 Local improvements upon majority petition. Whenever a petition signed by one hundred freeholders in the district to be therein described, shall be filed with the port commission, asking that any portion of the general plan adopted be ordered, and defining the boundaries of a local improvement district to be assessed in whole or in part to pay the cost thereof, it shall be the duty of the port commission to fix a date for hearing on the petition, after which it may alter the boundaries of the proposed district and prepare and adopt detail plans of any such local improvement, declare the estimated cost thereof, what proportion of the cost shall be borne by the proposed local improvement district, and what proportion of the cost, if any, but in any event not to exceed fifty percent, shall be borne by the entire port district. At any time within two years thereafter, upon petition of the owners of a majority of the lands in the proposed local improvement district, fixed by the port commission, as shown in the office of the auditor of the county, asking that the improvement be ordered, the port commission shall forthwith by resolution order the improvement, provide the general funds of the port district to be applied thereto, acquire all lands necessary therefor, pay all damages caused thereby, and commence in the name of the port district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle the port district to proceed with such work, and shall thereafter proceed with the work, and shall make and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within the local improvement district in proportion to the special benefits to be derived by the property in the local improvement district from the improvement. Before the approval of the roll a notice shall be published once a week for two consecutive weeks in one or more newspapers of general circulation in the local improvement district, stating that the roll is on file and open to inspection in the office of the clerk of the port commission, and fixing a time not less than fifteen nor more than thirty days from the date of the first publication of the notice within which protests must be filed with the clerk of the port commission against any assessments shown thereon, and fixing a time when a hearing shall be held by the commission on the protests. After the hearing the port commission may alter any and all assessments shown on the roll and may then by resolution approve the same, but in the event of any assessment being raised a new notice similar to the first notice shall be given, after which final approval of the roll may be made by the port commission. Any person feeling aggrieved by any such assessments shall perfect an appeal to the superior court of the county within ten days after the approval in the manner now provided by law for appeals from assessments levied by

cities of the first class in this state. Engineering and office expenses in all cases shall be borne by the general district. [1985 c 469 § 52; 1911 c 92 § 10; RRS § 9697. Formerly RCW 53.20.050 through 53.20.080.]

Appeal from assessments: RCW 35.44.200 through 35.44.270.

Special assessments for local improvement: State Constitution Art. 7 § 9.

Chapter 53.25 RCW

INDUSTRIAL DEVELOPMENT DISTRICTS— MARGINAL LANDS

Sections

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53.25.020	Marginal lands—Further declaration.
53.25.030	"Marginal lands" defined.
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53.25.210	Determination that land sought by eminent domain is marginal.
53.25.900	Repeal and saving.
53.25.910	Severability—1955 c 73.

53.25.010 Marginal lands—Declaration of policies and purposes. It is hereby declared to be the public policy of the legislature of the state of Washington, that it is in the public interest to employ the power of eminent domain and advance and expend public moneys for the purposes herein contained, and to provide for means by which marginal area properties may be developed or redeveloped in accordance with the legislative policies hereinafter stated:

(1) A sound development of the economic security of the peoples of the state of Washington is dependent upon proper development and redevelopment of marginal properties, and the general welfare of the inhabitants of the port districts in which they exist require the remedying of such injurious conditions marginal properties are now subjected to.

(2) The development and redevelopment of such marginal area properties cannot be accomplished by private enterprise alone without public participation and assistance in the acquisition of land and planning and in the financing of land assembly in the work of clearance, development and redevelopment, and in the making of improvements necessary therefor.

(3) To protect and promote sound development and redevelopment of marginal lands as hereinafter defined, and the general welfare of the inhabitants of the port districts in which they exist, to remedying such injurious conditions through the employment of all appropriate means.

(4) That whenever the development or redevelopment of such marginal lands cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land and planning and in financing of land assembly in the work of clearance, development and redevelopment, and in the making of improvements necessary therefor, it is in the public interest to employ the power of eminent domain, to advance and expend public moneys for those purposes, and to provide for means by which such marginal lands may be developed or redeveloped.

(5) That the development or redevelopment of such marginal lands and the provision of appropriate continuing land use constitute public uses and purposes for which public moneys may be advanced or expended and private property acquired, and are governmental functions and are of state concern in the interest of health, safety and welfare of the state of Washington, and of the communities in which such areas exist.

(6) That the necessity in the public interest for the provision of this chapter is declared to be a matter of legislative determination. [1955 c 73 § 1.]

53.25.020 Marginal lands—Further declaration. It is further found and declared that:

(1) The existence of such marginal lands characterized by any or all of such conditions constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety, and welfare of the people of the communities in which they exist and of the people of the state.

(2) Such marginal lands present difficulties and handicaps which are beyond remedy and control solely by regulatory processes in the exercise of the police power.

(3) They contribute substantially and increasingly to the problems of, and necessitate excessive and disproportionate expenditures for, crime prevention, correction, prosecution and punishment, the treatment of juvenile delinquency, the preservation of the public health and safety, and the maintaining of adequate police, fire and accident protection and other public services and facilities.

(4) This menace is becoming increasingly direct and substantial in its significance and effect.

(5) The benefits which will result from the remedying of such conditions and the redevelopment of such marginal lands will accrue to all the inhabitants and property owners of the communities in which they exist.

(6) Such conditions of marginal lands tend to further obsolescence, deterioration, and disuse because of the lack of incentive to the individual landowner and his inability to improve, modernize, or rehabilitate his property while the condition of the neighboring properties remains unchanged.

(7) As a consequence the process of deterioration of such marginal lands frequently cannot be halted or corrected except by redeveloping the entire area, or substantial portions of it.

(8) Such conditions of marginal lands are chiefly found in areas subdivided into small parcels, held in divided and widely scattered ownerships, frequently under defective titles, and in many such instances the private assembly of the land areas for redevelopment is so difficult and costly that it is uneconomic and as a practical matter impossible for own-

ers to undertake because of lack of the legal power and excessive costs.

(9) The remedying of such conditions may require the public acquisition at fair prices of adequate areas, the redevelopment of the areas suffering from such conditions under proper supervision, with appropriate planning, and continuing land use.

(10) The development or redevelopment of land, or both, acquired under the authority of this chapter constitute a public use and are governmental functions, and that the sale or leasing of such land after the same has been developed or redeveloped is merely incidental to the accomplishment of the real or fundamental purpose, that is, to remove the condition which caused said property to be marginal property as in this chapter defined. [1955 c 73 § 2.]

53.25.030 "Marginal lands" defined. "Marginal lands" is defined and characterized by any one or more of the following described conditions:

(1) An economic dislocation, deterioration, or disuse resulting from faulty planning.

(2) The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.

(3) The laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions.

(4) The existence of inadequate streets, open spaces, and utilities.

(5) The existence of lots or other areas which are subject to being submerged by water.

(6) By a prevalence of depreciated values, impaired investments, and social and economic maladjustment to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered.

(7) In some parts of marginal lands, a growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety and welfare.

(8) In other parts of marginal lands, a loss of population and reduction of proper utilization of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.

(9) Property of an assessed valuation of insufficient amount to permit the establishment of a local improvement district for the construction and installation of streets, walks, sewers, water and other utilities.

(10) Lands within an industrial area which are not devoted to industrial use but which are necessary to industrial development within the industrial area. [1955 c 73 § 3.]

53.25.040 Industrial development districts authorized—Boundaries—Deletion of land area. (1) A port commission may, after a public hearing thereon, of which at least ten days' notice shall be published in a newspaper of general circulation in the port district, create industrial development districts within the district and define the boundaries thereof, if it finds that the creation of the industrial development district is proper and desirable in establishing and

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developing a system of harbor improvements and industrial development in the port district.

(2) The boundaries of an industrial development district created by subsection (1) of this section may be revised from time to time by resolution of the port commission, to delete land area therefrom, if the land area to be deleted was acquired by the port district with its own funds or by gift or transfer other than pursuant to RCW 53.25.050 or 53.25.060.

As to any land area to be deleted under this subsection that was acquired or improved by the port district with funds obtained through RCW 53.36.100, the port district shall deposit funds equal to the fair market value of the lands and improvements into the fund for future use described in RCW 53.36.100 and such funds shall be thereafter subject to RCW 53.36.100. The fair market value of the land and improvements shall be determined as of the effective date of the port commission action deleting the land from the industrial development district and shall be determined by an average of at least two independent appraisals by professionally designated real estate appraisers as defined in RCW 74.46.020 or licensed real estate brokers. The funds shall be deposited into the fund for future use described in RCW 53.36.100 within ninety days of the effective date of the port commission action deleting the land area from the industrial district. Land areas deleted from an industrial development district under this subsection shall not be further subject to the provisions of this chapter. This subsection shall apply to presently existing and future industrial development districts. Land areas deleted from an industrial development district under this subsection that were included within such district for less than two years, if the port district acquired the land through condemnation or as a consequence of threatened condemnation, shall be offered for sale, for cash, at the appraised price, to the former owner of the property from whom the district obtained title. Such offer shall be made by certified or registered letter to the last known address of the former owner. The letter shall include the appraised price of the property and notice that the former owner must respond in writing within thirty days or lose the right to purchase. If this right to purchase is exercised, the sale shall be closed by midnight of the sixtieth day, including nonbusiness days, following close of the thirty-day period. [1989 c 167 § 1; 1985 c 469 § 53; 1955 c 73 § 4. Prior: 1943 c 166 § 1; 1939 c 45 § 1; Rem. Supp. 1943 § 9709-1; RCW 53.24.010.]

53.25.050 Tax title lands may be conveyed to district.

Any lands in an industrial development district acquired by the county by tax foreclosure, may, if the county commissioners deem the lands chiefly valuable for industrial development purposes, be conveyed to the port district. The lands shall be held in trust by the port district and may be managed, developed, leased, or sold by it as provided in this chapter.

From the proceeds of the sale or lease of the lands, the district shall first reimburse itself for any expense incurred by it in managing and developing the lands and any balance shall be paid to the county, which shall distribute it the same as general taxes collected in that year. [1955 c 73 § 5. Prior: 1939 c 45 § 2; RRS § 9709-2; RCW 53.24.020.]

53.25.060 Private lands may be conveyed to district—Cancellation of taxes. With the approval of the county commissioners, any lands in an industrial development district, owned privately, which the port commission deems valuable for industrial development purposes, may be deeded to and accepted by the port district, subject to delinquent general taxes thereon. When the commission has recorded the deed and notified the county commissioners thereof, the county commissioners shall order all taxes assessed against the lands canceled and the county treasurer shall record the cancellation, and remove the lands from the tax rolls. Thereafter the lands shall be held in trust, managed, developed, leased, and sold by the district, and the proceeds therefrom disposed of in the same manner as hereinabove provided. [1955 c 73 § 6. Prior: 1939 c 45 § 3; RRS § 9709-3; RCW 53.24.030.]

53.25.070 Discharge of trust. With the approval of the county commissioners, a port district may free any lands acquired by it pursuant to this chapter from the trust imposed upon it herein, by paying to the county the amount of the delinquent taxes against the land at the time the county acquired it by tax foreclosure, or the amount of the delinquent taxes against it when it was conveyed to the district by the private owner. [1955 c 73 § 7. Prior: 1939 c 45 § 4; RRS § 9709-4; RCW 53.24.040.]

53.25.080 When lands revert to county. Ten years from the date of its acquisition, property acquired by a port district pursuant to this chapter shall revert to the county to be used the same as property acquired by tax foreclosure, and upon demand by the county commissioners the port commission shall convey the property to the county, unless before the expiration of the ten year period, the port district has adopted a comprehensive plan of harbor improvement which provides for the improvement of an industrial development district which includes such lands or the district has freed the land from the trust imposed upon it as provided in this chapter. [1955 c 73 § 8. Prior: 1939 c 45 § 8; RRS § 9709-8; RCW 53.24.050.]

53.25.090 Conditions precedent to making improvements. No expenditure for improvement of property in an industrial development district, other than the expense of preparing and submitting a plan of improvement shall be made by a port district, and no property shall be acquired by it therefor except as provided for hereinbefore until it has been made a part of the comprehensive scheme of harbor improvements and industrial developments or amendments thereto.

That said comprehensive scheme or amendments thereto shall provide for the development or redevelopment of those marginal lands acquired and a provision for the continuing of the land uses which are hereby declared to constitute public uses and the purposes for which public moneys may be advanced and provide property acquired. [1955 c 73 § 9. Prior: 1939 c 45 § 5; RRS § 9709-5; RCW 53.24.060.]

53.25.100 Powers as to industrial development districts. All port districts wherein industrial development districts have been established are authorized and empowered to

acquire by purchase or condemnation or both, all lands, property and property rights necessary for the purpose of the development and improvement of such industrial development district and to exercise the right of eminent domain in the acquirement or damaging of all lands, property and property rights and the levying and collecting of assessments upon property for the payment of all damages and compensation in carrying out the provisions for which said industrial development district has been created; to develop and improve the lands within such industrial development district to make the same suitable and available for industrial uses and purposes; to dredge, bulkhead, fill, grade, and protect such property; to provide, maintain, and operate water, light, power and fire protection facilities and services, streets, roads, bridges, highways, waterways, tracks, and rail and water transfer and terminal facilities and other harbor and industrial improvements; to execute leases of such lands or property or any part thereof; to establish local improvement districts within such industrial development districts which may, but need not, be coextensive with the boundaries thereof, and to levy special assessments, under the mode of annual installments, over a period not exceeding ten years, on all property specially benefited by any local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of any improvement ordered in such local improvement district; to issue local improvement bonds in any such local improvement district; to be repaid by the collection of local improvement assessments; and generally to exercise with respect to and within such industrial development districts all the powers now or hereafter conferred by law upon port districts in counties with a population of one hundred twenty-five thousand or more: PROVIDED, That the exercise of powers hereby authorized and granted shall be in the manner now and hereafter provided by the laws of the state for the exercise of such powers by port districts under the general laws relating thereto insofar as the same shall not be inconsistent with this chapter. [1991 c 363 § 132; 1955 c 73 § 10. Prior: 1939 c 45 § 6; RRS § 9709-6; RCW 53.24.070.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); Title 8 RCW.

53.25.110 Sale authorized in industrial development district. When a port commission deems it for the best interests of the district and the people thereof and in furtherance of its general plan of harbor improvement, or industrial development, or both, it may sell and convey any property or part thereof owned by it within an industrial district. This section shall not be limited by chapter 53.08 RCW, pertaining to powers of port districts. [1955 c 73 § 11. Prior: 1939 c 45 § 9; RRS § 9709-9; RCW 53.28.010.]

Harbor improvement plan: RCW 53.20.010.

53.25.120 Notice of hearing on sale—Hearing—Plans and specifications—Conditions—Devotion of property to public use. The port commission shall give notice of the proposed sale by publication in a newspaper of general circulation in the county, and by posting in three public places in the

port district at least ten days before the date fixed for the hearing thereon.

The notice shall describe the property to be sold and state that at the time and place specified therein, the commission will meet at its usual meeting place, designating it, to hear and determine the advisability of the sale.

The hearing shall be held not more than twenty days from the publication of notice. At the hearing the commission shall hear the reasons of any taxpayer in the port district, for or against the sale.

No sales shall be made, however, of the property of any industrial development district until the purchaser thereof shall have submitted to the port commission plans and specifications for the development of the property, and the plans and specifications shall be approved in writing before the property shall be conveyed, and the conditions upon which the properties are conveyed shall be set forth in the instrument conveying title thereof with the further condition that all of the conditions set forth shall be covenants running with the land. All properties acquired in the manner herein set forth shall be devoted to the public use herein provided for. [1985 c 469 § 54; 1963 c 138 § 1; 1955 c 73 § 12. Prior: 1939 c 45 § 10; RRS § 9709-10; RCW 53.28.020.]

Validating—1963 c 138: "All sales made prior to the effective date of this amendatory act which are otherwise valid except for compliance with the limitation in section 12, chapter 73, Laws of 1955, which provided that the hearing shall be held not more than ten days from the publication of notice, are hereby ratified and validated.

All sales made prior to the effective date of this amendatory act under the provisions of section 18, chapter 73, Laws of 1955 and RCW 53.25.180 are hereby ratified and validated." [1963 c 138 § 3.]

53.25.130 Findings and determination—Record—

Appeal. Within three days after the hearing the commission shall make its findings and determination on the advisability of making the sale and enter its determination in its records. Any aggrieved party may appeal the determination of the commission by filing appeal with the superior court of the county in which the district is located within twenty days of the entry of the determination but no appeal shall be allowed except on the grounds that the action of the commission was arbitrary, capricious, or unlawful. [1955 c 73 § 13. Prior: 1939 c 45 § 11; RRS § 9709-11; RCW 53.28.030.]

53.25.140 Action on determination—Sale by competitive bid or negotiation. If the determination is against the sale, all proceedings thereon shall terminate. If the commission determines in favor of the sale by at least a two-thirds vote of the full commission, it shall in its discretion, either enter an order fixing a period, not less than twenty nor more than thirty days from the date of the order, during which bids will be received for the property or any part thereof, and give notice thereof in the same manner as for the hearing on the proposal to sell or negotiate the sale with an appropriate purchaser, provided that in any such negotiated sale the purchase price must not be less than the fair market value of the property which shall be determined by an average of at least two independent appraisals performed by licensed real estate brokers or professionally designated real estate appraisers as defined in RCW 74.46.020. Whether the property is sold by competitive bidding or negotiation, other real property conveyed by the purchaser to the commission may constitute all

or a portion of the consideration for the sale. [1984 c 195 § 1; 1955 c 73 § 14. Prior: 1939 c 45 § 12; RRS § 9709-12; RCW 53.28.040.]

53.25.150 Competitive bids—Conditions—Acceptance. If the commission chooses to sell the property through competitive bidding under RCW 53.25.140:

(1) Bids may be submitted for the property or any part of it, shall state the use which the bidder intends to make of it, and the commission may require the successful bidder to file additional information as to the intended use, and may require of him security as assurance that the property will be used for that purpose;

(2) All sales shall be made to the best bidder, and in determining the best bid, the commission may also consider the nature of the proposed use and the relation thereof to the improvement of the harbor and the business and facilities thereof;

(3) Within thirty days after the last day for submitting bids, the commission shall decide which if any bids it accepts. All sales shall be made upon such terms and conditions as the commission may prescribe. [1984 c 195 § 2; 1955 c 73 § 15. Prior: 1939 c 45 § 13, part; RRS § 9709-13, part; RCW 53.28.050.]

53.25.160 Devotion of property to intended use—Remedy—Restraint on alienation. The purchaser shall, within one year from the date of purchase, devote the property to its intended use, or shall commence work on the improvements thereon to devote it to such use, and if he fails to do so, the port commission may cancel the sale and return the money paid on the purchase price, and title to the property shall revert to the district. This remedy shall be in addition to any other remedy under the terms of the sale. No purchaser shall transfer title to such property within one year from the date of purchase. [1955 c 73 § 16. Prior: 1939 c 45 § 13, part; RRS § 9709-13, part; RCW 53.28.060.]

53.25.170 Covenant running with the land—Forfeiture. All sales made in accordance with the provisions of this chapter shall have incorporated in the instrument of conveyance of title the conditions of this chapter relating to the use of the land as a covenant running with the land. Any violation of such covenant shall result in a right by the commission, as grantee, to forfeit the land. [1955 c 73 § 17.]

53.25.190 Eminent domain. All port districts of the state of Washington which have created or may hereafter create industrial development districts in the manner provided by law, in addition to all powers possessed by such port districts, be and are hereby granted power of eminent domain to acquire real property within the limits of such industrial development district which property is marginal lands as the term is herein defined. The exercise of the power granted in this section shall be exercised in the same manner and by the same procedure as in or may be provided by law for cities of the first class except insofar as such duties may be inconsistent with the provisions of this chapter and the duties devolving upon the city treasurer under said law be and the same are

hereby imposed upon the county treasurer for the purposes of this chapter. [1955 c 73 § 19.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by cities: Chapter 8.12 RCW.

53.25.200 Advances of general fund moneys or credit. Port districts are hereby granted the power to advance their general fund moneys or credit, or both, without interest to accomplish the objects and purposes of this chapter, which fund shall be repaid from the sale or lease, or both, of such developed or redeveloped lands, provided, if the money advanced for such development or redevelopment was obtained from the sale of general obligation bonds of the port, then such advances shall bear the same rate of interest that said bonds bore. [1955 c 73 § 20.]

53.25.210 Determination that land sought by eminent domain is marginal. The determination that property sought by eminent domain proceedings is marginal lands as herein defined is a judicial question, provided that a duly adopted resolution of the commissioners of the port district that the property sought is marginal lands as the term is herein defined, setting forth the characteristics of the lands sought to be acquired which constitutes the marginal lands as herein defined, shall be prima facie evidence that such land is marginal lands as defined in this chapter. [1955 c 73 § 21.]

53.25.900 Repeal and saving. Chapter 53.24 RCW and chapter 53.28 RCW and chapter 45, Laws of 1939, as last amended by section 1, chapter 166, Laws of 1943 are repealed: PROVIDED, That nothing herein contained shall be construed as affecting any existing right acquired under the provisions of said act. [1955 c 73 § 22.]

53.25.910 Severability—1955 c 73. Should any section or provision of this chapter be held invalid by any court of competent jurisdiction, the same shall not affect the validity of the chapter as a whole or any part thereof other than the portion held to be invalid. [1955 c 73 § 23.]

Chapter 53.29 RCW TRADE CENTER ACT

Sections

53.29.010	Declaration of purpose.
53.29.015	Definitions.
53.29.020	Power to establish trade centers—Facilities authorized.
53.29.030	Cooperation with other entities—Annual service fee for support of local government.
53.29.900	Short title—Liberal construction—Powers cumulative.
53.29.910	Severability—1967 c 56.

53.29.010 Declaration of purpose. It is declared to be the finding of the legislature of the state of Washington that:

(1) The servicing functions and activities connected with the oceanborne and overseas airborne trade and commerce of port districts, including customs clearance, shipping negotiations, cargo routing, freight forwarding, financing, insurance arrangements and other similar transactions which are presently performed in various, scattered physical and electronic locations in the districts should be centralized to provide for

more efficient and economical transportation of persons and more efficient and economical physical or electronic facilities and services for the exchange and buying, selling and transportation of commodities and other property in world trade and commerce;

(2) Unification, at a single, centrally located physical or electronic site of a facility of commerce, i.e., a trade center, accommodating the functions and activities described in subsection (1) of this section and the appropriate governmental, administrative and other services connected with or incidental to transportation and security of persons and property and the promotion and protection of port commerce, and providing a central locale for exhibiting, and otherwise promoting the exchange and buying and selling of commodities and property in world trade and commerce, will materially assist in preserving the material and other benefits of a prosperous port community;

(3) The undertaking of the aforesaid unified trade center project by a port district or the Washington public ports association has the single object of preserving, and will aid in the promotion, security, and preservation of, the economic well-being of port districts and the state of Washington and is found and determined to be a public purpose. [2002 c 145 § 1; 1989 c 425 § 5; 1967 c 56 § 1.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.015 Definitions. The definitions in this section apply throughout RCW 53.29.020 and 53.29.030 unless the context clearly requires otherwise.

(1) "Person" has the same meaning as defined in the electronic signatures in global and national commerce act (15 U.S.C. Sec. 7006 (8)) in effect on June 13, 2002.

(2) "Transaction" has the same meaning as defined in the electronic signatures in global and national commerce act (15 U.S.C. Sec. 7006 (13)) in effect on June 13, 2002. However, "transaction" also includes actions relating to governmental affairs. [2002 c 145 § 4.]

53.29.020 Power to establish trade centers—Facilities authorized. In addition to all other powers granted to port districts, any such district, the Washington public ports association, or the federation of Washington ports as described in RCW 53.06.070 may acquire, as provided for other port properties in RCW 53.08.010, construct, develop, operate and maintain all land or other property interests, buildings, structures or other improvements, and may participate in transactions necessary to provide, electronically or otherwise, facilities or to exercise powers or purposes of a trade center including but not limited to the following electronic or physical facilities:

(1) A facility consisting of one or more structures, improvements and areas for the centralized accommodation of public and private agencies, persons and facilities in order to afford improved service to waterborne and airborne import and export trade and commerce;

(2) Facilities for the promotion of such import and export trade and commerce, inspection, testing, display and appraisal facilities, foreign trade zones, terminal and transportation facilities, office meeting rooms, auditoriums, libraries, language translation services, storage, warehouse, mar-

keting and exhibition facilities, facilities for federal, state, county and other municipal and governmental agencies providing services relating to the foregoing and including, but not being limited to, customs houses and customs stores, and other incidental facilities and accommodations. [2002 c 145 § 2; 1989 c 425 § 6; 1967 c 56 § 2.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.030 Cooperation with other entities—Annual service fee for support of local government. (1) In carrying out the powers authorized by this chapter and chapter 53.06 RCW, port districts and the Washington public ports association are authorized to cooperate, act, and invest jointly with other public and private agencies and persons, including, but not limited to, the federal government, the state, other ports and municipal corporations, other states and their political subdivisions, and private nonprofit trade promotion groups and associate development organizations.

(2) Port districts operating trade center buildings or operating association or federation trade centers, shall pay an annual service fee to the county treasurer wherein the center is located for municipal services rendered to the trade center building. The measure of such service fee shall be equal to three percent of the gross rentals received from the nongovernmental tenants of such trade center building. Such proceeds shall be distributed by the county treasurer as follows: Forty percent to the school district, forty percent to the city, and twenty percent to the county wherein the center is located: PROVIDED, That if the center is located in an unincorporated area, twenty percent shall be allocated to the fire district, forty percent to the school district, and forty percent to the county. [2002 c 145 § 3; 1989 c 425 § 7; 1967 c 56 § 3.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.900 Short title—Liberal construction—Powers cumulative. This chapter, which may be known and cited as the "Trade Center Act", shall be liberally construed, its purpose being to provide port districts, and their related association and federation, with additional powers to provide trade centers and to promote and encourage trade, tourism, travel, and economic development in a coordinated and efficient manner through the ports of the state of Washington. The powers herein granted shall be in addition to all others granted to port districts. [1989 c 425 § 8; 1967 c 56 § 4.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.910 Severability—1967 c 56. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons and circumstances is not affected. [1967 c 56 § 5.]

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Chapter 53.31 RCW

EXPORT TRADING COMPANIES

Sections

53.31.010	Legislative findings—Intent.
53.31.020	Definitions.
53.31.030	Export trading companies—Authorized—Adoption of business plan.
53.31.040	Export trading companies—Powers—Formation—Dissolution.
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53.31.010 Legislative findings—Intent. It is declared to be the public policy of the state to promote and preserve the economic well-being of the citizens of this state by creating opportunities for expanded participation in international trade by state businesses and expanding international trade through state ports. Increased international trade of state products creates and retains jobs, increases the state's tax base, and diversifies the state's economy. Port districts, through economies of scale, are uniquely situated to promote and expand international trade and provide greater opportunities for state businesses to participate in international trade.

The legislature finds that significant public benefit, in the form of increased employment and tax revenues, can be realized through export trading companies without lending the credit of port districts, and without capital investment of public funds by port districts. The legislature finds that the use of port district funds to promote and establish export trading companies under this chapter constitutes trade promotion and industrial development within the meaning of Article VIII, section 8 of the state Constitution.

It is the purpose of this chapter: (1) To stimulate greater participation by private businesses in international trade; (2) to authorize port districts to promote and facilitate international trade more actively; (3) to make export services more widely available; (4) to generate revenue for port districts; and (5) to develop markets for Washington state goods and services. Port sponsored export trading companies can also assist small to medium-sized companies in achieving economies of scale in order to expand into the export market.

It is the intent of this chapter to enhance export trade and not to create outside competition for existing Washington state businesses. The primary intent of a port sponsored export trading company is to increase exports of Washington state products.

This chapter shall not be construed as modifying or restricting any other powers granted to port districts by law. The legislature does not intend by the enactment of this chapter for port districts to use export trading companies to create unfair competition with private business. [1986 c 276 § 1.]

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

(1) "Port district" means any port district other than a county-wide port district in a county with a population of two hundred ten thousand or more, established under Title 53 RCW.

(2) "Export services" means the following services when provided in order to facilitate the export of goods or services through Washington ports: International market research, promotion, consulting, marketing, legal assistance, trade documentation, communication and processing of foreign orders to and for exporters and foreign purchasers, financing, and contracting or arranging for transportation, insurance, warehousing, foreign exchange, and freight forwarding.

(3) "Export trading company" means an entity created by a port district under RCW 53.31.040.

(4) "Obligations" means bonds, notes, securities, or other obligations or evidences of indebtedness.

(5) "Person" means any natural person, firm, partnership, association, private or public corporation, or governmental entity. [1991 c 363 § 133; 1986 c 276 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

53.31.030 Export trading companies—Authorized—Adoption of business plan. (1) Public port districts, formed under chapter 53.04 RCW are authorized to establish export trading companies and a company so formed may contract with other public ports, financial institutions, freight forwarders, and public or private concerns within or outside the state to carry out the purposes of this chapter. A port district may participate financially in only one export trading company.

(2) A port district proposing to establish an export trading company shall adopt a business plan with safeguards and limitations to ensure that any private benefit to be realized from the use of funds of the export trading company are incidental to the purposes of this chapter. The business plan shall be adopted only after public hearing and shall be reviewed at least once every two years. Amendments to the plan shall be adopted only after public hearing. The business plan shall include:

(a) A description of export promotion activities to be conducted during the period of the plan;

(b) A proposed budget of operations which shall include an itemized list of estimated revenues and expenditures;

(c) A description of the safeguards and limitations which ensure that the export trading company will best be used to enhance international trade and produce public benefit in the form of employment, capital investment, and tax revenues;

(d) A description of private competitors which may be capable of providing the functions in the business plan; and

(e) Such other matters as may be determined by the port district.

(3) A port district, for the purpose of establishing or promoting an export trading company under this chapter, may provide financial assistance to the export trading company. A port district may not provide such assistance or services for more than five years or in an amount greater than five hundred thousand dollars. [1986 c 276 § 3.]

53.31.040 Export trading companies—Powers—Formation—Dissolution. (1) For the purpose of promoting international trade, export trading companies formed under this chapter may provide export services through:

(a) Holding and disposing of goods in international trade;

(b) Taking title to goods.

All such activities engaged in or pursued by an export trading company shall be charged for in accordance with the customs of the trade at competitive market rates.

(2) Nothing contained in this chapter may be construed to authorize an export trading company to own or operate directly or indirectly any business which provides freight-forwarding, insurance, foreign exchange, or warehousing services. Nothing contained in this chapter may be construed to permit an export trading company to engage in the business of transporting commodities by motor vehicle, barge, ship, or rail for compensation.

(3)(a) Proceedings to form a public corporation designated as an export trading company shall be initiated by a resolution of the board of commissioners of a port district adopting a charter for the corporation. The charter shall contain such provisions as are authorized by law and include provisions for a board of directors which shall conduct the affairs of the export trading company. The board of directors shall include no fewer than three nor more than five members, all appointed by the port district board of commissioners. Commissioners of the port shall be eligible to serve as members of the board and shall constitute a majority of the board of directors at all times. Unless a later date is specified, the resolution shall take effect on the thirtieth day after adoption. The corporation shall be deemed formed for all purposes upon filing in the office of the secretary of state a certified copy of the effective resolution and the charter adopted by the resolution.

(b) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the corporation, the corporation is conclusively presumed to be established and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the resolution creating the corporation by the governing body. A copy of the resolution duly certified by the secretary of the port district commission shall be admissible in evidence in any suit, action, or proceeding.

(c) A corporation created by a port district pursuant to this chapter may be dissolved by the district if the corporation (i) has no property to administer, other than funds or property, if any, to be paid or transferred to the district by which it was established; and (ii) all its outstanding obligations have been satisfied. Such a dissolution shall be accomplished by the governing body of the port district adopting a resolution providing for the dissolution.

(d) The creating port district may, at its discretion and at any time, alter or change the structure, organizational programs, or activities of the corporation, including termination of the corporation if contracts entered into by the corporation are not impaired. Subject to any contractual obligations, any net earnings of the corporation shall inure only to the benefit of the creating port district. Upon dissolution of the corporation, all assets and title to all property owned by the corporation shall vest in the creating port district.

(4) A port district may contract with an export trading company to provide services on a reimbursement basis at current business rates to the export trading company, including but not limited to accounting, legal, clerical, technical, and other administrative services. Separate accounting records prepared according to generally accepted accounting principles shall be maintained by the export trading company.

(5) Any obligation of an export trading company shall not in any manner be an obligation of the port district nor a charge upon any revenues or property of the port district.

(6) An export trading company may borrow money or contract indebtedness and pledge, in whole or in part, any of its revenues or assets not subject to prior liens or pledges. An export trading company may not pledge any revenue or property of a port district or other municipal corporation and no port district or other municipal corporation may pledge its revenues or property to the payment thereof. An export trading company has no power to issue general obligation bonds, levy taxes, or exercise power of eminent domain. [1989 c 11 § 23; 1986 c 276 § 4.]

Severability—1989 c 11: See note following RCW 9A.56.220.

53.31.050 Confidentiality of records supplied by private persons. All financial and commercial information and records supplied by private persons to an export trading company with respect to export projects shall be kept confidential unless such confidentiality shall be waived by the party supplying the information or by all parties engaged in the discussion. [1986 c 276 § 5.]

53.31.060 Certificate of review under federal export trading company act—Authorized. An export trading company may apply for and hold a certificate of review provided for under 15 U.S.C. Secs. 4001 through 4021, the federal export trading company act of 1982. [1986 c 276 § 6.]

53.31.901 Severability—1986 c 276. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 276 § 11.]

Chapter 53.34 RCW TOLL FACILITIES

Sections

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53.34.220	Chapter supplemental to other laws—Liberal construction.
53.34.900	Severability—1959 c 236.
53.34.910	Chapter controls inconsistent acts.

53.34.010 Toll bridges, tunnels authorized—Highway approaches—Tolls proposed. In addition to all other powers granted to port districts, any such district may, with the consent of the department of transportation, acquire by condemnation, purchase, lease, or gift, and may construct, reconstruct, maintain, operate, furnish, equip, improve, better, add to, extend, and lease to others in whole or in part and sell in whole or in part any one or more of the following port projects, within or without or partially within and partially without the corporate limits of the district whenever the commission of the district determines that any one or more of such projects are necessary for or convenient to the movement of commercial freight and passenger traffic a part of which traffic moves to, from, or through the territory of the district:

- (1) Toll bridges;
- (2) Tunnels under or upon the beds of any river, stream, or other body of water, or through mountain ranges.

In connection with the acquisition or construction of any one or more of such projects the port districts may, with the consent of the state department of transportation, further acquire or construct, maintain, operate, or improve limited or unlimited access highway approaches of such length as the commission of such district deems advisable to provide means of interconnection of the facilities with public highways and of ingress and egress to any such project, including plazas and toll booths, and to construct and maintain under, along, over, or across any such project telephone, telegraph, or electric transmission wires and cables, fuel lines, gas transmission lines or mains, water transmission lines or mains, and other mechanical equipment not inconsistent with the appropriate use of the project, all for the purpose of obtaining revenues for the payment of the cost of the project.

Consistent with RCW 47.56.850, any toll, including any change in an existing toll rate, proposed under this section must first be reviewed and approved by the tolling authority designated in RCW 47.56.850 if the toll, or change in toll rate, would have a significant impact, as determined by the tolling authority, on the operation of any state facility. [2008 c 122 § 21; 1984 c 7 § 365; 1959 c 236 § 1.]

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

53.34.020 Contracts for use of projects—Regulations—Controversies. The district shall have the power to enter into a contract or contracts for the use of said projects, their approaches and equipment and from time to time to amend such contracts, with persons and with private and public corporations, and by said contracts to give such persons or corporations the right to use said projects, their approaches and equipment for the transmission of power for telephone and telegraph lines, for the transportation of water, gas, petroleum, and other products, for railroad and railway purposes, and for any other purpose to which the same may be adapted: PROVIDED, That no such contract shall be for a period

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longer than ninety-nine years, and that the projects shall be put to the largest possible number of uses consistent with the purposes for which such projects are constructed.

In making such contract or contracts and providing for payments and rentals thereunder the port district shall determine the value of the separate and different uses to which the projects are to be put and shall apportion the annual rentals and charges as nearly as possible according to the respective values of such uses. No such contract shall be made with any person or corporation unless and until such person or corporation shall bind himself or itself to pay as rental therefor an amount determined by the port district and specified in the contract which shall be a fair and just proportion of the total amount required to pay interest on the bonds provided for in this chapter, plus a just proportion of the amount necessary for their retirement, and plus the cost of maintenance of the projects, their approaches and equipment.

The port district may require any of such contracts to be entered into before beginning the construction of said projects or before the expenditure of funds under the provisions of this chapter if in its judgment it is deemed expedient.

There shall be no monopoly of the use of said projects, and their approaches by any one use, or by any person or corporation, private or public, in respect to the several uses, and the port district may continue to make separate, additional, and supplemental contracts for one or more uses until in the judgment of said port district the capacity of the projects and approaches for any such use has been reached. When such capacity has been reached contracts for the use of said projects shall be given preference in regard to such uses according to the public interest as determined by the port district, and subsequent contracts shall be subject to all existing and prior contracts. The port district shall have the power to prescribe regulations for the use of such facilities by the parties to contracts for such use, or any of them, and to hear and determine all controversies which may arise between such parties, under such rules as the port district may from time to time promulgate; and all contracts shall expressly reserve such power to the port district. [1959 c 236 § 2.]

53.34.030 Revenue bonds and notes—Authorized—Purposes—Sale, maturity, cost. Whenever any port district shall determine to acquire or construct any one or more projects authorized under the provisions of this chapter, the commission of such district shall have the power and is authorized to issue negotiable revenue bonds and notes from time to time in one or more series or installments in such principal amount as, in the opinion of the commission, shall be necessary to provide sufficient money for the acquisition, construction, reconstruction, extension or improvement thereof as set forth in RCW 53.34.010, including engineering, inspection, legal and financial fees and costs, working capital, interest on such bonds and notes during construction and for a reasonable period thereafter, establishment of reserves to secure such bonds and notes and all other expenditures of such district incidental, necessary or convenient to the establishment of such projects on a sound financial basis, and to issue negotiable revenue bonds and notes for the purpose of renewing or refunding such outstanding bonds and notes in whole or in part at or prior to maturity. All such revenue bonds or notes shall be negotiable instruments within

the meaning and purposes of the negotiable instruments law and shall be sold by the commission in such manner and for such price as the commission deems for the best interests of the district: PROVIDED, That the bonds and warrants may be in any form, including bearer bonds or bearer notes, or registered bonds or registered notes as provided in RCW 39.46.030. The commission may provide in any contract for the construction or acquisition of all or any part of a project or projects or for the additions or betterments thereto or extensions or improvements thereof that payment therefor shall be made only in such revenue bonds or notes. Any revenue bonds issued under the authority of chapter 236, Laws of 1959 shall have a final maturity not to exceed forty years from date of issue. [1983 c 167 § 133; 1970 ex.s. c 56 § 69; 1969 ex.s. c 232 § 79; 1959 c 236 § 3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.34.040 Revenue bonds and notes—Resolution—Security—Form, interest, payment, etc. (1) Revenue bonds and notes may be issued by one or more resolutions and may be secured by trust agreement by and between the district and one or more corporate trustees, depositories, or fiscal agents, which may be any trust company or state or national bank having powers of a trust company within or without the state of Washington. Such bonds or notes shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places within or without the state of Washington, and be subject to such terms of redemption and at such redemption premiums as such resolution, resolutions, or trust agreements may provide. No proceedings for the issuance of such bonds or notes shall be required other than those required by the provisions of this chapter, and none of the provisions of any other laws relative to the terms and conditions for the issuance, payment, redemption, registration, sale or delivery of bonds of public bodies, corporation, or political subdivisions of this state shall be applicable to bonds or notes issued by port districts pursuant to this chapter.

(2) Notwithstanding subsection (1) of this section, such bonds and notes may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 134; 1970 ex.s. c 56 § 70; 1969 ex.s. c 232 § 80; 1959 c 236 § 4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.34.050 Covenants to safeguard and secure bonds and notes. Any resolution, resolutions, or trust agreements authorizing the issuance of any bonds or notes of a port district may contain covenants and agreements on the part of the district to protect and safeguard the security and payment of

such bonds or notes, which shall be a part of the contract with the owners of such obligations thereby authorized as to:

(1) Pledging all or any part of the revenues, income, receipts, profits and other moneys derived by the district issuing such obligations from the ownership, operation, management, lease, or sale of any one or more of the projects constructed from the proceeds thereof to secure the payment of bonds or notes;

(2) The establishment and collection of rates, rentals, tolls, charges, license, and other fees to be charged by the district and the amounts to be raised in each year for the services and commodities sold, leased, furnished, or supplied by any one or more of the projects established from the proceeds of such obligations, and the deposit, use, and disposition of the revenues of the district received therefrom;

(3) The setting aside of reserves or sinking funds for such obligations, and the deposit, investment, and disposition thereof;

(4) Limitations on the purpose or purposes to which the proceeds of sale of any issue of bonds or notes then or thereafter issued payable from the revenues of any such project or projects may be applied, and pledging such proceeds to secure the payment of such bonds or notes;

(5) Limitations on the issuance of additional revenue bonds or notes of the district, the terms and conditions upon which such additional revenue bonds or notes may be issued and secured, and the refunding of outstanding or other bonds or notes;

(6) The procedure, if any, by which the terms of any contract with bond owners may be amended or abrogated, the amount of bonds or notes the owners of which must consent thereto, and the manner in which such consent may be given;

(7) Limitations on the amount of moneys derived from any project or projects to be expended for operating, administrative or other expenses of the district in connection with any such project or projects;

(8) The employment of independent auditors and engineers or other technical consultants to advise and assist the district in the operation, management, and improvement of any project or projects;

(9) Limitations or prohibitions on rendering free service in connection with any project or projects;

(10) Specifying conditions constituting events of default and vesting in one or more trustees including trustees which may be appointed by the bond owners and note owners, such special rights, property rights, powers, and duties with respect to the property and revenues of any project or projects as the commission of the district may deem advisable the better to secure the payment of such bonds and notes;

(11) Prescribing conditions controlling the acquisition, sale, lease, or other disposition of real and personal property used or useful in connection with any project or projects, the amount and kinds of policies of insurance to be carried by the district in connection therewith, and the use and disposition of the proceeds of policies of insurance; and

(12) Any other matters of like or different character which in any way affect the security or protection of bonds or notes of the district. [1983 c 167 § 135; 1959 c 236 § 5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

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53.34.060 Notes. A district shall have power from time to time to issue bond anticipation revenue notes (herein referred to as notes), and from time to time to issue renewal notes, such notes in any case to mature not later than six years from the date of incurring the indebtedness represented thereby in an amount not exceeding in the aggregate at any time outstanding the amount of revenue bonds then or theretofore authorized but not issued. Payment of such notes shall be made from any moneys or revenue which the district may have available for such purpose or the proceeds of the sale of revenue bonds of the district, or such notes may be exchanged for a like amount of such revenue bonds bearing the same or a lower or higher rate of interest than that borne by such notes.

All notes may be issued and sold in the same manner as revenue bonds. Any district shall have power to make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and the district shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of said notes, of revenue bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in amount deemed by the district sufficient to provide for the payment of the notes in full at the maturity thereof. The district may provide in such collateral agreement that the notes may be exchanged for revenue bonds held as collateral security for the notes, or that the trustee may sell the revenue bonds if the notes are not otherwise paid at maturity and apply the proceeds of such sale to the payment of the notes. Such notes shall bear interest at a rate or rates as authorized by the port commission. [1970 ex.s. c 56 § 71; 1969 ex.s. c 232 § 81; 1959 c 236 § 6.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.34.070 Bonds and notes payable solely from revenues, etc.—Adequate rates and charges to be established. Revenue bonds and notes issued under the provisions of this chapter shall be payable solely from the revenues, income, receipts, profits, charges, fees, rentals, and moneys received or derived by or through the ownership, operation, sale, lease, or other disposition in whole or in part of any project or projects authorized under the provisions of this chapter, or through the issuance of refunding bonds or notes, and the commission of any district issuing revenue bonds or notes under the authority of this chapter shall establish, maintain, and collect rates, tolls, rents, and charges from time to time so long as any of such revenue bonds are outstanding and unpaid for all services sold, furnished, or supplied by or through any such project or projects sufficient to produce an amount, together with any other moneys of the district available and dedicated to such purpose, to pay the principal of and interest and premium, if any, on all revenue bonds and notes payable from the revenues of any project or projects as the same may respectively fall due in accordance with the terms of the resolution or resolutions or trust agreement authorizing the issuance and securing the payment of such obligations. [1959 c 236 § 7.]

53.34.080 Special funds and accounts—Disposition.

The resolution, resolutions, or trust agreement providing for the issuance of revenue bonds or notes pursuant to the provisions of this chapter shall create and establish a special fund of the district into which the district shall be obligated to deposit as collected all income, revenues, receipts, and profits derived by the district through the ownership and operation of any project or projects acquired or constructed from the proceeds of the sale of such revenue bonds or notes: PROVIDED, That additional separate special funds or accounts may be created by such resolution or trust agreement into which the district may obligate itself to deposit the proceeds of the sale of such revenue bonds and notes, the proceeds of the sale or other disposition in whole or in part of any project or projects, the proceeds of any policies of insurance on such projects, and any other additional moneys received by the district and applicable to such projects. All such moneys shall be held by the district, the depositories and trustees of such funds and accounts, in trust for the equal and ratable benefit and security of the holders from time to time of the revenue bonds and notes issued pursuant to the resolution, resolutions, or trust agreement establishing such special funds or accounts, and shall be collected, held, deposited, and disbursed solely for the acquisition, construction, operation, maintenance, renewal, replacement, improvement, extension, and betterment of such project or projects and the payment of the principal of and interest and premium, if any, on the revenue bonds and notes issued pursuant to such resolution, resolutions, or trust agreements, and the creation and maintenance of reasonable reserves for all such purposes: PROVIDED, HOWEVER, That the district may in its discretion and subject to any agreements with the holders of such revenue bonds and notes expend amounts of such moneys as are not required for the purposes aforesaid for other corporate purposes of the district.

The district may pledge such moneys or revenues of the district subject to prior pledges thereof, if any, for the payment of such notes and may in addition secure the notes in the same manner as herein provided for revenue bonds. [1959 c 236 § 8.]

53.34.090 Pledge of moneys, when binding—When lien attaches. It is the intention hereof that any pledge of revenues, income, receipts, profits, charges, fees, or other moneys made by a district for the payment of bonds shall be valid and binding from the time of the adoption of any resolution or the execution of any trust agreement making such pledge notwithstanding the fact that there may not then be any simultaneous delivery thereof, that the revenues, income, receipts, profits, charges, fees, and other moneys so pledged shall as soon as received by the district immediately be subject to the lien of such pledge without the physical delivery thereof and without further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the district irrespective of whether such parties have notice thereof. Neither the resolution, resolutions, or trust agreement authorizing revenue bonds or notes nor any other instrument by which such a pledge is created need be recorded to be effective. [1959 c 236 § 9.]

53.34.100 No personal liability on bonds or notes.

Neither the members of a commission nor any person executing revenue bonds or notes shall be liable personally on such bonds or notes, or be subject to any personal liability or accountability by reason of the issuance thereof. [1959 c 236 § 10.]

53.34.110 District may purchase bonds or notes.

A district shall have power out of any funds available therefor to purchase revenue bonds or notes of such district. Any bonds or notes so purchased may be held, canceled, or resold by the district subject to and in accordance with any resolution or resolutions or trust agreements with bondholders. [1959 c 236 § 11.]

53.34.120 State not to limit or alter rights of district or impair rights or remedies of bond or note holders.

The state of Washington does hereby covenant and agree with the holders of revenue bonds or notes issued by a district under the authority of this chapter that the state will not limit or alter the rights hereby vested in a district to acquire, maintain, construct, reconstruct, improve, extend, add to, better and operate the projects authorized to be constructed or acquired under the provisions hereof and to establish, collect, and pledge such rates, rentals, tolls, charges, license, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with holders of such revenue bonds and notes or in any way impair the rights and remedies of bondholders and noteholders until the bonds or notes together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully met and discharged. The provisions of this chapter and of the resolutions, trust agreements and proceedings authorizing revenue bonds and notes hereunder shall constitute a contract with the holders of said bonds and notes. [1959 c 236 § 12.]

53.34.130 Bonds, notes, obligations not state or district debt—No ad valorem taxes.

The revenue bonds, revenue notes, and any other obligations of a district issued under the authority of this chapter shall not be a debt of the state of Washington or of any political subdivision of this state, nor shall such obligations be considered indebtedness of the port district issuing same within any constitutional, statutory, or other limitation of indebtedness, and neither the state nor any political subdivision thereof, including the port district issuing such revenue bonds or notes, shall ever become obligated to levy ad valorem taxes on any taxable property within the state for the payment of such revenue bonds and notes, but such revenue bonds and notes shall be payable solely from and shall be a charge only upon the revenues and other funds of the project or projects pledged to the payment thereof by the proceedings authorizing the issuance of such bonds and notes. [1959 c 236 § 13.]

53.34.140 Registration of bonds and notes—Prima facie validity. Prior to the issuance and delivery of revenue

bonds or notes under the authority of this chapter, such revenue bonds or notes and a certified copy of the resolution, resolutions, or trust agreements authorizing such revenue bonds or notes shall be forwarded by the port commission to the state auditor together with any additional information requested by him, and when such revenue bonds or notes have been examined they shall be registered by the auditor in books to be kept by him for that purpose, and a certificate of registration shall be endorsed upon each such revenue bond or note and signed by the auditor or a deputy appointed by him for that purpose.

Revenue bonds or notes so registered shall then be prima facie valid and binding obligations of the port district in accordance with the terms thereof, notwithstanding any defect or irregularity in the proceedings for the authorization and issuance of such revenue bonds or notes or in the sale, execution or delivery thereof or in the application of the proceeds thereof. [1959 c 236 § 14.]

53.34.150 Bonds and notes as legal investment and security. Revenue bonds and notes issued under the authority of this chapter are made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds and notes are also made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities, municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized. [1959 c 236 § 15.]

53.34.160 Projects declared public benefit and governmental function—Covenant by state with bond and note holders—Tax exemption. It is found, determined, and declared that the creation and establishment of projects authorized by this chapter are in all respects for the benefit of the people of the state of Washington, for the improvement of their welfare and prosperity, and for the promotion of intrastate, interstate, and foreign commerce, the transportation of freight, commercial, and passenger traffic, is a public purpose, that such projects operated by port districts are essential parts of the public transportation system, and that such districts will be performing essential governmental functions in the exercise of the powers conferred upon them by this chapter; and the state of Washington covenants with the holders of revenue bonds and notes that port districts shall not be required to pay any taxes or assessments, or other governmental charges in lieu thereof, upon any of the property acquired by them or under their respective jurisdictions, con-

trol, possession, or supervision, upon the activities of port districts in the operation and maintenance of such projects, or upon any charges, fees, rentals, revenues, or other income received by such districts from such projects and that the revenue bonds and notes of port districts and the income therefrom shall at all times be exempt from all taxation in the state of Washington, except transfer, inheritance, and estate taxes. This section shall constitute a covenant and agreement with the holders of all revenue bonds and notes issued by port districts pursuant to the provisions of this chapter. [1959 c 236 § 16.]

53.34.170 District's power to acquire property, rights, etc.—Gifts—Condemnation—Contracts by public agencies authorized. In the acquisition, construction, reconstruction, improvement, extension, or betterment of any project or projects authorized under the provisions of this chapter any port district creating and establishing any such project or projects may have and exercise all of the powers heretofore or hereafter granted to port districts for corporate purposes and, in addition thereto, may acquire by gift or grant, lease, purchase, or condemnation any public and private property, franchises and property rights, including state, county, and school lands and property, and littoral and water rights whether or not any such property is then devoted to public or quasi public proprietary or governmental use: PROVIDED, That the court shall find that the proposed condemnation of any property already devoted to a public use is for a higher public use, and may by appropriate contracts with any city, county, or other political subdivision of the state, with the state and any department of the government of the state (hereinafter referred to collectively as public agencies), or with any department, instrumentality or agency of the United States, acquire title to or the use of existing roads, streets, parkways, avenues, or highways or the closing of any roads, streets, parkways, avenues, or highways as may be necessary or convenient to the acquisition, construction, or operation of any such project or projects under such terms and conditions as may be mutually agreed upon. All public agencies are authorized to enter into contracts with port districts for the aforesaid purposes. [1959 c 236 § 17.]

53.34.180 Public agencies authorized to contract with district for contribution of money, property, services, etc. Any public agency, including without limitation the department of transportation, may contract with a port district that is constructing a project or projects under this chapter for the contribution of moneys or real or personal property in aid of the construction of the projects, or for the furnishing of engineering, legal, police, and fire protection, and all other services necessary or convenient to the acquisition, construction, reconstruction, operation, maintenance, renewal, replacement, improvement, additions to, or extension of the project or projects. The contracts shall run for such period of years and contain such terms and conditions as the parties thereto mutually agree upon. Any public agency, by resolution, may authorize the execution of the contracts with a port district and no other authorization on the part of the public agency is necessary, regardless of any provision of laws or of a city charter to the contrary. Obligations assumed

by a public agency under the contracts entered into under this chapter shall be included and provided for in each annual budget of the public agency made thereafter until all the obligations have been fully discharged. [1984 c 7 § 366; 1959 c 236 § 18.]

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

53.34.190 Bylaws, rules for management, uses, charges—Penalty for violation. (1) Any port district establishing a project under the authority of this chapter may make such bylaws, rules, and regulations for the management and use of such project and for the collection of rentals, tolls, fees, and other charges for services or commodities sold, furnished or supplied through such project.

(2) The violation of any bylaw, rule, or regulation described in subsection (1) of this section is a misdemeanor punishable by fine not to exceed one hundred dollars or by imprisonment for not longer than thirty days, or both. [2003 c 53 § 287; 1959 c 236 § 19.]

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

53.34.200 Actions for damages, injuries, death—Allegation in complaint of presentment of claim. In every action against a district for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death arising in connection with the acquisition, construction, reconstruction, operation, or maintenance of a project authorized by the provisions of this chapter, the complaint shall contain an allegation that at least thirty days have elapsed since a demand, claim, or claims upon which such action is founded were presented to the secretary of the district, or to its chief executive officer, and that the district has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment. [1959 c 236 § 20.]

53.34.220 Chapter supplemental to other laws—Liberal construction. The powers and rights granted to port districts and public agencies by the provisions of this chapter are in addition and supplemental to and not in substitution of the powers and rights heretofore or hereafter granted to such districts and public agencies by any other law or city charter, and no limitations or restrictions or proceedings for the exercise of powers and rights by port districts and public agencies contained in any other laws or city charters shall apply to the exercise of powers and rights granted by the provisions of this chapter, and the provisions of this chapter shall be liberally construed to permit the accomplishment of the purposes hereof. [1959 c 236 § 22.]

53.34.900 Severability—1959 c 236. If any section, clause or provision of this chapter shall be declared unconstitutional or invalid in whole or in part, to the extent that this chapter is not unconstitutional or invalid this chapter shall be valid and effective, and no other section, clause, or provision hereof shall on account of such declaration be deemed invalid or ineffective. [1959 c 236 § 23.]

53.34.910 Chapter controls inconsistent acts. Insofar as the provisions of this chapter are inconsistent with the provisions of any other act or of any city charter, the provisions of this chapter shall be controlling. [1959 c 236 § 24.]

Chapter 53.35 RCW

BUDGETS

Sections

53.35.010	Preliminary budget.
53.35.020	Publication of notice of preliminary budget and hearing.
53.35.030	Hearing—Final budget.
53.35.040	Final budget to be filed with county commissioners.
53.35.045	Alternate date for filing final budget.
53.35.050	Supplemental budgets.
53.35.060	Fiscal year.
53.35.070	Chapter exclusive method for budgets.
53.35.071	Expenditures for industrial development, trade promotion, or promotional hosting—Budgeting required.
53.35.900	Severability—1959 c 159.

53.35.010 Preliminary budget. On or before the 15th day of September of each year each port commission shall prepare a preliminary budget of the port district for the ensuing fiscal year showing the estimated expenditures and the anticipated available funds from which all expenditures are to be paid. [1959 c 159 § 1.]

53.35.020 Publication of notice of preliminary budget and hearing. Following the preparation of the preliminary budget, the port commission shall publish a notice stating that the preliminary budget of the port district has been prepared and placed on file at the office of the port district; that a copy thereof may be obtained by any taxpayer at an address set forth in the notice; that the commission will meet at a date, hour and place set forth in the notice, such date to be not earlier than September 15th and not later than the first Tuesday following the first Monday in October, for the purpose of fixing and adopting the final budget of the port district for the ensuing year. The notice shall be published once each week for two consecutive weeks in a legal newspaper of the district, or if there is none, in any newspaper of general circulation in the county, the first publication to be not less than nine days nor more than twenty days prior to the date of the hearing. [1959 c 159 § 2.]

53.35.030 Hearing—Final budget. On the day set by the notice provided for in RCW 53.35.020 the commission shall meet at the place and hour designated for the purpose of a hearing on the budget and adoption of a final budget. Any person may present objections to the preliminary budget following which the commission shall, by resolution adopt a final budget. [1959 c 159 § 3.]

53.35.040 Final budget to be filed with county commissioners. It shall be the duty of the commissioners of port districts, for the purpose of levying port district taxes, to file with the clerk of the board of county commissioners on or before the Wednesday next following the first Monday in October in each year a certified copy of such final budget which shall specify the amounts to be raised by taxation on the assessed valuation of the property in the port district. [1959 c 159 § 4.]

53.35.045 Alternate date for filing final budget. Notwithstanding any provision of law to the contrary, the board of commissioners of a port district may file with the clerk of the county legislative authority a certified copy of the port district final budget, provided for in RCW 53.35.040, on the first Monday in December. The board of port commissioners may also set other dates relating to the budget process, including but not limited to the dates set in RCW 53.35.010 and 53.35.020 to conform to the alternate date for final budget filing. [1974 ex.s. c 19 § 1.]

53.35.050 Supplemental budgets. A port commission may adopt by resolution one or more supplemental budgets at any time during the fiscal year. Such supplemental budget shall be adopted only after public hearing. Notice of such hearing shall be given by a single publication of notice of the date, place and hour of the hearing in a legal newspaper of the district, or if there is none, in any newspaper of general circulation in the county, the publication of such notice to be at least five days and not more than fifteen days prior to the hearing date. [1959 c 159 § 5.]

53.35.060 Fiscal year. The fiscal year for a port district shall be the calendar year. [1959 c 159 § 6.]

53.35.070 Chapter exclusive method for budgets. The provisions of this chapter shall constitute the exclusive requirement and authority for the preparation, adoption, certification and filing of port district budgets. [1959 c 159 § 7.]

53.35.071 Expenditures for industrial development, trade promotion, or promotional hosting—Budgeting required. See RCW 53.36.120.

53.35.900 Severability—1959 c 159. Should any section or parts of sections of this chapter be declared unconstitutional it shall in no case affect the validity of other provisions of this chapter. [1959 c 159 § 8.]

**Chapter 53.36 RCW
FINANCES**

Sections

- 53.36.010 District treasurer.
- 53.36.015 Payment of claims—Use of warrants and checks.
- 53.36.020 Tax levy—Limitation.
- 53.36.030 Indebtedness—Limitation.
- 53.36.040 Funds in anticipation of revenues—Warrants.
- 53.36.050 County treasurer—General and special funds—Depositories—Investment of excess funds.
- 53.36.060 Incidental expense fund.
- 53.36.070 Levy for dredging, canal construction, or land leveling or filling purposes.
- 53.36.080 Collection of levies for dredging, canal construction, or land leveling or filling purposes.
- 53.36.100 Levy for industrial development district purposes—Notice—Petition—Election.
- 53.36.110 Levy for industrial development district purposes—Excess funds to be used solely for retirement of general obligations.
- 53.36.120 Expenditures for industrial development, trade promotion, or promotional hosting—Budgeting required.
- 53.36.130 Expenditures for industrial development, trade promotion, or promotional hosting—Source and amount of funds.
- 53.36.140 Expenditures for industrial development, trade promotion, or promotional hosting—Rules and regulations—Authorizations—Vouchers.

53.36.150 Expenditures for industrial development, trade promotion, or promotional hosting—Duties of state auditor.

Accounting system and state examination: RCW 43.09.200 through 43.09.280.

Disposition of rentals from aquatic lands managed by a port district: RCW 79.105.420.

Tax district relief: Chapter 39.64 RCW.

Vouchers on public funds: Chapter 42.24 RCW.

53.36.010 District treasurer. The treasurer of the county in which a port district is located shall be treasurer of the district unless the commission of a port district which has for the last three consecutive years received annual gross operating revenues of one hundred thousand dollars or more, excluding tax revenues and grants for capital purposes, designates by resolution some other person having experience in financial or fiscal matters as treasurer of the port district to act with the same powers and under the same restrictions as provided by law for a county treasurer acting on behalf of a port district: PROVIDED, That any port district which was authorized by the county treasurer to appoint its own treasurer prior to July 24, 1983, may continue to appoint its own treasurer. The commission may, and if the treasurer is not the county treasurer it shall, require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on such bonds shall be paid by the district. All district funds shall be paid to the treasurer and shall be disbursed by him upon warrants signed by a port auditor appointed by the port commission, upon vouchers approved by the commission. [1983 c 250 § 1; 1974 ex.s. c 13 § 1; 1955 c 348 § 5. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Severability—1955 c 348: See note following RCW 53.08.120.

County treasurer, calling warrants: RCW 36.29.060.

53.36.015 Payment of claims—Use of warrants and checks. A port district that acts as its own treasurer as provided in RCW 53.36.010 may by resolution adopt a policy for the payment of claims or other obligations of the port district, which are payable out of solvent funds, electing either to pay obligations by warrant or by check. However, no check shall be issued when the applicable fund is not solvent at the time payment is ordered, but a warrant shall be issued instead. When checks are to be used, the port commission shall designate the qualified public depository where checks are to be drawn, and the officers authorized or required to sign checks. Wherever in this title reference is made to warrants, the term includes checks where authorized by this section. [2002 c 95 § 1.]

53.36.020 Tax levy—Limitation. A district may raise revenue by levy of an annual tax not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district for general port purposes, including the establishment of a capital improvement fund for future capital improvements, except that any levy for the payment of the principal and interest of the general bonded indebtedness of the port district shall be in excess of any levy made by the port district under

the forty-five cents per thousand dollars of assessed value limitation. The levy shall be made and taxes collected in the manner provided for the levy and collection of taxes in school districts of the first class. [1973 1st ex.s. c 195 § 56; 1955 c 65 § 11. Prior: 1951 c 133 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Budgets: Chapter 53.35 RCW.

Levy of taxes: Chapter 84.52 RCW.

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59); RCW 84.52.050 through 84.52.056.

School district levy: Chapter 28A.545 RCW.

53.36.030 Indebtedness—Limitation. (1)(a) Except as provided in (b) of this subsection, a port district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor not exceeding an amount, together with any existing indebtedness of the district not authorized by the voters, of one-fourth of one percent of the value of the taxable property in the district.

(b) Port districts having less than eight hundred million dollars in value of taxable property during 1991 may at any time contract indebtedness or borrow money for port district purposes and may issue general obligation bonds therefor not exceeding an amount, combined with existing indebtedness of the district not authorized by the voters, of three-eighths of one percent of the value of the taxable property in the district. Prior to contracting for any indebtedness authorized by this subsection (1)(b), the port district must have a comprehensive plan for harbor improvements or industrial development and a long-term financial plan approved by the department of community, trade, and economic development. The department of community, trade, and economic development is immune from any liability for its part in reviewing or approving port district's improvement or development plans, or financial plans. Any indebtedness authorized by this subsection (1)(b) may be used only to acquire or construct a facility, and, prior to contracting for such indebtedness, the port district must have a lease contract for a minimum of five years for the facility to be acquired or constructed by the debt.

(2) With the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, a port district may contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor provided the total indebtedness of the district at any such time shall not exceed three-fourths of one percent of the value of the taxable property in the district.

(3) In addition to the indebtedness authorized under subsections (1) and (2) of this section, port districts having less than two hundred million dollars in value of taxable property and operating a municipal airport may at any time contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor not exceeding an additional one-eighth of one percent of the value of the taxable property in the district without authorization by the voters; and, with the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, may contract indebtedness or borrow

money for airport capital improvement purposes and may issue general obligation bonds therefor for an additional three-eighths of one percent provided the total indebtedness of the district for all port purposes at any such time shall not exceed one and one-fourth percent of the value of the taxable property in the district.

(4) Any port district may issue general district bonds evidencing any indebtedness, payable at any time not exceeding fifty years from the date of the bonds. Any contract for indebtedness or borrowed money authorized by RCW 53.36.030(1)(b) shall not exceed twenty-five years. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(5) Elections required under this section shall be held as provided in RCW 39.36.050.

(6) For the purpose of this section, "indebtedness of the district" shall not include any debt of a county-wide district with a population less than twenty-five hundred people when the debt is secured by a mortgage on property leased to the federal government; and the term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015.

(7) This section does not apply to a loan made under a loan agreement under chapter 39.69 RCW, and a computation of indebtedness under this chapter must exclude the amount of a loan under such a loan agreement. [1996 c 66 § 1; 1995 c 102 § 1; 1991 c 314 § 29; 1990 c 254 § 1; 1984 c 186 § 41; 1970 ex.s. c 42 § 32; 1965 ex.s. c 54 § 1; 1959 c 52 § 1; 1955 c 65 § 12. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Findings—1991 c 314: See note following RCW 43.160.020.

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

General provisions applicable to district bonds: Chapter 39.44 RCW.

Limitation upon indebtedness: State Constitution Art. 8 § 6 (Amendment 27); chapter 39.36 RCW.

Port district indebtedness authorized, emergency public works: RCW 39.28.030.

Validation requirement: RCW 39.40.010.

53.36.040 Funds in anticipation of revenues—Warrants. (1) Any port commission is hereby authorized, prior to the receipt of taxes raised by levy, to borrow money or issue the warrants of the district in anticipation of the revenues to be derived by such district and such warrants shall be redeemed from the first money available from such taxes when collected. Such warrants may be in any form, including bearer warrants or registered warrants as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 136; 1921 c 179 § 2; 1911 c 92 § 12; RRS § 9699.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

53.36.050 County treasurer—General and special funds—Depositories—Investment of excess funds. The county treasurer acting as port treasurer shall create a fund to be known as the "Port of Fund," into which shall be

paid all money received by him from the collection of taxes in behalf of such port district, and shall also maintain such other special funds as may be created by the port commission into which shall be placed such moneys as the port commission may by its resolution direct. All such port funds shall be deposited with the county depositories under the same restrictions, contracts and security as is provided by statute for county depositories and all interest collected on such port funds shall belong to such port district and shall be deposited to its credit in the proper port funds: PROVIDED, That any portion of such port moneys determined by the port commission to be in excess of the current needs of the port district may be invested by the county treasurer in accordance with RCW 36.29.020, 36.29.022, and chapter 39.59 RCW, and all interest collected thereon shall likewise belong to such port district and shall be deposited to its credit in the proper port funds. [1997 c 393 § 10; 1959 c 52 § 2; 1921 c 179 § 3; 1911 c 92 § 13; RRS § 9700.]

County depositories: Chapter 36.48 RCW.

53.36.060 Incidental expense fund. The port commission of any port district may, by resolution, create an incidental expense fund in such amount as the port commission may direct. Such incidental expense fund may be kept and maintained in a bank or banks designated in the resolution creating the fund, and such depository shall be required to give bonds or securities to the port district for the protection of such incidental expense fund, in the full amount of the fund authorized by the said resolution. Vouchers shall be drawn to reimburse said incidental expense fund and such vouchers shall be approved by the port commission. Transient labor, freight, express, cartage, postage, petty supplies, and minor expenses of the port district may be paid from said incidental expense fund and all such disbursements therefrom shall be by check of the port auditor or such other officer as the port commission shall by resolution direct. All expenditures from said incidental expense fund shall be covered by vouchers drawn by the port auditor and approved by the manager or such other officer of the port district as the port commission may by resolution direct. The officer disbursing said fund shall be required to give bond to the port district in the full authorized amount of the said incidental expense fund for the faithful performance of his duties in connection with the disbursement of moneys from such fund. [1933 c 189 § 16; RRS § 9699-1.]

53.36.070 Levy for dredging, canal construction, or land leveling or filling purposes. Any port district organized under the laws of this state shall, in addition to the powers otherwise provided by law, have the power to raise revenue by the levy and collection of an annual tax on all taxable property within such port district of not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district, for dredging, canal construction, or land leveling or filling purposes, the proceeds of any such levy to be used exclusively for such dredging, canal construction, or land leveling and filling purposes: PROVIDED, That no such levy for dredging, canal construction, or land leveling or filling purposes under the provisions of RCW 53.36.070 and 53.36.080

shall be made unless and until the question of authorizing the making of such additional levy shall have been submitted to a vote of the electors of the district in the manner provided by law for the submission of the question of making additional levies in school districts of the first class at an election held under the provisions of *RCW 29.13.020 and shall have been authorized by a majority of the electors voting thereon. [1983 c 3 § 162; 1973 1st ex.s. c 195 § 57; 1965 ex.s. c 22 § 1; 1925 c 29 § 1; RRS § 9692-1.]

*Reviser's note: RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

53.36.080 Collection of levies for dredging, canal construction, or land leveling or filling purposes. Whenever such additional levy for dredging, canal construction, or land leveling or filling purposes shall have been authorized by the electors of the district at an election, held subsequent to the time of making the levy for the district for general purposes, in any year, such levy shall be certified by the port commission in the manner provided by law for certifying levies for general purposes of the district, and shall be forthwith spread and extended upon the tax rolls for the current year, and the taxes so levied and extended shall be collected in the manner provided by law for the collection of general taxes. [1965 ex.s. c 22 § 2; 1925 c 29 § 2; RRS § 9692-2.]

Collection of taxes, generally: Chapter 84.56 RCW.

53.36.100 Levy for industrial development district purposes—Notice—Petition—Election. (1) A port district having adopted a comprehensive scheme of harbor improvements and industrial developments may thereafter raise revenue, for six years only, and a second six years if the procedures are followed under subsection (2) of this section, in addition to all other revenues now authorized by law, by an annual levy not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district. In addition, if voters approve a ballot proposition authorizing additional levies by a simple majority vote, a port district located in a county bordering on the Pacific Ocean having adopted a comprehensive scheme of harbor improvements and industrial developments may impose these levies for a third six-year period. Said levies shall be used exclusively for the exercise of the powers granted to port districts under chapter 53.25 RCW except as provided in RCW 53.36.110. The levy of such taxes is herein authorized notwithstanding the provisions of RCW 84.52.050 and 84.52.043. The revenues derived from levies made under RCW 53.36.100 and 53.36.110 not expended in the year in which the levies are made may be paid into a fund for future use in carrying out the powers granted under chapter 53.25 RCW, which fund may be accumulated and carried over from year to year, with the right to continue to levy the taxes provided for in RCW 53.36.100 and 53.36.110 for the purposes herein authorized.

(2) If a port district intends to levy a tax under this section for one or more years after the first six years these levies were imposed, the port commission shall publish notice of this intention, in one or more newspapers of general circulation within the district, by June 1 of the year in which the first

levy of the seventh through twelfth year period is to be made. If within ninety days of the date of publication a petition is filed with the county auditor containing the signatures of eight percent of the number of voters registered and voting in the port district for the office of the governor at the last preceding gubernatorial election, the county auditor shall canvass the signatures in the same manner as prescribed in *RCW 29.79.200 and certify their sufficiency to the port commission within two weeks. The proposition to make these levies in the seventh through twelfth year period shall be submitted to the voters of the port district at a special election, called for this purpose, no later than the date on which a primary election would be held under *RCW 29.13.070. The levies may be made in the seventh through twelfth year period only if approved by a majority of the voters of the port district voting on the proposition. [1994 c 278 § 1; 1982 1st ex.s. c 3 § 1; 1979 c 76 § 1; 1973 1st ex.s. c 195 § 58; 1957 c 265 § 1.]

***Reviser's note:** RCW 29.79.200 and 29.13.070 were recodified as RCW 29A.72.230 and 29A.04.310, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.310 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.310, see RCW 29A.04.311.

Effective date—1982 1st ex.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982." [1982 1st ex.s. c 3 § 3.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Levy by port district under RCW 53.36.100—Application of chapter 84.55 RCW: RCW 84.55.045.

53.36.110 Levy for industrial development district purposes—Excess funds to be used solely for retirement of general obligations. In the event the levy herein authorized shall produce revenue in excess of the requirements to complete the projects of a port district then provided for in its comprehensive scheme of harbor improvements and industrial developments or amendments thereto, said excess shall be used solely for the retirement of general obligation bonded indebtedness. [1957 c 265 § 2.]

53.36.120 Expenditures for industrial development, trade promotion, or promotional hosting—Budgeting required. Under the authority of Article VIII, section 8, of the state Constitution, port district expenditures for industrial development, trade promotion or promotional hosting shall be pursuant to specific budget items as approved by the port commission at the annual public hearings on the port district budget. [1967 c 136 § 1.]

53.36.130 Expenditures for industrial development, trade promotion, or promotional hosting—Source and amount of funds. Funds for promotional hosting expenditures shall be expended only from gross operating revenues and shall not exceed one percent thereof upon the first two million five hundred thousand dollars of such gross operating revenues, one-half of one percent upon the next two million five hundred thousand dollars of such gross operating revenues, and one-fourth of one percent on the excess over five million dollars of such operating revenues: PROVIDED, HOWEVER, That in no case shall these limitations restrict a

port district to less than twenty-five hundred dollars per year from any funds available to the port. [1967 c 136 § 2.]

53.36.140 Expenditures for industrial development, trade promotion, or promotional hosting—Rules and regulations—Authorizations—Vouchers. Port commissions shall adopt, in writing, rules and regulations governing promotional hosting expenditures by port employees or agents. Such rules shall identify officials and agents authorized to make such expenditures and the approved objectives of such spending. Port commissioners shall not personally make such expenditures, or seek reimbursement therefor, except where specific authorization of such expenditures has been approved by the port commission. All payments and reimbursements shall be identified and supported on vouchers approved by the port auditor. [1967 c 136 § 3.]

53.36.150 Expenditures for industrial development, trade promotion, or promotional hosting—Duties of state auditor. The state auditor shall, as provided in chapter 43.09 RCW:

- (1) Audit expenditures made pursuant to RCW 53.36.120 through 53.36.150; and
- (2) Promulgate appropriate rules and definitions as a part of the uniform system of accounts for port districts to carry out the intent of RCW 53.36.120 through 53.36.150: PROVIDED, That such accounts shall continue to include "gross operating revenues" which shall be exclusive of revenues derived from any property tax levy except as provided in RCW 53.36.130. [1967 c 136 § 4.]

Chapter 53.40 RCW

REVENUE BONDS AND WARRANTS

Sections

53.40.010	Revenue bonds authorized.
53.40.020	Purposes for which bonds may be issued and sold.
53.40.030	Bonds—Term, form, etc.
53.40.040	Bonds payable solely out of revenues—Special funds.
53.40.050	Sale of bonds to federal government.
53.40.110	Interest, signatures, sale of bonds—Covenants—Safeguards—Enforcement.
53.40.120	Irregularity in bonds or use of funds no defense.
53.40.125	District may mortgage industrial development facility.
53.40.130	Funding, refunding bonds.
53.40.135	Revenue warrants.
53.40.140	Construction of chapter.
53.40.150	Validation—1959 c 183.

53.40.010 Revenue bonds authorized. The port commission of any port district is authorized for the purpose of carrying out the lawful powers granted port districts by the laws of the state to contract indebtedness and to issue revenue bonds evidencing such indebtedness in conformity with this chapter. [1959 c 183 § 1; 1957 c 59 § 1; 1949 c 122 § 1; Rem. Supp. 1949 § 9711-1.]

Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.

Declaratory judgments of local bond issues: Chapter 7.25 RCW.

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

53.40.020 Purposes for which bonds may be issued and sold. All such revenue bonds authorized under the terms

of this chapter may be issued and sold by the port district from time to time and in such amounts as is deemed necessary by the port commission to provide sufficient funds for the carrying out of all port district powers, and without limiting the generality thereof, shall include the following: Acquisition, construction, reconstruction, maintenance, repair, additions and operation of port properties and facilities, including in the cost thereof engineering, inspection, accounting, fiscal and legal expenses; the cost of issuance of bonds, including printing, engraving and advertising and other similar expenses; payment of interest on the outstanding bonds issued for any project during the period of actual construction and for six months after the completion thereof, and the proceeds of such bond issue are hereby made available for all such purposes. "Port property and facilities," as used in this section, includes facilities for the freezing or processing of agricultural products. [1987 c 289 § 2; 1959 c 183 § 2; 1957 c 59 § 3. Prior: 1949 c 122 § 2, part; Rem. Supp. 1949 § 9711-2, part.]

53.40.030 Bonds—Term, form, etc. (1) The port commission shall determine the form, conditions, and denominations of all such bonds, the maturity date or dates which the bonds so sold shall bear, and the interest rate or rates thereon. It shall not be necessary that all bonds of the same authorized issue bear the same interest rate or rates. Principal and interest of the bonds shall be payable at such place or places as may be fixed and determined by the port commission. The bonds may contain provisions for registration thereof as to principal only or as to both principal and interest as provided in RCW 39.46.030. The bonds shall have interest payable at such time or times as may be determined by the port commission and in such amounts as it may prescribe. The port commission may provide for retirement of bonds issued under this chapter at any time or times prior to their maturity, and in such manner and upon the payment of such premiums as may be fixed and determined by resolution of the port commission. The port commission may delegate authority to the chief executive officer of the port to approve the interest rate or rates, maturity date or dates, redemption rights, interest payment dates, and principal maturities under such terms and conditions approved by resolution of the port commission.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2000 c 181 § 1; 1983 c 167 § 137; 1970 ex.s. c 56 § 73; 1969 ex.s. c 232 § 37; 1959 c 183 § 3; 1957 c 59 § 4. Prior: 1949 c 122 § 2, part; Rem. Supp. 1949 § 9711-2, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Bonds—Form, terms of sale, payment, etc.: Chapter 39.44 RCW.

53.40.040 Bonds payable solely out of revenues—Special funds. Bonds issued under the provisions of this chapter shall be payable solely out of operating revenues of the port district. Such bonds shall be authorized by resolution adopted by the port commission, which resolution shall create a special fund or funds into which the port commission may obligate and bind the port district to set aside and pay

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any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the gross revenue of the port district for the purpose of paying the principal of and interest on such bonds as the same shall become due, and if deemed necessary to maintain adequate reserves therefor. Such fund or funds shall be drawn upon solely for the purpose of paying the principal and interest upon the bonds issued pursuant to this chapter.

The bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, even though they shall be payable solely from such special fund or funds, and the tax revenue of the port district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. The bonds and any coupons attached thereto shall state upon their face that they are payable solely from such special fund or funds. If the port commission fails to set aside and pay into such fund or funds the payments provided for in such resolution, the owner of any such bonds may bring suit to compel compliance with the provisions of the resolution. [1983 c 167 § 138; 1959 c 183 § 4; 1957 c 59 § 5; 1949 c 122 § 4; Rem. Supp. 1949 § 9711-4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Negotiable instruments—Uniform Commercial Code: Title 62A RCW.

53.40.050 Sale of bonds to federal government. Port districts may, but are not required by the terms of this chapter to do so, sell any or all such bonds issued pursuant to this chapter to the federal government, or any agency of the federal government, at private sale and without the necessity of public advertisement or calling for bids. [1959 c 183 § 5; 1957 c 59 § 6; 1949 c 122 § 3; Rem. Supp. 1949 § 9711-3.]

Bonds sold to government at private sale: Chapter 39.48 RCW.

53.40.110 Interest, signatures, sale of bonds—Covenants—Safeguards—Enforcement. (1) The bonds issued pursuant to the provisions of this chapter shall bear interest at such rate or rates as authorized by the port commission; shall be signed on behalf of the port district by the president of the port commission and shall be attested by the secretary of the port commission, one of which signatures may be a facsimile signature, and shall have the seal of the port district impressed thereon; any interest coupons attached thereto shall be signed by the facsimile signatures of said officials. Such bonds shall be sold in the manner and at such price as the port commission shall deem best, either at public or private sale.

The port commission may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on such bonds and may but shall not be required to include covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing the payment of such principal and interest; to establish, maintain, and collect tariffs, rates, charges, fees, rentals, and sales prices on facilities and services the income of which is pledged for the payment of such bonds, sufficient to pay or secure the payment of such principal and interest and to maintain an adequate coverage over annual debt service; and to make any and all other covenants not inconsistent with the provisions of this chapter which will increase the marketability of such bonds. The port commis-

sion may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. The provisions of this chapter and any resolution or resolutions providing for the authorization, issuance, and sale of such bonds shall constitute a contract with the owners of such bonds, and the provisions thereof shall be enforceable by any owner of such bonds by mandamus or any appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 139; 1970 ex.s. c 56 § 74; 1969 ex.s. c 232 § 38; 1959 c 183 § 6; 1949 c 122 § 9; Rem. Supp. 1949 § 9711-8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Mandamus: Chapter 7.16 RCW.

53.40.120 Irregularity in bonds or use of funds no defense. The Reconstruction Finance Corporation, or any other agency of the United States government making any such loan, or any other holder or owner of any bonds issued pursuant to this chapter, shall not be required to see to the application of the moneys derived from such bonds to the purposes for which the bonds are issued as specified in any resolution authorizing the issuance thereof. No defense of invalidity, or irregularity in any such bonds funded or refunded by the issuance of bonds hereunder, shall be a valid defense in any action at law or equity for a judgment upon or for the enforcement or collection of any bonds issued pursuant to this chapter, and no court shall have jurisdiction to entertain any such defense in any such action or proceeding. [1957 c 59 § 10. Prior: 1949 c 122 § 7, part; Rem. Supp. 1949 § 9711-6, part.]

53.40.125 District may mortgage industrial development facility. The port commission of any port district, as security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, may mortgage, pledge, or otherwise encumber the particular industrial development facility or facilities or any part or parts thereof that are being financed by the revenue bonds, whether then owned or thereafter acquired, and may assign any mortgage and repledge any security conveyed to the port district for that particular facility or facilities. [1987 c 289 § 1.]

53.40.130 Funding, refunding bonds. (1) The port commission of any port district may by resolution, from time to time, provide for the issuance of funding or refunding revenue bonds to fund or refund any outstanding revenue warrants, bonds, and any premiums and interest due thereon at or before the maturity of such warrants or bonds, and may combine various outstanding revenue warrants and parts or all of various series and issues of outstanding revenue bonds and

any matured coupons in the amount thereof to be funded or refunded.

The port commission shall create a special fund for the sole purpose of paying the principal of and interest on such funding or refunding revenue bonds, into which fund the commission shall obligate and bind the port district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the gross revenue of the port district sufficient to pay such principal and interest as the same shall become due, and if deemed necessary to maintain adequate reserves therefor.

Such funding or refunding bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, and the tax revenue of the port district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The port district may exchange such funding or refunding bonds for the warrants, bonds, and any coupons being funded or refunded, or it may sell such funding or refunding bonds in the manner, at such rate or rates of interest and at such price as the port commission shall deem to be for the best interest of the district and its inhabitants, either at public or private sale.

The provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 140; 1970 ex.s. c 56 § 75; 1969 ex.s. c 232 § 39; 1959 c 183 § 7; 1949 c 122 § 8; Rem. Supp. 1949 § 9711-7.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.40.135 Revenue warrants. Port districts may also issue revenue warrants for the same purposes for which they may issue revenue bonds, and the provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such revenue warrants. [1959 c 183 § 8.]

53.40.140 Construction of chapter. This chapter shall be complete authority for the issuance of the bonds and warrants hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations relative to the issuance of such bonds or warrants contained in any other act shall not apply to the bonds or warrants issued under this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1949 c 122 § 10; Rem. Supp. 1949 § 9711-9.]

53.40.150 Validation—1959 c 183. Any sale of revenue bonds or warrants of port districts heretofore made, whether at public or private sale and whether at par or less

than par as authorized herein, and any terms, conditions, and covenants of any revenue bonds or warrants of port districts heretofore issued, are hereby declared to be valid, legal, and binding in all respects: PROVIDED, HOWEVER, That this section shall not be construed to exonerate any officer or agent of any such district from any liability for any acts which were committed fraudulently or in bad faith. [1959 c 183 § 9.]

Chapter 53.44 RCW FUNDING AND REFUNDING INDEBTEDNESS— 1947 ACT

Sections

53.44.010 Funding and refunding authorized.
53.44.030 Maturities—Payment.

Funding and refunding revenue bonds: RCW 53.40.130.

Public bonds, form, terms of sale, payment, etc.: Chapter 39.44 RCW.

53.44.010 Funding and refunding authorized. The board of commissioners of any port district of the state may fund or refund any of the general bonded indebtedness and/or warrants of the district now or hereafter existing and accrued interest thereon, and may combine various series and/or issues of warrants and/or bonds into a single issue of funding or refunding bonds, by the issuance of general obligation funding or refunding bonds, when the board, by resolution, finds, determines, and declares that such proposed funding or refunding will inure to the benefit and credit of the district and will not result in an increase of the district's indebtedness or in an increase in the rate of interest borne by the indebtedness so funded or refunded. Such funding or refunding may be accomplished by the sale of said funding or refunding bonds or by their exchange for the bonds and/or warrants to be refunded. General obligation bonds of a port district which do not provide for prior redemption, may also be refunded with the consent of the holders thereof. Such bonds shall be issued in accordance with chapter 39.46 RCW. [1984 c 186 § 42; 1947 c 239 § 1; Rem. Supp. 1947 § 5623-1.]

Purpose—1984 c 186: See note following RCW 39.46.110.

53.44.030 Maturities—Payment. Such funding or refunding bonds shall run for a period of not exceeding twenty years from date thereof. The board may apply to the payment of the funding or refunding bonds and to the prior redemption thereof any other moneys or funds belonging to the district which are legally available for such purpose. [1984 c 186 § 43; 1947 c 239 § 3; Rem. Supp. 1947 § 5623-3.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Chapter 53.46 RCW CONSOLIDATION

Sections

53.46.005 Definitions.
53.46.010 Consolidation authorized—Petition or resolution, contents.
53.46.020 Special election—Conduct.
53.46.030 Certification of election—Establishment as municipal corporation—Commissioners, terms.
53.46.040 Prior obligations—Powers of consolidated district—Separation of funds.

53.46.050 County commissioners may act if no active port commission.
53.46.060 Dissolution of district which has no active commission—Authority of county commissioners.
53.46.070 Title to property vests in consolidated district.
53.46.080 District including area from two or more counties—Procedure to determine proportion of taxes.
53.46.090 District including area from two or more counties—Levy and collection of taxes—Principal county treasurer, duties.
53.46.100 General powers of consolidated district—Debt limitation.

53.46.005 Definitions. As used in this chapter the term "principal county auditor" and "principal county treasurer" shall be the county auditor or county treasurer in the county having the largest assessed valuation of the total of the proposed consolidated port district. [1965 c 102 § 1.]

53.46.010 Consolidation authorized—Petition or resolution, contents. Two or more port districts may be joined into one consolidated port district in the following manner: The port commissioners of each of the port districts proposed to be consolidated may, or on petition of ten percent of the qualified electors residing within each of the districts proposed to be consolidated based on the total vote cast in the last general election, shall, by joint resolution submit to the qualified electors of the port districts to be consolidated the proposition of consolidating such districts into one port district. Such resolution or petition in request thereof shall identify each port district to be consolidated, listing its assets and liabilities; state the name by which the port district resulting from the consolidation shall be known; legally describe each port commissioner district to be created within the port district resulting from the consolidation; state the terms and conditions, if any, under which the consolidation is proposed; and call a special election in the territory of the port districts to be consolidated, to determine whether such consolidation shall take place, and to fill the offices of the port commission of the port district resulting from the consolidation. The resolution or petition shall provide that the commission in the proposed district shall consist of three, five, or seven commissioners and that the number shall be approved by the voters at the time the proposition for consolidation is voted upon. The proposition in this respect shall provide that the commissioners shall be elected one each from commissioner districts which shall be described as set forth in this section, or if such districts are not so described then the commissioners shall be elected at large. [1965 c 102 § 2; 1961 c 26 § 1.]

53.46.020 Special election—Conduct. The special election to consider such consolidation and to fill such offices shall be conducted in accordance with the general election laws of the state. [1990 c 259 § 20; 1965 c 102 § 3; 1961 c 26 § 2.]

53.46.030 Certification of election—Establishment as municipal corporation—Commissioners, terms. The county canvassing board of election returns shall certify the results of the election to the board of county commissioners; and if at such election a majority of voters voting on the question of consolidation in each port district to be consolidated shall vote in favor of consolidation, the board of county commissioners shall so declare, and the port district resulting from the consolidation shall then be and become a municipal corporation of the state of Washington. The county auditor

shall in such event issue a certificate of election to the successful candidate from each port commissioner district. If the proposed district includes area in two or more counties, certificates of election shall be issued by the principal county auditor, and the canvassing board of elections shall be made up of the chairmen of the board of county commissioners, prosecutors, and the auditors of each county with area within the consolidated port district. Of the successful port commissioner candidates, if three are elected, the one receiving the highest number of votes shall serve until his successor is elected and qualified at the third subsequent regular election for port commissioner, and the ones receiving the second and third highest numbers of votes shall serve until their successors are elected and qualified at the second and first subsequent regular elections for port commissioner, respectively. If five or seven commissioners are elected, the two with the greatest number of votes shall serve until their successors are elected and qualified at the third subsequent regular election of port commissioners, the two commissioners receiving the next highest number of votes shall serve until their successors are elected and qualified at the second subsequent regular election of port commissioners; and the remaining commissioner or commissioners shall serve until their successors are elected and qualified at the next regular election of port commissioners. [1965 c 102 § 4; 1961 c 26 § 3.]

53.46.040 Prior obligations—Powers of consolidated district—Separation of funds. None of the obligations of each port district which has been consolidated shall be affected by the consolidation, and taxes and assessments for payment of such obligations shall continue to be levied and collected in respect to property in such former port district notwithstanding the consolidation. The port commission of the port district resulting from the consolidation shall have all the powers possessed at the time of the consolidation by the port commission of each port district which has been consolidated, to levy or collect taxes or assessments in respect to property in such former port district, for payment of such obligations. While any such obligations remain outstanding, funds subject to such obligations shall be kept separate. [1961 c 26 § 4.]

53.46.050 County commissioners may act if no active port commission. In the event a port district does not have an active port commission to which the petition for consolidation may be directed, the board of county commissioners of the county wherein such inactive port district is located may act in the place and stead of the port commission for the purposes of consolidation. [1961 c 26 § 5.]

53.46.060 Dissolution of district which has no active commission—Authority of county commissioners. For the purpose of dissolution of any port district not having an active port commission the board of county commissioners of the county wherein such inactive port district is located may exercise the powers and duties vested by chapter 53.48 RCW in the governing body of such port district. [1961 c 26 § 6.]

53.46.070 Title to property vests in consolidated district. Upon consolidation of two or more port districts the

title to all property owned by or held in trust for the former districts shall vest in the consolidated port district. [1965 c 102 § 5.]

53.46.080 District including area from two or more counties—Procedure to determine proportion of taxes. If the district includes area from two or more counties, it shall be the duty of the county assessor in each county to certify annually to the auditor of his county, who shall forward the same to the principal county auditor, the total assessed valuation of that part of the port district which lies within his county. The port commission of such consolidated port district shall certify to the principal county auditor the budget and the levies to be assessed for port purposes: PROVIDED, That the amount of tax to be levied upon taxable property of that part of a port district lying in one county shall be in such ratio to the whole amount levied upon the property lying in the entire consolidated port district as the assessed valuation lying in such county bears to the assessed valuation of the property in the entire consolidated port district.

Thereafter the principal county auditor shall forward a certificate to each county auditor, for the county commissioners thereof, which shall specify the proportion of taxes to be levied for port district purposes. [1965 c 102 § 6.]

53.46.090 District including area from two or more counties—Levy and collection of taxes—Principal county treasurer, duties. Upon receipt of the certificate from the principal county auditor as provided in RCW 53.46.080 it shall be the duty of the board of county commissioners of each county to levy on all taxable property of the consolidated port district which lies within the county a tax sufficient to raise the amount necessary to meet the county's proportionate share of the total tax levy. Such taxes shall be levied and collected in the same manner as other taxes are levied and collected. The proceeds shall be forwarded quarterly by the treasurer of each county to the principal county treasurer. The principal county treasurer shall place to the credit of said consolidated port district all funds received from the other county treasurers as well as those amounts he shall have collected for the account of the port district. The principal county treasurer shall be the treasurer of the consolidated port district and shall perform all functions required of a treasurer of a port district. [1965 c 102 § 7.]

53.46.100 General powers of consolidated district—Debt limitation. Any port district created by consolidation prior to June 10, 1965, or formed hereafter under chapter 102, Laws of 1965, shall have all the powers of a newly formed port district, without any other restriction except the requirements of RCW 53.46.040: PROVIDED, That general obligation indebtedness outstanding for all port purposes within the area of the consolidated port shall not exceed the limits of RCW 53.36.030, and for purpose of computing such bonded debt, the bonds outstanding of all port agencies shall be considered. [1965 c 102 § 8.]

Chapter 53.47 RCW

DISSOLUTION OF INACTIVE PORT DISTRICTS

Sections

53.47.010	Purpose.
53.47.020	Port district deemed inactive, when.
53.47.030	Petition for dissolution—Filing—Contents.
53.47.040	Hearing on petition—Notice, publication—Creditor claims, determination—Terms and conditions of court order if district to be dissolved.
53.47.050	Effect of final order of dissolution.
53.47.900	Chapter cumulative and nonexclusive.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

53.47.010 Purpose. This chapter shall provide an additional method by which inactive port districts may be dissolved. [1971 ex.s. c 162 § 1.]

53.47.020 Port district deemed inactive, when. A port district shall be deemed inactive if, at the time of the filing of the petition for dissolution with the clerk of the superior court of the county in which such port district is situated, such port has failed to comply with subdivision (1), (2), or (3) of this section.

(1) The port district has failed to file its budget with the board of county commissioners or, in the case of home rule charters, the appropriate governing body for the two fiscal years immediately preceding the date of filing such petition, and the port district, having been in existence for two years or more, has failed to adopt its comprehensive plan of harbor improvement and/or industrial development as provided by statute, and does not presently own or has not leased within two years prior to the filing of such petition, real property for use for port purposes.

(2) The port district does not presently own or has not leased or owned real property for use for port purposes within the four calendar years prior to the filing of such petition.

(3) The port district has not filed its budget with the board of county commissioners or, in the case of home rule charters, the appropriate governing body for the two fiscal years immediately preceding the filing of said petition has not adopted its comprehensive plan of harbor improvement and/or industrial development as provided by statute, and has not met with a legal quorum at least twice in the last two calendar years prior to the filing of such petition. [1971 ex.s. c 162 § 2.]

Harbor improvement plan: RCW 53.20.010.

53.47.030 Petition for dissolution—Filing—Contents. The county prosecutor of the county in which such port district is located acting upon his own motion shall file such petition for dissolution with the clerk of the superior court of the county in which such inactive port district is located. Such petition shall:

(1) Describe with certainty the port district which is declared to be inactive and which is sought to be dissolved;

(2) Allege with particularity that the port district sought to be dissolved is inactive within the purview of any of the several particulars set forth in RCW 53.47.020; and

(3) Request that the court find the port district inactive and declare it dissolved upon such terms and conditions as the court may impose and declare. [1971 ex.s. c 162 § 3.]

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53.47.040 Hearing on petition—Notice, publication—Creditor claims, determination—Terms and conditions of court order if district to be dissolved. The superior court, upon the filing of such petition, shall set such petition for hearing not less than one hundred twenty days and not more than one hundred eighty days after the date of filing said petition. Further, the court shall order the clerk of said court to give notice of the time and place fixed for the hearing by publication of notice in a newspaper of general circulation within such district, such publication to be once each week for three consecutive weeks, the date of first publication to be not less than thirty nor more than seventy days prior to the date fixed for the hearing upon such petition. Said notice shall further provide that all creditors of said district, including holders of revenue or general obligation bonds issued by said district, if any, shall present their claims to the clerk of said court within ninety days from the date of first publication of said notice, and that upon failure to do so all such claims will be forever barred. The clerk shall also mail a copy by ordinary mail of such notice to all creditors of said district, including holders of revenue or general obligation bonds issued by said district, if any, such mailing to be mailed not later than thirty days after the hearing date has been set. No other or further notices shall be required at any stage of the proceedings for dissolution of an inactive port district pursuant to this chapter.

The clerk, ten days prior to the date set for the hearing, shall deliver to the court the following:

(1) A list of the liabilities of the port district in detail with the names and addresses of creditors as then known; and

(2) A list of the assets of the port district in detail as then known.

The court upon hearing the petition shall fix and determine all such claims subject to proof being properly filed as provided in this section; shall fix and determine the financial condition of the district as to its assets and liabilities, and if it finds the port district to be inactive in respect of any standard of inactivity set forth by this chapter, shall order the port district to be dissolved upon the following terms and conditions:

(1) If there be no outstanding debts, or if the debts be less than the existing assets, the court shall appoint the auditor of the county in which the port district is located to be trustee of the port's assets and shall empower such person to wind up and liquidate the affairs of such district in such manner as the court shall provide and to file his accounting with the court within ninety days from the date of his appointment. Upon the filing of such account, the court shall fix a date for hearing upon the same and upon approval thereof, if such accounting be the final accounting, shall enter its order approving the same and declaring the port district dissolved.

At the request of the trustee the county sheriff may sell, at public auction, all real and personal property of the port district. The county sheriff shall cause a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale. Such notice shall contain a description of the property to be sold and shall be signed by the sheriff or his deputy. Such notice shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The sheriff or his deputy shall conduct said sale and sell the property described in the notice at public auction to the

highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. The moneys arising from such sale shall be turned over to the county auditor acting as trustee: PROVIDED, HOWEVER, That the sheriff shall first deduct the costs and expenses of the sale from the moneys and shall apply such moneys to pay said costs and expenses.

The court order shall provide that the assets remaining in the hands of the trustee shall be transferred to any school district, districts, or portions of districts, lying within the dissolved port district boundaries. The transfer of assets shall be prorated to the districts based on the assessed valuation of said districts.

(2) If the debts exceed the assets of the port district, then the court shall appoint the auditor of the county in which a port district is located to be trustee of the port's assets for the purpose of conserving the same and of paying liability of the port district as funds become available therefor. The trustee shall be empowered to generally manage, wind up, and liquidate the affairs of such district in such manner as the court shall provide and to file his accounting with the court within ninety days from the date of his appointment and as often thereafter as the court shall provide. The board of county commissioners, acting as pro tempore port district commissioners under the authority of RCW 53.36.020 shall levy an annual tax not exceeding forty-five cents per thousand dollars of assessed value or such lesser amount as may previously have been voted by the taxpayers within said district, together with an amount deemed necessary for payment of the costs and expenses attendant upon the dissolution of said district, upon all the taxable property within said district, the amount of such levy to be determined from time to time by the court. When, as shown by the final accounting of the trustee, all of the indebtedness of the district shall have been satisfied, the cost and expense of the proceeding paid or provided for, and the affairs of the district wound up, the court shall declare the district dissolved: PROVIDED, That if the indebtedness be composed in whole or in part of bonded debt for which a regular program of retirement has been provided, then the board of county commissioners shall be directed by the court to continue to make such annual levies as are required for the purpose of debt service upon said bonded debt. [1973 1st ex.s. c 195 § 59; 1971 ex.s. c 162 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

53.47.050 Effect of final order of dissolution. Upon the entry of the final order of dissolution declaring the port district dissolved all offices of the port district shall be deemed abolished, and no other or further levy shall be certified by the county commissioners except pursuant to the directive of the court as hereinabove provided. [1971 ex.s. c 162 § 5.]

53.47.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1971 ex.s. c 162 § 6.]

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Chapter 53.48 RCW

DISSOLUTION OF PORT AND OTHER DISTRICTS

Sections

53.48.001	Dissolution of certain districts subject to review by boundary review board.
53.48.010	Definitions.
53.48.020	Petition.
53.48.030	Order for hearing—Notice.
53.48.040	Order of dissolution—Sale of assets.
53.48.050	Payment of debts and costs—Balance to school district.
53.48.060	Insolvency—Second hearing.
53.48.070	Notice of second hearing.
53.48.080	Sale of property—Levy to pay deficit.
53.48.090	Order of dissolution or refusal.
53.48.120	Provision for costs and expenses.
53.48.140	Dissolution of district which has no active commission—Powers of county commissioners.

Dissolution of

air pollution control authorities: RCW 70.94.260.

cemetery districts: RCW 68.52.320.

fire protection districts, election method: RCW 52.10.010.

*flood control districts: 1937 act—*RCW 86.09.622, 86.09.625.

inactive special purpose districts: Chapter 36.96 RCW.

irrigation districts: Chapters 87.52, 87.53, 87.56 RCW.

metropolitan park districts: RCW 35.61.310.

soil conservation districts: RCW 89.08.350 through 89.08.370.

water-sewer districts, election method: RCW 57.04.090, 57.04.100, and chapter 53.48 RCW.

53.48.001 Dissolution of certain districts subject to review by boundary review board. The dissolution of a metropolitan park district, fire protection district, water-sewer district, or flood control zone district under chapter 53.48 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1999 c 153 § 62; 1989 c 84 § 46.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

53.48.010 Definitions. The following words and terms shall, whenever used in this chapter, have the meaning set forth in this section:

(1) The term "district" as used herein, shall include all municipal and quasi-municipal corporations having a governing body, other than cities, towns, counties, and townships, such as port districts, school districts, water-sewer districts, fire protection districts, and all other special districts of similar organization, but shall not include local improvement districts, diking, drainage and irrigation districts, special districts as defined in RCW 85.38.010, nor public utility districts.

(2) The words "board of commissioners," as used herein, shall mean the governing authority of any district as defined in subdivision (1) of this section. [1999 c 153 § 63; 1986 c 278 § 17; 1979 ex.s. c 30 § 10; 1941 c 87 § 1; Rem. Supp. 1941 § 8931-11.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Severability—1986 c 278: See note following RCW 36.01.010.

Purpose—1941 c 87: "This act is intended to authorize the dissolution of all types of municipal corporations having governing bodies, other than those excepted from the application of this act, in cases where the occasion or reason for continued existence of such corporation has ceased, or where the best interests of all persons concerned would be served by such dissolution, and shall be liberally construed to effect such intent." [1941 c 87 § 12.]

Severability—1941 c 87: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall

not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1941 c 87 § 11.]

53.48.020 Petition. For the purpose of dissolution of a district, a petition for an order of dissolution signed by the majority of the board of commissioners, or other governing authority of such district shall be presented to the superior court of the county in which the board of commissioners is situated. [1941 c 87 § 2; Rem. Supp. 1941 § 8931-12.]

53.48.030 Order for hearing—Notice. Upon the filing of such petition for an order of dissolution, the superior court shall enter an order setting the same for hearing at a date not less than thirty days from the date of filing, and the clerk of the court of said county shall give notice of such hearing by publication in a newspaper of general circulation in the county in which the district is located once a week for three successive weeks, and by posting in three public places in the county in which the district is located at least twenty-one days before said hearing. At least one notice shall be posted in the district. The notices shall set forth the filing of the petition, its purpose and the date and place of the hearing thereon. [1941 c 87 § 3; Rem. Supp. 1941 § 8931-13.]

53.48.040 Order of dissolution—Sale of assets. After said hearing the court shall enter its order dissolving or refusing to dissolve said district. A finding that the best interests of all persons concerned will be served by the proposed dissolution shall be essential to an order of dissolution. If the court find that such district is solvent, the court shall order the sale of such assets, other than cash, by the sheriff of the county in which the board is situated, in the manner provided by law for the sale of property on execution. [1941 c 87 § 4; Rem. Supp. 1941 § 8931-14.]

Execution: Chapter 6.17 RCW.

53.48.050 Payment of debts and costs—Balance to school district. The proceeds of the sale, together with moneys on hand in the treasury of the district, shall after payment of all costs and expenses, be paid to the treasurer of the same county and placed to the credit of the school district, or districts, in which such district is situated. [1941 c 87 § 5; Rem. Supp. 1941 § 8931-15.]

Port districts in counties with populations of from eight thousand to less than twelve thousand—Disposition of funds: Chapter 53.49 RCW.

53.48.060 Insolvency—Second hearing. Upon a finding of insolvency the court shall then determine the indebtedness of the district, the creditors thereof and their claims. The court shall then set a date and a place for a second hearing, which hearing shall be not less than sixty days nor more than one hundred twenty days from the hearing as provided in RCW 53.48.030.

The purpose of such hearing shall be to determine ways and means of retiring the established indebtedness of the district and paying all costs and expenses of proceedings hereunder. Such ways and means may include the levy of assessments against the property in the district as provided in RCW 53.48.080. [1941 c 87 § 6; Rem. Supp. 1941 § 8931-16.]

(2008 Ed.)

53.48.070 Notice of second hearing. The clerk shall give notice of the second hearing by publication in a newspaper of general circulation in the county in which the district is located once a week for three successive weeks, and by posting in three public places in the county in which the district is located at least twenty-one days before the hearing, and shall give such other notice to creditors and other interested parties as the court may deem necessary or advisable. At least one notice shall be posted in the district. The notices shall set forth the filing of the petition, its purpose, the finding of the court on the petition, the date and place of the second hearing and the purpose of the hearing as stated in RCW 53.48.060. [1941 c 87 § 7; Rem. Supp. 1941 § 8931-17.]

53.48.080 Sale of property—Levy to pay deficit. At the second hearing the court shall have authority to order the sale of any district property. If the proceeds of such sale together with any cash remaining on hand to the credit of the district are insufficient to retire such indebtedness together with all costs and expenses, the court shall have authority to order the board of commissioners to levy assessments in the manner provided by law against the property in the district in amounts sufficient to retire said indebtedness and pay the costs and expenses. At such hearing any property owner within the district may appear and be heard for or against such levy. [1941 c 87 § 8; Rem. Supp. 1941 § 8931-18.]

53.48.090 Order of dissolution or refusal. After the indebtedness of the district has been settled or paid, the court shall determine whether the best interests of all persons concerned will be served by the proposed dissolution and shall make a finding thereon. The court shall then enter its order dissolving or refusing to dissolve said district. [1941 c 87 § 9; Rem. Supp. 1941 § 8931-19.]

53.48.120 Provision for costs and expenses. In all proceedings brought under this chapter the court shall make provision for the costs and expenses of proceedings hereunder and for the payment of the same. [1941 c 87 § 10; Rem. Supp. 1941 § 8931-20.]

53.48.140 Dissolution of district which has no active commission—Powers of county commissioners. See RCW 53.46.060.

Chapter 53.49 RCW

DISPOSITION OF FUNDS ON DISSOLUTION OF CERTAIN DISTRICTS

Sections

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| 53.49.010 | Port districts in counties with populations of from eight thousand to less than twelve thousand—Disposition of funds. |
| 53.49.020 | Port districts in counties with populations of from eight thousand to less than twelve thousand—Order to transfer funds. |

53.49.010 Port districts in counties with populations of from eight thousand to less than twelve thousand—Disposition of funds. Whenever any port district located in any county with a population of from eight thousand to less than twelve thousand shall be dissolved and disestablished or is about to be dissolved and disestablished and any sums of

[Title 53 RCW—page 51]

money remain in any of its funds, the port commissioners are authorized and directed to apply by petition, which may be filed without fee, to the superior court of such county for an order authorizing the transfer of such funds to the school district fund or if there be more than one such district, the school district funds of all districts, which are located within the boundaries of such port district. [1991 c 363 § 134; 1943 c 282 § 1; Rem. Supp. 1943 § 9718-10. Formerly RCW 53.48.100.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

53.49.020 Port districts in counties with populations of from eight thousand to less than twelve thousand—Order to transfer funds. The superior court of any such county shall enter his order authorizing such transfer of funds if he is satisfied, after hearing the petition therefor, that the port district is dissolved and disestablished or is about to be dissolved and disestablished and that no obligations of the port district remain unpaid. The court shall equitably divide such sums of money between school districts if there be more than one district involved. [1943 c 282 § 2; Rem. Supp. 1943 § 9718-11. Formerly RCW 53.48.110.]

Chapter 53.54 RCW

AIRCRAFT NOISE ABATEMENT

Sections

53.54.010	Programs for abatement of aircraft noise authorized.
53.54.020	Investigation and monitoring of noise impact—Programs to conform to needs—"Impacted areas."
53.54.030	Authorized programs—When property deemed within impacted area.
53.54.040	Fund authorized—Sources.
53.54.900	Liberal construction—Powers additional.
53.54.910	Severability—1974 ex.s. c 121.

53.54.010 Programs for abatement of aircraft noise authorized. A port district operating an airport serving more than twenty scheduled jet aircraft flights per day may undertake any of the programs or combinations of such programs, as authorized by this chapter, for the purpose of alleviating and abating the impact of jet aircraft noise on areas surrounding such airport. [1974 ex.s. c 121 § 1.]

53.54.020 Investigation and monitoring of noise impact—Programs to conform to needs—"Impacted areas." Prior to initiating programs as authorized in this chapter, the port commission shall undertake the investigation and monitoring of aircraft noise impact to determine the nature and extent of the impact. The port commission shall adopt a program of noise impact abatement based upon the investigations and as amended periodically to conform to needs demonstrated by the monitoring programs: PROVIDED, That in no case may the port district undertake any of the programs of this chapter in an area which is more than six miles beyond the paved end of any runway or more than one mile from the centerline of any runway or from an imaginary runway centerline extending six miles from the paved end of such runway. Such areas as determined above, shall be known as "impacted areas". [1984 c 193 § 1; 1979 c 85 § 1; 1974 ex.s. c 121 § 2.]

53.54.030 Authorized programs—When property deemed within impacted area. For the purposes of this chapter, in developing a remedial program, the port commission may utilize one or more of the following programs:

(1) Acquisition of property or property rights within the impacted area, which shall be deemed necessary to accomplish a port purpose. The port district may purchase such property or property rights by time payment notwithstanding the time limitations provided for in RCW 53.08.010. The port district may mortgage or otherwise pledge any such properties acquired to secure such transactions. The port district may assume any outstanding mortgages.

(2) Transaction assistance programs, including assistance with real estate fees and mortgage assistance, and other neighborhood remedial programs as compensation for impacts due to aircraft noise and noise associated conditions. Any such programs shall be in connection with properties located within an impacted area and shall be provided upon terms and conditions as the port district shall determine appropriate.

(3) Programs of soundproofing structures located within an impacted area. Such programs may be executed without regard to the ownership, provided the owner waives damages and conveys an easement for the operation of aircraft, and for noise and noise associated conditions therewith, to the port district.

(4) Mortgage insurance of private owners of lands or improvements within such noise impacted area where such private owners are unable to obtain mortgage insurance solely because of noise impact. In this regard, the port district may establish reasonable regulations and may impose reasonable conditions and charges upon the granting of such mortgage insurance: PROVIDED, That such fees and charges shall at no time exceed fees established for federal mortgage insurance programs for like service.

(5) An individual property may be provided benefits by the port district under each of the programs described in subsections (1) through (4) of this section. However, an individual property may not be provided benefits under any one of these programs more than once, unless the property is subjected to increased aircraft noise or differing aircraft noise impacts that would have afforded different levels of mitigation, even if the property owner had waived all damages and conveyed a full and unrestricted easement.

(6) Management of all lands, easements, or development rights acquired, including but not limited to the following:

(a) Rental of any or all lands or structures acquired;

(b) Redevelopment of any such lands for any economic use consistent with airport operations, local zoning and the state environmental policy;

(c) Sale of such properties for cash or for time payment and subjection of such property to mortgage or other security transaction: PROVIDED, That any such sale shall reserve to the port district by covenant an unconditional right of easement for the operation of all aircraft and for all noise or noise conditions associated therewith.

(7) A property shall be considered within the impacted area if any part thereof is within the impacted area. [1993 c 150 § 1; 1985 c 115 § 1; 1974 ex.s. c 121 § 3.]

53.54.040 Fund authorized—Sources. A port district may establish a fund to be utilized in effectuating the intent of this chapter. The port district may finance such fund by: The proceeds of any grants or loans made by federal agencies; rentals, charges and other revenues as may be generated by programs authorized by this chapter, airport revenues; and revenue bonds based upon such revenues. The port district may also finance such fund, as necessary, in whole or in part, with the proceeds of general obligation bond issues of not more than one-eighth of one percent of the value of taxable property in the port district: PROVIDED, That any such bond issue shall be in addition to bonds authorized by RCW 53.36.030: PROVIDED FURTHER, That any such general obligation bond issue may be subject to referendum by petition as provided by county charter, the same as if it were a county ordinance. [1974 ex.s. c 121 § 4.]

53.54.900 Liberal construction—Powers additional. The rule of strict construction shall have no application to this chapter, which shall be liberally construed to carry out the purposes and objects for which this chapter is intended. The powers granted in this chapter shall be in addition to all others granted to port districts. [1974 ex.s. c 121 § 5.]

53.54.910 Severability—1974 ex.s. c 121. If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1974 ex.s. c 121 § 7.]

**Chapter 53.56 RCW
FIRE DEPARTMENTS—
PERFORMANCE MEASURES**

Sections

53.56.010	Intent.
53.56.020	Definitions.
53.56.030	Policy statement—Service delivery objectives.
53.56.040	Annual evaluations—Annual report.
53.56.900	Part headings not law—2005 c 376.

53.56.010 Intent. The legislature intends for port districts to set standards for addressing the reporting and accountability of substantially career fire departments, and to specify performance measures applicable to response time objectives for certain major services. The legislature acknowledges the efforts of the international city/county management association, the international association of fire chiefs, and the national fire protection association for the organization and deployment of resources for fire departments. The arrival of first responders with automatic external defibrillator capability before the onset of brain death, and the arrival of adequate fire suppression resources before flash-over is a critical event during the mitigation of an emergency, and is in the public’s best interest. For these reasons, this chapter contains performance measures, comparable to that research, relating to the organization and deployment of fire suppression operations, emergency medical operations, and special operations by substantially career fire departments. This chapter does not, and is not intended to, in any

way modify or limit the authority of port districts to set levels of service. [2005 c 376 § 401.]

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

(1) "Advanced life support" means functional provision of advanced airway management, including intubation, advanced cardiac monitoring, manual defibrillation, establishment and maintenance of intravenous access, and drug therapy.

(2) "Aircraft rescue and fire fighting" means the fire fighting actions taken to rescue persons and to control or extinguish fire involving or adjacent to aircraft on the ground.

(3) "Brain death" as defined by the American heart association means the irreversible death of brain cells that begins four to six minutes after cardiac arrest.

(4) "Fire department" means a port district fire department responsible for fire fighting actions, emergency medical services, and other special operations in a specified geographic area. The department must be a substantially career fire department, and not a substantially volunteer fire department.

(5) "Fire suppression" means the activities involved in controlling and extinguishing fires.

(6) "First responder" means provision of initial assessment and basic first-aid intervention, including cardiac pulmonary resuscitation and automatic external defibrillator capability.

(7) "Flash-over" as defined by national institute of standards and technology means when all combustibles in a room burst into flame and the fire spreads rapidly.

(8) "Marine rescue and fire fighting" means the fire fighting actions taken to prevent, control, or extinguish fire involved in or adjacent to a marine vessel and the rescue actions for occupants using normal and emergency routes for egress.

(9) "Port" means a port district that provides fire protection services, which may include fire fighting actions, emergency medical services, and other special operations, in a specified geographic area.

(10) "Response time" means the time immediately following the turnout time that begins when units are en route to the emergency incident and ends when units arrive at the scene.

(11) "Special operations" means those emergency incidents to which the fire department responds that require specific and advanced training and specialized tools and equipment.

(12) "Turnout time" means the time beginning when units receive notification of the emergency to the beginning point of response time. [2005 c 376 § 402.]

53.56.030 Policy statement—Service delivery objectives. (1) Every port shall maintain a written statement or policy that establishes the following:

- (a) The existence of a fire department;
- (b) Services that the fire department is required to provide;

(c) The basic organizational structure of the fire department;

(d) The expected number of fire department employees; and

(e) Functions that fire department employees are expected to perform.

(2) Every port shall include service delivery objectives in the written statement or policy required under subsection (1) of this section. These objectives shall include specific response time objectives for the following major service components, if appropriate:

(a) Fire suppression;

(b) Emergency medical services;

(c) Special operations;

(d) Aircraft rescue and fire fighting;

(e) Marine rescue and fire fighting; and

(f) Wild land fire fighting.

(3) Every port, in order to measure the ability to arrive and begin mitigation operations before the critical events of brain death or flash-over, shall establish time objectives for the following measurements:

(a) Turnout time;

(b) Response time for the arrival of the first arriving engine company at a fire suppression incident and response time for the deployment of a full first alarm assignment at a fire suppression incident;

(c) Response time for the arrival of a unit with first responder or higher level capability at an emergency medical incident; and

(d) Response time for the arrival of an advanced life support unit at an emergency medical incident, where this service is provided by the fire department.

(4) Every port shall also establish a performance objective of not less than ninety percent for the achievement of each response time objective established under subsection (3) of this section.

(5) An annual part 139 inspection and certification by the federal aviation administration shall be considered to meet the requirements of this section. [2005 c 376 § 403.]

53.56.040 Annual evaluations—Annual report. (1) Every port shall evaluate its level of service and deployment delivery and response time objectives on an annual basis. The evaluations shall be based on data relating to level of service, deployment, and the achievement of each response time objective in each geographic area within the port's jurisdiction.

(2) Beginning in 2007, every port shall issue an annual written report which shall be based on the annual evaluations required by subsection (1) of this section.

(a) The annual report shall define the geographic areas and circumstances in which the requirements of this standard are not being met.

(b) The annual report shall explain the predictable consequences of any deficiencies and address the steps that are necessary to achieve compliance.

(3) An annual part 139 inspection and certification by the federal aviation administration shall be considered to meet the requirements of this section. [2005 c 376 § 404.]

53.56.900 Part headings not law—2005 c 376. See RCW 35.103.900.

Title 54

PUBLIC UTILITY DISTRICTS

Chapters

- 54.04** General provisions.
- 54.08** Formation—Dissolution—Elections.
- 54.12** Commissioners.
- 54.16** Powers.
- 54.20** Condemnation proceedings.
- 54.24** Finances.
- 54.28** Privilege taxes.
- 54.32** Consolidation and annexation.
- 54.36** Liability to other taxing districts.
- 54.40** Five commissioner districts.
- 54.44** Nuclear, thermal, electric generating power facilities—Joint development.
- 54.48** Agreements between electrical public utilities and cooperatives.
- 54.52** Voluntary contributions to assist low-income customers.

Acquisition of electrical distribution property from public utility district by cities and towns: RCW 35.92.054.

Conversion of overhead electric utility to underground: Chapter 35.96 RCW, RCW 36.88.410 through 36.88.485.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

Credit card use by local governments: RCW 43.09.2855.

Electric energy, falling waters—Sale or purchase authorized: RCW 43.52.410.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Joint operating agencies: Chapter 43.52 RCW.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.

Municipal utilities: Chapter 35.92 RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Water-sewer districts, disposition of property to public utility district: Chapter 57.42 RCW.

Chapter 54.04 RCW GENERAL PROVISIONS

Sections

- 54.04.010 Definitions.
- 54.04.020 Districts authorized.
- 54.04.030 Restrictions on invading other municipalities.
- 54.04.035 Annexation of territory.
- 54.04.037 Annexation of territory—Coordination among county officials.
- 54.04.039 County with federal nuclear reservation within its boundaries—Special procedure for addition or withdrawal of territory from public utility district.
- 54.04.040 Utilities within a city or town—Restrictions.
- 54.04.045 Locally regulated utilities—Attachments to poles—Rates—Contracting.
- 54.04.050 Group employee insurance—Annuities—Retirement income policies.
- 54.04.055 Employee benefits—District may continue to pay premiums after employee retires.

- 54.04.060 District elections.
- 54.04.070 Contracts for work or materials—Notice—Exemptions.
- 54.04.080 Bids—Deposit—Low bidder claiming error—Contract—Bond—Definitions.
- 54.04.082 Alternative bid procedure.
- 54.04.085 Electrical facility construction or improvement—Bid proposals—Contract proposal forms—Conditions for issuance—Appeals.
- 54.04.090 Minimum wages.
- 54.04.092 Application of RCW 54.04.070 through 54.04.090 to certain service provider agreements under chapter 70.150 RCW.
- 54.04.100 Wholesale power—Procedure as to rate filing—Definition—Duty to furnish to district.
- 54.04.120 Planning powers.
- 54.04.130 Employee benefit plans when private utility acquired—Rights, powers and duties as to existing private employee benefit plans.
- 54.04.140 Employee benefit plans when private utility acquired—Admission to district's employee plan—Service credit—Contributions—Benefits.
- 54.04.150 Employee benefit plans when private utility acquired—Agreements and contracts—Prior rights preserved.
- 54.04.160 Assumption of obligations of private pension plan when urban transportation system acquired.
- 54.04.170 Collective bargaining authorized for employees.
- 54.04.180 Collective bargaining authorized for districts.
- 54.04.190 Production and distribution of biodiesel, ethanol, and ethanol blend fuels—Crop purchase contracts for dedicated energy crops.

Lien for labor and materials on public works: Chapter 60.28 RCW.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Traffic control at work sites: RCW 47.36.200.

Utility poles, unlawful to attach object to—Penalty: RCW 70.54.090.

54.04.010 Definitions. As used in this title "revenue obligation" or "revenue obligations" mean and include bonds, notes, warrants, certificates of indebtedness, or any other evidences of indebtedness issued by a district which, by the terms thereof, shall be payable from the revenues of its public utilities. [1959 c 218 § 14.]

"Wholesale power" defined: RCW 54.04.100.

54.04.020 Districts authorized. Municipal corporations, to be known as public utility districts, are hereby authorized for the purposes of chapter 1, Laws of 1931 and may be established within the limits of the state of Washington, as provided herein. [1931 c 1 § 2; RRS § 11606.]

Purpose—1931 c 1: "The purpose of this act is to authorize the establishment of public utility districts to conserve the water and power resources of the State of Washington for the benefit of the people thereof, and to supply public utility service, including water and electricity for all uses." [1931 c 1 § 1.]

Severability—Construction—1931 c 1: "Adjudication of invalidity of any section, clause or part of a section of this act shall not impair or otherwise affect the validity of the act as a whole or any other part thereof.

The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended.

When this act comes in conflict with any provision, limitation or restriction in any other law, this act shall govern and control." [1931 c 1 § 11.]

54.04.030 Restrictions on invading other municipalities. Chapter 1, Laws of 1931, shall not be deemed or construed to repeal or affect any existing act, or any part thereof, relating to the construction, operation and maintenance of public utilities by irrigation or water-sewer districts or other municipal corporations, but shall be supplemental thereto and concurrent therewith. No public utility district created hereunder shall include therein any municipal corporation, or any part thereof, where such municipal corporation already owns or operates all the utilities herein authorized: PROVIDED, that in case it does not own or operate all such utilities it may be included within such public utility district for the purpose of establishing or operating therein such utilities as it does not own or operate: PROVIDED, FURTHER, That no property situated within any irrigation or water-sewer districts or other municipal corporations shall ever be taxed or assessed to pay for any utility, or part thereof, of like character to any utility, owned or operated by such irrigation or water districts or other municipal corporations. [1999 c 153 § 64; 1931 c 1 § 12; RRS § 11616.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Irrigation districts: Title 87 RCW.

Municipal utilities: RCW 80.04.500, 81.04.490 and chapter 35.92 RCW.

Water-sewer districts: Title 57 RCW.

54.04.035 Annexation of territory. In addition to other powers authorized in Title 54 RCW, public utility districts may annex territory as provided in this section.

The boundaries of a public utility district may be enlarged and new contiguous territory added pursuant to the procedures for annexation by cities and towns provided in RCW 35.13.015 through 35.13.110. The provisions of these sections concerning community municipal corporations, review boards, and comprehensive plans, however, do not apply to public utility district annexations. For purposes of conforming with such procedures, the public utility district is deemed to be the city or town and the board of commissioners is deemed to be the city or town legislative body.

Annexation procedures provided in this section may only be used to annex territory that is both: (1) Contiguous to the annexing public utility district; and (2) located within the service area of the annexing public utility district. As used in this section, a public utility district's "service area" means those areas whether located within or outside of the annexing public utility district's boundaries that were generally served with electrical energy by the annexing public utility district on January 1, 1987. Such service area may, or may not, have been recognized in an agreement made under chapter 54.48 RCW, but no area may be included within such service area that was generally served with electrical energy on January 1, 1987, by another public utility as defined in RCW 54.48.010. An area proposed to be annexed may be located in the same or a different county as the annexing public utility district.

If an area proposed to be annexed is located within the boundaries of another public utility district, annexation may be initiated only upon petition of registered voters residing in the area in accordance with RCW 35.13.020 and adoption by the boards of commissioners of both districts of identical resolutions stating (a) the boundaries of the area to be annexed, (b) a determination that annexation is in the public interest of

the residents of the area to be annexed as well as the public interest of their respective districts, (c) approval of annexation by the board, (d) the boundaries of the districts after annexation, (e) the disposition of any assets of the districts in the area to be annexed, (f) the obligations to be assumed by the annexing district, (g) apportionment of election costs, and (h) that voters in the area to be annexed will be advised of lawsuits that may impose liability on the annexed territory and the possible impact of annexation on taxes and utility rates.

If annexation is approved, the area annexed shall cease to be a part of the one public utility district at the same time that it becomes a part of the other district. The annexing public utility district shall assume responsibility for providing the area annexed with the services provided by the other public utility district in the area annexed. [1987 c 292 § 2; 1983 c 101 § 1.]

Consolidation and annexation: Chapter 54.32 RCW.

54.04.037 Annexation of territory—Coordination among county officials. When territory has been added to a public utility district in accordance with RCW 54.04.035, the supervisor of elections and other officers of the county in which the public utility district first operated shall coordinate elections, the levy and collection of taxes, and other necessary duties with the appropriate county officials of the other county. [1987 c 292 § 3.]

54.04.039 County with federal nuclear reservation within its boundaries—Special procedure for addition or withdrawal of territory from public utility district. (1) Any voting precinct located within a county that has a federal nuclear reservation within its boundaries is:

(a) Withdrawn from a public utility district if the precinct receives at least one electric distribution, water, or sewer service from a city, and no electric distribution, water, or sewer service from a public utility district;

(b) Included in a public utility district if any portion of the precinct receives at least one electric distribution, water, or sewer service from the public utility district.

(2) For voting precincts that meet the requirements of subsection (1) of this section, within ten days after March 24, 2004, and for voting precincts that later meet the requirements of subsection (1) of this section, within thirty days of meeting the requirements:

(a) The city that provides any electric distribution, water, or sewer service to a precinct that is withdrawn from a public utility district under subsection (1) of this section shall submit to the public utility district and the county auditor a list of street addresses, or map of the areas to which any service is provided;

(b) The public utility district that provides any electric distribution, water, or sewer service to a precinct that is included in the public utility district under subsection (1) of this section shall submit to the city or town and the county auditor a list of street addresses, or map of the areas to which any service is provided.

(3) Within ten days of receipt of the information required under subsection (2) of this section, the auditor shall determine which voting precincts are required to be withdrawn

from or included in the public utility district, and provide that information to the public utility district commissioners who shall, within ten days, revise the boundaries of the district in conformance with RCW 54.12.010 without dividing any voting precinct.

(4) Unless otherwise provided in an agreement between the public utility district and the city or town, taxes or assessments levied or assessed against property located in an area withdrawn from a public utility district shall remain a lien and be collected as by law (a) if the taxes or assessments were levied or assessed before the withdrawal or (b) if the levies or assessments were made to pay or secure an obligation of the district duly incurred or issued before the withdrawal. The withdrawal of an area from the boundaries of a district does not exempt any property therein from taxation or assessment for the purpose of paying the costs of retiring or redeeming any obligation of the district duly incurred or issued before the withdrawal.

(5) Except as set forth in subsection (4) of this section, a public utility district may not levy or impose any taxes upon property located within those voting precincts withdrawn from the public utility district.

(6) Nothing in chapter 113, Laws of 2004 limits the authority of public utility districts and cities or towns to enter into service agreements that are otherwise permitted by law. [2004 c 113 § 2.]

Effective date—2004 c 113: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 24, 2004]." [2004 c 113 § 3.]

54.04.040 Utilities within a city or town—Restrictions. A district shall not construct any property to be utilized by it in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale, on the streets, alleys, or public places within a city or town without the consent of the governing body of the city or town and approval of the plan and location of the construction, which shall be made under such reasonable terms as the city or town may impose. All such properties shall be maintained and operated subject to such regulations as the city or town may prescribe under its police power. [1957 c 278 § 9. Prior: (i) 1941 c 245 § 3a; Rem. Supp. 1941 § 11616-4. (ii) 1941 c 245 § 1, part; Rem. Supp. 1941 § 11616-1.]

54.04.045 Locally regulated utilities—Attachments to poles—Rates—Contracting. (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable, or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, which is authorized to construct attachments upon, along, under, or across public ways.

(c) "Locally regulated utility" means a public utility district not subject to rate or service regulation by the utilities and transportation commission.

(d) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of licensees approved for attachments.

(2) All rates, terms, and conditions made, demanded, or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory, and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) A just and reasonable rate must be calculated as follows:

(a) One component of the rate shall consist of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the locally regulated utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities and uses that remain available to the owner or owners of the subject facilities;

(b) The other component of the rate shall consist of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the locally regulated utility attributable to the share, expressed in feet, of the required support and clearance space, divided equally among the locally regulated utility and all attaching licensees, in addition to the space used for the pole attachment, which sum is divided by the height of the pole; and

(c) The just and reasonable rate shall be computed by adding one-half of the rate component resulting from (a) of this subsection to one-half of the rate component resulting from (b) of this subsection.

(4) For the purpose of establishing a rate under subsection (3)(a) of this section, the locally regulated utility may establish a rate according to the calculation set forth in subsection (3)(a) of this section or it may establish a rate according to the cable formula set forth by the federal communications commission by rule as it existed on June 12, 2008, or such subsequent date as may be provided by the federal communications commission by rule, consistent with the purposes of this section.

(5) Except in extraordinary circumstances, a locally regulated utility must respond to a licensee's application to enter into a new pole attachment contract or renew an existing pole attachment contract within forty-five days of receipt, stating either:

(a) The application is complete; or

(b) The application is incomplete, including a statement of what information is needed to make the application complete.

(6) Within sixty days of an application being deemed complete, the locally regulated utility shall notify the applicant as to whether the application has been accepted for licensing or rejected. In extraordinary circumstances, and with the approval of the applicant, the locally regulated utility may extend the sixty-day timeline under this subsection. If

the application is rejected, the locally regulated utility must provide reasons for the rejection. A request to attach may only be denied on a nondiscriminatory basis (a) where there is insufficient capacity; or (b) for reasons of safety, reliability, or the inability to meet generally applicable engineering standards and practices.

(7) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities. [2008 c 197 § 2; 1996 c 32 § 5.]

Intent—2008 c 197: "It is the policy of the state to encourage the joint use of utility poles, to promote competition for the provision of telecommunications and information services, and to recognize the value of the infrastructure of locally regulated utilities. To achieve these objectives, the legislature intends to establish a consistent cost-based formula for calculating pole attachment rates, which will ensure greater predictability and consistency in pole attachment rates statewide, as well as ensure that locally regulated utility customers do not subsidize licensees. The legislature further intends to continue working through issues related to pole attachments with interested parties in an open and collaborative process in order to minimize the potential for disputes going forward." [2008 c 197 § 1.]

54.04.050 Group employee insurance—Annuities—Retirement income policies. (1) Subject to chapter 48.62 RCW, any public utility district engaged in the operation of electric or water utilities may enter into contracts of group insurance for the benefit of its employees, and pay all or any part of the premiums for such insurance. Such premiums shall be paid out of the revenues derived from the operation of such properties: PROVIDED, That if the premium is to be paid by the district and employees jointly, and the benefits of the policy are offered to all eligible employees, not less than seventy-five percent of such employees may be so insured.

(2) A public utility district whose employees or officials are not members of the state retirement system engaged in the operation of electric or water utilities may contract for individual annuity contracts, retirement income policies or group annuity contracts, including prior service, to provide a retirement plan, or any one or more of them, and pay all or any part of the premiums therefor out of the revenue derived from the operation of its properties. [1991 sp.s. c 30 § 23; 1984 c 15 § 1; 1959 c 233 § 1; 1941 c 245 § 8; Rem. Supp. 1941 § 11616-6.]

Effective date, implementation, application—Severability—1991 sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Severability—1941 c 245: "If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid." [1941 c 245 § 11.]

Group insurance: Chapters 48.21 and 48.24 RCW.

Hospitalization and medical insurance authorized: RCW 41.04.180.

54.04.055 Employee benefits—District may continue to pay premiums after employee retires. Any public utility district which provides for the coverage of any of its employees under any plan for individual annuity contracts, retirement income policies, group annuity contracts, group insurance for the benefit of its employees, or any other contract for the benefit of its employees, and pays all or any part of the premiums or other payments required therefor, is hereby authorized to continue to make such payments for such employees after their retirement from employment. Such payments agreed to by the public utility district shall be con-

sidered as deferred compensation. Such payments shall not be retroactive but shall only be available for those employees employed on or after August 6, 1965 provided that such payments for retired employees shall not exceed those being paid for regular employees. [1965 ex.s. c 149 § 1.]

54.04.060 District elections. The supervisor of elections or other proper officer of the county shall give notice of all elections held under this title, for the time and in the manner and form provided for city, town, school district, and port district elections. When the supervisor or other officer deems an emergency exists, and is requested so to do by a resolution of the district commission, he may call a special election at any time in the district, and he may combine or divide precincts for the purpose of holding special elections, and special elections shall be conducted and notice thereof given in the manner provided by law.

The supervisor or other officer shall provide polling places, appoint the election officers, provide their compensation, provide ballot boxes, and ballots or voting machines, poll books and tally sheets, and deliver them to the election officers at the polling places, publish and post notices of the elections in the manner provided by law, and apportion to the district its share of the expense of the election.

The manner of conducting and voting at the elections, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as for the election of state and county officers, except as otherwise provided herein.

The district commission shall certify to the supervisor a list of offices to be filled at a district election and the commission, if it desires to submit to the voters of the district a proposition, shall require the secretary of the commission to certify it at the time and in the manner and form provided for certifying propositions by the governing board of cities, towns, and port districts. [1951 c 207 § 1; 1941 c 245 § 5; 1931 c 1 § 5; RRS § 11609.]

54.04.070 Contracts for work or materials—Notice—Exemptions. (1) Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of fifteen thousand dollars, exclusive of sales tax, shall be by contract. However, a district may make purchases of the same kind of items of materials, equipment, and supplies not exceeding seven thousand five hundred dollars in any calendar month without a contract, purchasing any excess thereof over seven thousand five hundred dollars by contract.

(2) Any work ordered by a district commission, the estimated cost of which is in excess of twenty-five thousand dollars, exclusive of sales tax, shall be by contract. However, a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding one hundred fifty thousand dollars in value without a contract. This limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of

individual items of equipment purchased or acquired and used as one unit of a project.

(3) Before awarding a contract required under subsection (1) or (2) of this section, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for the work or materials. Plans and specifications for the work or materials shall at the time of publication be on file at the office of the district and subject to public inspection. Any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may, at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

(4) As an alternative to the competitive bidding requirements of this section and RCW 54.04.080, a district may let contracts using the small works roster process under RCW 39.04.155.

(5) Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission, and may consider such price as a bid without a deposit or bond.

(6) Pursuant to RCW 39.04.280, the commission may waive the competitive bidding requirements of this section and RCW 54.04.080 if an exemption contained within RCW 39.04.280 applies to the purchase or public work. [2008 c 216 § 2; 2002 c 72 § 2; 2000 c 138 § 211; 1998 c 278 § 7; 1993 c 198 § 14; 1990 c 251 § 1; 1971 ex.s. c 220 § 4; 1955 c 124 § 2. Prior: 1951 c 207 § 2; 1931 c 1 § 8, part; RRS § 11612, part.]

Findings—Intent—2008 c 216: "The legislature finds that public utility districts provide customer-owned, nonprofit utility services throughout Washington state. The legislature further finds that statutory bid limits for public utility districts have not been increased to address inflation and dramatic cost increases in construction materials. The legislature further finds that existing bid limits and high construction material costs often preclude public utility districts from maintaining and repairing their utility infrastructure, providing training and experience to utility workers, and accommodating high contract administrative costs. The legislature further finds that existing bid limits result in increased costs to both public utility districts and utility customers. Therefore, it is the intent of the legislature to amend the bid limits for public utility districts to address inflation and increased material costs." [2008 c 216 § 1.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Contracts with state department of transportation: RCW 47.01.210.

Emergency public works: Chapter 39.28 RCW.

Prevailing wages on public works: Chapter 39.12 RCW.

Public purchase preferences: Chapter 39.24 RCW.

54.04.080 Bids—Deposit—Low bidder claiming error—Contract—Bond—Definitions. Any notice inviting sealed bids shall state generally the work to be done, or the material to be purchased and shall call for proposals for furnishing it, to be sealed and filed with the commission on or before the time named therein. Each bid shall be accompanied by a certified or cashier's check, payable to the order of

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the commission, for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond unless he or she enters into a contract in accordance with his or her bid and furnishes the performance bond within ten days from the date on which he or she is notified that he or she is the successful bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

At the time and place named, the bids shall be publicly opened and read, and the commission shall canvass the bids, and may let the contract to the lowest responsible bidder upon the plans and specifications on file, or to the best bidder submitting his or her own plans or specifications; or if the contract to be let is to construct or improve electrical facilities, the contract may be let to the lowest bidder prequalified according to the provisions of RCW 54.04.085 upon the plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: PROVIDED, That no contract shall be let for more than fifteen percent in excess of the estimated cost of the materials or work. The commission may reject all bids and readvertise, and in such case all checks shall be returned to the bidders. The commission may procure materials in the open market, have its own personnel perform the work or negotiate a contract for such work to be performed by others, in lieu of readvertising, if it receives no bid. If the contract is let, all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract is entered into and a bond to perform the work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of the contract price, in accordance with the bid. If the bidder fails to enter into the contract and furnish the bond within ten days from the date at which he or she is notified that he or her [she] is the successful bidder, his or her check and the amount thereof shall be forfeited to the district.

The commission shall, by resolution, define the term "same kind of materials, equipment, and supplies" with respect to purchase of items under the provisions of RCW 54.04.070.

The term "construction or improvement of any electrical facility" as used in this section and in RCW 54.04.085, shall mean the construction, the moving, maintenance, modification, or enlargement of facilities primarily used or to be used for the transmission or distribution of electricity at voltages above seven hundred fifty volts, including structures directly supporting transmission or distribution conductors but not including site preparation, housing, or protective fencing associated with but not included in a contract for such construction, moving, modification, maintenance, or enlargement of such facilities.

The commission shall be the final authority with regard to whether a bid is responsive to the call for bids and as to whether a bidder is a responsible bidder under the conditions of his or her bid. No award of contract shall be invalidated solely because of the failure of any prospective bidder to receive an invitation to bid. [1996 c 18 § 12; 1972 ex.s. c 41

§ 1; 1971 ex.s. c 220 § 3; 1955 c 124 § 3. Prior: 1951 c 207 § 3; 1931 c 1 § 8, part; RRS § 11612, part.]

54.04.082 Alternative bid procedure. For the awarding of a contract to purchase any item, or items of the same kind of materials, equipment, or supplies in an amount exceeding fifteen thousand dollars per calendar month, but less than sixty thousand dollars per calendar month, exclusive of sales tax, the commission may, in lieu of the procedure described in RCW 54.04.070 and 54.04.080 requiring public notice to invite sealed proposals for such materials, equipment, or supplies, pursuant to commission resolution use the process provided in RCW 39.04.190. Waiver of the deposit or bid bond required under RCW 54.04.080 may be authorized by the commission in securing such bid quotations. [2008 c 216 § 3; 2002 c 72 § 1; 1995 c 354 § 1; 1993 c 198 § 15; 1977 ex.s. c 116 § 1.]

Findings—Intent—2008 c 216: See note following RCW 54.04.070.

54.04.085 Electrical facility construction or improvement—Bid proposals—Contract proposal forms—Conditions for issuance—Appeals. A district shall require that bid proposals upon any construction or improvement of any electrical facility shall be made upon contract proposal form supplied by the district commission, and in no other manner. The district commission shall, before furnishing any person, firm or corporation desiring to bid upon any electrical work with a contract proposal form, require from such person, firm or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of such person, firm, or corporation in performing electrical work. Such questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds, and shall be submitted once a year and at such other times as the district commission may require. Whenever the district commission is not satisfied with the sufficiency of the answers contained in such questionnaire and financial statement or whenever the district commission determines that such person, firm, or corporation does not meet all of the requirements hereinafter set forth it may refuse to furnish such person, firm or corporation with a contract proposal form and any bid proposal of such person, firm or corporation must be disregarded. In order to obtain a contract proposal form, a person, firm or corporation shall have all of the following requirements:

- (1) Adequate financial resources, or the ability to secure such resources;
- (2) The necessary experience, organization, and technical qualifications to perform the proposed contract;
- (3) The ability to comply with the required performance schedule taking into consideration all of its existing business commitments;
- (4) A satisfactory record of performance, integrity, judgment and skills; and
- (5) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Such refusal shall be conclusive unless appeal therefrom to the superior court of the county where the utility district is situated or Thurston county be taken within fifteen days,

which appeal shall be heard summarily within ten days after the same is taken and on five days' notice thereof to the district commission. [1971 ex.s. c 220 § 2.]

54.04.090 Minimum wages. Each contractor and subcontractor performing work for a public utility district or a local utility district within a public utility district shall pay or cause to be paid to its employees on the work or under the contract or subcontract, not less than the minimum scale fixed by the resolution of the commission prior to the notice and call for bids on the work. The commission, in fixing the minimum scale of wages, shall fix them as nearly as possible to the current prevailing wages within the district for work of like character. [1955 c 124 § 4. Prior: 1931 c 1 § 8, part; RRS § 11612, part.]

Prevailing wages on public works: Chapter 39.12 RCW.

54.04.092 Application of RCW 54.04.070 through 54.04.090 to certain service provider agreements under chapter 70.150 RCW. RCW 54.04.070 through 54.04.090 shall not apply to agreements entered into under authority of chapter 70.150 RCW provided there is compliance with the procurement procedure under RCW 70.150.040. [1986 c 244 § 14.]

Severability—1986 c 244: See RCW 70.150.905.

54.04.100 Wholesale power—Procedure as to rate filing—Definition—Duty to furnish to district. Whenever a decree of public use and necessity heretofore has been or hereafter shall be entered in condemnation proceedings conducted by a public utility district for the acquisition of electrical distribution properties, or whenever it has executed a contract for the purchase of such properties, the district may cause to be filed with the utilities and transportation commission a copy of such contract or a certified copy of the decree, together with a petition requesting that the commission cause a rate to be filed with it for the sale of wholesale power to the district. Thereupon the utilities and transportation commission shall order that a rate be filed with the commission forthwith for the sale of wholesale power to such district. The term "wholesale power" means electric energy sold for purposes of resale. The commission shall have authority to enter such order as to any public service corporation which owns or operates the electrical distribution properties being condemned or purchased or as to any such corporation which owns or operates transmission facilities within a reasonable distance of such distribution properties and which engages in the business of selling wholesale power, pursuant to contract or otherwise. The rate filed shall be for the period of service specified by the district, or if the district does not specify a particular period, such rate shall apply from the commencement of service until the district terminates same by thirty days' written notice.

Upon reasonable notice, any such public service corporation shall furnish wholesale power to any public utility district owning or operating electrical distribution properties. Whenever a public service corporation shall furnish wholesale power to a district and the charge or rate therefor is reviewed by the commission, such reasonable rate as the commission finally may fix shall apply as to power thereafter

furnished and as to that previously furnished under such charge or rate from the time that the complaint concerning the same shall have been filed by the commission or the district, as the case may be. [1983 c 4 § 5; 1945 c 130 § 2; Rem. Supp. 1945 § 10459-12. Formerly RCW 54.04.010, 54.04.100, and 54.04.110.]

Purpose—1945 c 130: "The legislature has found that the public utility districts of this state, including several which at the present moment are completing the acquisition of electrical properties and the sale of revenue bonds, have immediate need for this act, in order to effectuate timely arrangements for their wholesale power requirements, clarify their condemnation procedure, and plan their operations." [1945 c 130 § 1.]

Severability—1945 c 130: "If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid." [1945 c 130 § 5.]

54.04.120 Planning powers. In order that the commissioners of a public utility district may be better able to plan for the marketing of power and for the development of resources pertaining thereto, they shall have the same powers as are vested in a board of county commissioners as provided in *chapter 44, Laws of 1935 (sections 9322-2 to 9322-4, both inclusive, and 9322-10 to 9322-11 inclusive, Remington's Revised Statutes, also Pierce's Perpetual Code 776-3 to -7, 776-19 and -21), entitled: "An Act relating to city, town, county and regional planning and the creation, organization, duties and powers of planning commissions." For the purposes of such act, the president of a public utility district shall have the powers of the chairman of the board of county commissioners, and a planning commission created hereunder shall have the same powers, enumerated in the above sections, with reference to a public utility district as a county planning commission has with reference to a county. However, this section shall not be construed to grant the power to adopt, regulate, or enforce comprehensive plans, zoning, land use, or building codes. [1985 c 95 § 1; 1945 c 130 § 4; Rem. Supp. 1945 § 10459-14.]

***Reviser's note:** The portions of chapter 44, Laws of 1935 compiled as RRS §§ 9322-2 to 9322-4 and 9322-10 to 9322-11 are codified in RCW 35.63.020 through 35.63.070.

Purpose—Severability—1945 c 130: See notes following RCW 54.04.100.

54.04.130 Employee benefit plans when private utility acquired—Rights, powers and duties as to existing private employee benefit plans. Whenever any municipal corporation acquires by condemnation or otherwise any utility which at the time of acquisition is in private ownership and the employees of such private utility have been for at least two years and are at the time of acquisition covered by any plan for individual annuity contracts, retirement income policies, group annuity contracts, group insurance for the benefit of employees, or any other contract for the benefit of employees, such district shall, when the personnel is retained by the district, assume all of the obligations and liabilities of the private utility acquired with relation to such plan and the employees covered thereby at the time of acquisition; or the municipal corporation may by agreement with a majority of the employees affected substitute a plan or contract of the same or like nature. The municipal corporations acquiring such private utility shall proceed in such manner as is neces-

sary so as not to reduce or impair any benefits or privileges which such employees would have received or be entitled to had such acquisition not been effected. The district may pay all or any part of the premiums or other payments required therefor out of the revenue derived from the operation of its properties. [1961 c 139 § 1.]

54.04.140 Employee benefit plans when private utility acquired—Admission to district's employee plan—Service credit—Contributions—Benefits. Any person affected by RCW 54.04.130 who was employed by the private utility at the time of acquisition may, at his option, apply to the district and/or appropriate officers, for admission to any plan available to other employees of the district. Every such person who was covered at the time of acquisition by a plan with the private utility shall have added and accredited to his period of employment his period of immediately preceding continuous service with such private utility if he remains in the service of the municipal corporation until such plan for which he seeks admission becomes applicable to him.

No such person shall have added and accredited to his period of employment his period of service with said private utility unless he or a third party shall pay to the appropriate officer or fund of the plan to which he requests admission his contribution for the period of such service with the private utility at the rate provided in or for such plan to which he desires admission, or if he shall be entitled to any private benefits, as a result of such private service, unless he agrees at the time of his employment with the district to accept a reduction in the payment of any benefits payable under the plan to which he requests entry that are based in whole or in part on such added and accredited service by the amount of benefits received. For the purposes of contributions, the date of entry of service shall be deemed the date of entry into service with the private utility, which service is accredited by this section, and the amount of contributions for the period of accredited service shall be based on the wages or salary of such person during that added and accredited period of service with the private utility.

The district may receive such payments from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable it to assume its obligations.

After such contributions have been made and such service added and accredited such employee shall be established in the plan to which he seeks admission with all rights, benefits and privileges that he would have been entitled to had he been a member of the plan from the beginning of his immediately preceding continuous employment with the private utility or of his eligibility. [1961 c 139 § 2.]

54.04.150 Employee benefit plans when private utility acquired—Agreements and contracts—Prior rights preserved. The municipal corporation may enter into any agreements and contracts necessary to carry out the powers and duties prescribed by RCW 54.04.130 and 54.04.140, but nothing in RCW 54.04.130 through 54.04.160 shall be so construed as requiring without consent the modification of the obligation of any contract or as requiring any third party

to modify the rights, privileges or obligations acquired or incurred under a prior agreement. [1961 c 139 § 3.]

54.04.160 Assumption of obligations of private pension plan when urban transportation system acquired. Any municipal corporation which has heretofore or shall hereafter acquire from a private owner any urban transportation system which at the time of such acquisition has or had in effect any pension or retirement system for its employees, shall assume all such obligations with respect to continued contributions to and/or administration of, such retirement system, as the private owner bore or shall bear at such time, insofar as shall be necessary to discharge accrued obligations under such retirement system to beneficiaries who are not thereafter made members of a municipal or state retirement system. [1961 c 139 § 4.]

54.04.170 Collective bargaining authorized for employees. Employees of public utility districts are hereby authorized and entitled to enter into collective bargaining relations with their employers with all the rights and privileges incident thereto as are accorded to similar employees in private industry. [1963 c 28 § 1.]

54.04.180 Collective bargaining authorized for districts. Any public utility district may enter into collective bargaining relations with its employees in the same manner that a private employer might do and may agree to be bound by the result of such collective bargaining. [1963 c 28 § 2.]

54.04.190 Production and distribution of biodiesel, ethanol, and ethanol blend fuels—Crop purchase contracts for dedicated energy crops. In addition to any other authority provided by law, public utility districts are authorized to produce and distribute biodiesel, ethanol, and ethanol blend fuels, including entering into crop purchase contracts for a dedicated energy crop for the purpose of generating electricity or producing biodiesel produced from Washington feedstocks, cellulosic ethanol, and cellulosic ethanol blend fuels for use in internal operations of the electric utility and for sale or distribution. [2007 c 348 § 210.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Chapter 54.08 RCW

FORMATION—DISSOLUTION—ELECTIONS

Sections

- 54.08.001 Actions subject to review by boundary review board.
- 54.08.010 Districts including entire county or less—Procedure.
- 54.08.041 Formation election expenses.
- 54.08.050 Validity of district, questioning of.
- 54.08.060 Special election for formation of district and first commissioners—Terms.
- 54.08.070 Construction or acquisition of electric facilities for generation, transmission, or distribution of power—When voter approval required—Election.
- 54.08.080 Dissolution.

54.08.001 Actions subject to review by boundary review board. Actions taken under chapter 54.08 RCW may

be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 47.]

54.08.010 Districts including entire county or less—Procedure. At any general election held in an even-numbered year, the county legislative authority of any county in this state may, or, on petition of ten percent of the qualified electors of the county based on the total vote cast in the last general county election held in an even-numbered year, shall, by resolution, submit to the voters of the county the proposition of creating a public utility district which shall be coextensive with the limits of the county as now or hereafter established. A form of petition for the creation of a public utility district shall be submitted to the county auditor within ten months prior to the election at which the proposition is to be submitted to the voters. Petitions shall be filed with the county auditor not less than four months before the election and the county auditor shall within thirty days examine the signatures thereof and certify to the sufficiency or insufficiency thereof. If the petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed the petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor: PROVIDED, That each signature shall be dated and that no signature dated prior to the date on which the form of petition was submitted to the county auditor shall be valid. Whenever the petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the county legislative authority which shall submit the proposition to the voters of the county at the next general election in an even-numbered year according to RCW 29A.04.330. The notice of the election shall state the boundaries of the proposed public utility district and the object of such election, and shall in other respects conform to the requirements of the general laws of the state of Washington, governing the time and manner of holding elections. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot substantially in the following terms:

Public Utility District No. YES
Public Utility District No. NO

Any petition for the formation of a public utility district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed the county legislative authority shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when the petition will be heard. The publication, and all other publications required by chapter 1, Laws of 1931, shall be in a newspaper of general circulation in the county in which the district is situated. The hearing on the petition may be adjourned from time to time, not exceeding four weeks in

all. If upon the final hearing the county legislative authority shall find that any lands have been unjustly or improperly included within the proposed public utility district and will not be benefited by inclusion therein, it shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the public welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public utility district: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of those lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public utility district including an entire county, except that the petition and election shall be confined solely to the lesser public utility district.

No public utility district created after September 1, 1979, shall include any other public utility district within its boundaries: PROVIDED, That this paragraph shall not alter, amend, or modify provisions of chapter 54.32 RCW. [2006 c 344 § 36; 1985 c 469 § 55; 1979 ex.s. c 240 § 1; 1977 c 53 § 1; 1931 c 1 § 3; RRS § 11607. Formerly RCW 54.08.010 and 54.08.020.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Elections: Title 29A RCW.

54.08.041 Formation election expenses. All expenses of elections for the formation of such public utility districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the public utility district, if formed. [1969 c 106 § 2.]

Construction—1969 c 106: "The rule of strict construction shall have no application to this act. The act shall be liberally construed, in order to carry out the purposes and objectives for which this act is intended." [1969 c 106 § 8.]

Severability—1969 c 106: "If any provision of this act, or its application to any person or circumstance, is held invalid, the remainder of this act, or the application to other persons or circumstances, is not affected." [1969 c 106 § 9.]

54.08.050 Validity of district, questioning of. The existence of any public utility district now or hereafter formed under chapter 1, Laws of 1931, cannot hereafter be legally questioned by any person except the state of Washington in an appropriate court action brought within six months from the date that the county election board shall have canvassed the returns of the election held on the proposition of creating such district. If the existence of a district is not challenged within the period above specified, by the filing and service of petition or complaint in the action aforesaid, the state of Washington thereafter shall be barred forever from questioning the legal existence and validity of such district by reason of any defect in the organization thereof, and the same shall be deemed duly and regularly organized under the laws of this state. [1941 c 245 § 10; Rem. Supp. 1941 § 11616-7.]

(2008 Ed.)

54.08.060 Special election for formation of district and first commissioners—Terms. Whenever a proposition for the formation of a public utility district is to be submitted to voters in any county, the county legislative authority may by resolution call a special election, and at the request of petitioners for the formation of such district contained in the petition shall do so and shall provide for holding the same at the earliest practicable time. If the boundaries of the proposed district embrace an area less than the entire county, such election shall be confined to the area so included. The notice of such election shall state the boundaries of the proposed district and the object of such election; in other respects, such election shall be held and called in the same manner as provided by law for the holding and calling of general elections: PROVIDED, That notice thereof shall be given for not less than ten days nor more than thirty days prior to such special election. In submitting the proposition to the voters for their approval or rejection, such proposition shall be expressed on the ballots in substantially the following terms:

Public Utility District No. YES
Public Utility District No. NO

At the same special election on the proposition to form a public utility district, there shall also be an election for three public utility district commissioners. However, the election of such commissioners shall be null and void if the proposition to form the public utility district does not receive approval by a majority of the voters voting on the proposition. No primary shall be held. A special filing period shall be opened as provided in *RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for the commissioner of each commissioner district shall be elected as the commissioner of that district. Commissioner districts shall be established as provided in RCW 54.12.010. The terms of the initial commissioners shall be staggered as follows: (1) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an even-numbered year or a five-year term if the election is held in an odd-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an even-numbered year or a three-year term of office if the election is held in an odd-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an even-numbered year or a one-year term of office if the election is held in an odd-numbered year. The commissioners first to be elected at such special election shall assume office immediately when they are elected and qualified, but the length of their terms of office shall be calculated from the first day in January in the year following their elections.

The term "general election" as used herein means biennial general elections at which state and county officers in a noncharter county are elected. [1994 c 223 § 55; 1979 ex.s. c 126 § 36; 1951 c 207 § 5.]

***Reviser's note:** RCW 29.15.170 and 29.15.180 were recodified as RCW 29A.24.170 and 29A.24.180, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.24.170 and 29A.24.180, see RCW 29A.24.171 and 29A.24.181, respectively.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Elections: Title 29A RCW.

54.08.070 Construction or acquisition of electric facilities for generation, transmission, or distribution of power—When voter approval required—Election. Any district which does not own or operate electric facilities for the generation, transmission or distribution of electric power on March 25, 1969, or any district which hereafter does not construct or acquire such electric facilities within ten years of its creation, shall not construct or acquire any such electric facilities without the approval of such proposal by the voters of such district: PROVIDED, That a district shall have the power to construct or acquire electric facilities within ten years following its creation by action of its commission without voter approval of such action.

At any general election held in an even-numbered year, the proposal to construct or acquire electric facilities may be submitted to the voters of the district by resolution of the public utility district commission or shall be submitted to the voters of the district by the county legislative authority on petition of ten percent of the qualified electors of such district, based on the total vote cast in the last general county election held in an even-numbered year. A form of petition for the construction or acquisition of electric facilities by the public utility district shall be submitted to the county auditor within ten months prior to the election at which such proposition is to be submitted to the voters. Petitions shall be filed with the county auditor not less than four months before such election and the county auditor shall within thirty days examine the signatures thereof and certify to the sufficiency or insufficiency thereof. If such petition is found to be insufficient, it shall be returned to the persons filing the same, who may amend and add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor: PROVIDED, That each signature shall be dated and that no signature dated prior to the date on which the form of petition was submitted to the county auditor shall be valid. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the county legislative authority which shall submit such proposition to the voters of said district at the next general election in an even-numbered year according to RCW 29A.04.330. The notice of the election shall state the object of such election, and shall in other respects conform to the requirements of the general laws of Washington, governing the time and manner of holding elections.

The proposal submitted to the voters for their approval or rejection, shall be expressed on the ballot substantially in the following terms:

Shall Public Utility District No. of County construct or acquire electric facilities for the generation, transmission or distribution of electric power?

Yes
No

Within ten days after such election, the election board of the county shall canvass the returns, and if at such election a majority of the voters voting on such proposition shall vote in

favor of such construction or acquisition of electric facilities, the district shall be authorized to construct or acquire electric facilities. [2006 c 344 § 37; 1979 ex.s. c 240 § 2; 1969 c 106 § 3.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.08.080 Dissolution. Any district now or hereafter created under the laws of this state may be dissolved, as hereinafter provided, by a majority vote of the qualified electors of such district at any general election upon a resolution of the district commission, or upon petition being filed and such proposition for dissolution submitted to said electors in the same manner provided by chapter 54.08 RCW for the creation of public utility districts. The returns of the election on such proposition for dissolution shall be canvassed and the results declared in the same manner as is provided by RCW 54.08.010: PROVIDED, HOWEVER, That any such proposition to dissolve a district shall not be submitted to the electors if within five years prior to the filing of such petition or resolution such district has undertaken any material studies or material action relating to the construction or acquisition of any utility properties or if such district at the time of the submission of such proposition is actually engaged in the operation of any utility properties.

If a majority of the votes cast at the election favor dissolution, the commission of the district shall petition, without any filing fee, the superior court of the county in which such district is located for an order authorizing the payment of all indebtedness of the district and directing the transfer of any surplus funds or property to the general fund of the county in which such district is organized. [1969 c 106 § 4.]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

Dissolution of special purpose districts: Chapters 36.96 and 53.48 RCW.

**Chapter 54.12 RCW
COMMISSIONERS**

Sections

- 54.12.010 Exercise of power by commissioners—Number—Districts—Terms—Vacancies—Adjustment of boundaries.
- 54.12.080 Compensation and expenses—Group insurance.
- 54.12.090 President—Secretary—Rules—Seal—Minutes.
- 54.12.100 Oath or affirmation.
- 54.12.110 Electrical utilities—Civil immunity of commissioners and employees for good faith mistakes and errors of judgment.

Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on, request for review of, certification, remand—Sanctions when review request frivolous: RCW 29A.76.010.

54.12.010 Exercise of power by commissioners—Number—Districts—Terms—Vacancies—Adjustment of boundaries. A public utility district that is created as provided in RCW 54.08.010 shall be a municipal corporation of the state of Washington, and the name of such public utility district shall be Public Utility District No. of County.

The powers of the public utility district shall be exercised through a commission consisting of three members in

three commissioner districts, and five members in five commissioner districts.

(1) If the public utility district is county-wide and the county has three county legislative authority districts, then, at the first election of commissioners and until any change is made in the boundaries of public utility district commissioner districts, one public utility district commissioner shall be chosen from each of the three county legislative authority districts.

(2) If the public utility district comprises only a portion of the county, with boundaries established in accordance with chapter 54.08 RCW, or if the public utility district is county-wide and the county does not have three county legislative authority districts, three public utility district commissioner districts, numbered consecutively, each with approximately equal population and following precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, subject to appropriate change by the county legislative authority if and when it changes the boundaries of the proposed public utility district. One commissioner shall be elected as a commissioner of each of the public utility district commissioner districts.

(3) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district. Only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire public utility district may vote at a general election to elect a person as a commissioner of the commissioner district.

(4) The term of office of each public utility district commissioner other than the commissioners at large shall be six years, and the term of each commissioner at large shall be four years. Each term shall be computed in accordance with RCW 29A.20.040 following the commissioner's election. All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with RCW 29A.20.040.

(5) A vacancy in the office of public utility district commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the public utility district commission for a period of sixty days unless excused by the public utility district commission. Vacancies on a board of public utility district commissioners shall be filled as provided in chapter 42.12 RCW.

(6) The boundaries of the public utility district commissioner districts may be changed only by the public utility district commission, and shall be examined every ten years to determine substantial equality of population in accordance with chapter 29A.76 RCW. Except as provided in this section or RCW 54.04.039, the boundaries shall not be changed oftener than once in four years. Boundaries may only be changed when all members of the commission are present. Whenever territory is added to a public utility district under RCW 54.04.035, or added or withdrawn under RCW 54.04.039, the boundaries of the public utility commissioner districts shall be changed to include the additional or exclude the withdrawn territory. Unless the boundaries are changed pursuant to RCW 54.04.039, the proposed change of the boundaries of the public utility district commissioner district must be made by resolution and after public hearing. Notice

of the time of the public hearing shall be published for two weeks before the hearing. Upon a referendum petition signed by ten percent of the qualified voters of the public utility district being filed with the county auditor, the county legislative authority shall submit the proposed change of boundaries to the voters of the public utility district for their approval or rejection. The petition must be filed within ninety days after the adoption of resolution of the proposed action. The validity of the petition is governed by the provisions of chapter 54.08 RCW. [2004 c 113 § 1; 1994 c 223 § 56; 1990 c 59 § 109; 1987 c 292 § 1; 1979 ex.s. c 126 § 37; 1977 ex.s. c 36 § 8; 1977 c 53 § 2; 1969 c 106 § 1; 1959 c 265 § 9; 1941 c 245 § 4; 1931 c 1 § 4; Rem. Supp. 1941 § 11608. Formerly RCW 54.08.030, 54.08.040, 54.12.010 through 54.12.070.]

Effective date—2004 c 113: See note following RCW 54.04.039.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.12.080 Compensation and expenses—Group insurance. (1) Commissioners of public utility districts are eligible to receive salaries as follows:

(a) Each public utility district commissioner of a district operating utility properties shall receive a salary of one thousand four hundred dollars per month during a calendar year if the district received total gross revenue of over fifteen million dollars during the fiscal year ending June 30th before the calendar year. However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to one thousand eight hundred dollars per month.

(b) Each public utility district commissioner of a district operating utility properties shall receive a salary of one thousand dollars per month during a calendar year if the district received total gross revenue of from two million dollars to fifteen million dollars during the fiscal year ending June 30th before the calendar year. However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to one thousand three hundred dollars per month.

(c) Commissioners of other districts shall serve without salary. However, the board of commissioners of such a public utility district may pass a resolution providing for salaries not exceeding six hundred dollars per month for each commissioner.

(2) In addition to salary, all districts may provide by resolution for the payment of per diem compensation to each commissioner at a rate not exceeding ninety dollars for each day or portion thereof spent in actual attendance at official meetings of the district commission or in performance of other official services or duties on behalf of the district, to include meetings of the commission of his or her district or meetings attended by one or more commissioners of two or more districts called to consider business common to them, but such compensation paid during any one year to a commissioner shall not exceed twelve thousand six hundred dollars. Per diem compensation shall not be paid for services of a ministerial or professional nature.

(3) Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

(4) Each district commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence.

(5) Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioner with the same coverage.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2008 c 218 § 1; 2007 c 469 § 4; 1998 c 121 § 4; 1997 c 28 § 1; 1985 c 330 § 4; 1977 ex.s. c 157 § 1; 1969 c 106 § 5; 1967 c 161 § 1; 1957 c 140 § 2; 1955 c 124 § 5; 1951 c 207 § 4. Prior: (i) 1931 c 1 § 8, part; RRS § 11612, part. (ii) 1941 c 245 § 6; Rem. Supp. 1941 § 11616-5.]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

Group employee insurance: RCW 54.04.050.

Hospitalization and medical insurance not deemed additional compensation: RCW 41.04.190.

54.12.090 President—Secretary—Rules—Seal—Minutes. The commission shall elect from its members, a president and secretary, and shall, by resolution, adopt rules governing the transaction of district business, and adopt an official seal. All proceedings of the commission shall be by motion or resolution, recorded in its minute books, which shall be public records.

[Title 54 RCW—page 12]

A majority of the members shall constitute a quorum of the commission for the transaction of business. The concurrence of a majority of the whole commission in office at the time shall be necessary for the passage of any resolution, and no business shall be transacted, except in usual and ordinary course, unless there are in office at least a majority of the full number of commissioners as fixed by law.

The commission may create and fill such positions and fix salaries and bonds thereof as it may provide by resolution. [1955 c 124 § 6. Prior: 1931 c 1 § 8, part; RRS § 11612, part.]

54.12.100 Oath or affirmation. Each commissioner before he enters upon the duties of his office shall take and subscribe an oath or affirmation that he will faithfully and impartially discharge the duties of his office to the best of his ability. This oath, or affirmation, shall be administered and certified by an officer of the county in which the district is situated, who is authorized to administer oaths, without charge therefor. The oath or affirmation shall be filed with the county auditor. [1986 c 167 § 23; 1959 c 265 § 10.]

Severability—1986 c 167: See note following RCW 29A.04.049.

54.12.110 Electrical utilities—Civil immunity of commissioners and employees for good faith mistakes and errors of judgment. Commissioners and employees of public utility districts shall be immune from civil liability for mistakes and errors of judgment in the good faith performance of acts within the scope of their official duties involving the exercise of judgment and discretion which relate solely to their responsibilities for electrical utilities. This grant of immunity shall not be construed as modifying the liability of the public utility district. [1983 1st ex.s. c 48 § 2.]

Severability—1983 1st ex.s. c 48: See note following RCW 35.21.415.

Chapter 54.16 RCW POWERS

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Deferral of special assessments: Chapter 84.38 RCW.

Special benefit assessments—Property taxes—Exemptions: RCW 84.34.300 through 84.34.380.

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

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Telecommunications" has the same meaning as that contained in RCW 80.04.010.

(3) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

(4) "Wholesale telecommunications services" means the provision of telecommunications services or facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers. [2000 c 81 § 2.]

(2008 Ed.)

Findings—2000 c 81: See note following RCW 53.08.005.

54.16.010 Surveys, plans, investigations, or studies.

A district may make surveys, plans, investigations or studies for generating electric energy by water power, steam, or other methods, and for systems and facilities for the generation, transmission or distribution thereof, and for domestic and industrial water supply and irrigation, and for matters and purposes reasonably incidental thereto, within or without the district, and compile comprehensive maps and plans showing the territory that can be most economically served by the various resources and utilities, the natural order in which they should be developed, and how they may be joined and coordinated to make a complete and systematic whole. [1969 c 106 § 6; 1955 c 390 § 2. Prior: 1945 c 143 § 1(a); 1931 c 1 § 6(a); Rem. Supp. 1945 § 11610(a).]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.16.020 Acquisition of property and rights—Eminent domain.

A district may construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop, and regulate all lands, property, property rights, water, water rights, dams, ditches, flumes, aqueducts, pipes and pipe lines, water power, leases, easements, rights-of-way, franchises, plants, plant facilities, and systems for generating electric energy by water power, steam, or other methods; plants, plant facilities, and systems for developing, conserving, and distributing water for domestic use and irrigation; buildings, structures, poles and pole lines, and cables and conduits and any and all other facilities; and may exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of such property and rights, or property of any kind appurtenant thereto, and for the purpose of acquiring the right to make physical connection with plants and plant facilities of all persons and municipalities. The right of eminent domain shall be exercised pursuant to resolution of the commission and conducted in the same manner and by the same procedure as is provided for the exercise of that power by cities and towns of the state in the acquisition of like property and property rights. It shall be no defense to a condemnation proceeding that a portion of the electric current generated or sold by the district will be applied to private purposes, if the principal uses intended are public: PROVIDED, That no public utility owned by a city or town shall be condemned, and none shall be purchased without submission of the question to the voters of the utility district. In a condemnation proceeding, the court shall submit to the jury the values placed upon the property by the taxing authority for taxation purposes, and in respect to property, plants, and facilities of persons using public highways for furnishing public service without franchises, shall consider in determining the value thereof the fact that the property, plants, and facilities are subject to be removed from the highways by reason of being so operated without a franchise. [1955 c 390 § 3. Prior: 1945 c 143 § 1(b); 1931 c 1 § 6(b); Rem. Supp. 1945 § 11610(b).]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by cities: Chapter 8.12 RCW.

54.16.030 Water and irrigation works. A district may construct, purchase, condemn and purchase, acquire, add to, maintain, conduct, and operate water works and irrigation plants and systems, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof, and of the county in which the district is located, and any other persons including public and private corporations within or without the limits of the district or the county, with an ample supply of water for all purposes, public and private, including water power, domestic use, and irrigation, with full and exclusive authority to sell and regulate and control the use, distribution, and price thereof. [1999 c 154 § 1; 1998 c 49 § 1; 1955 c 390 § 4. Prior: 1945 c 143 § 1(c); 1931 c 1 § 6(c); Rem. Supp. 1945 § 11610(c).]

54.16.032 Authority to assist customers in the acquisition of water conservation equipment—Limitations. Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the district if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the district to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [1989 c 421 § 4.]

Intent—Contingent effective date—1989 c 421: See notes following RCW 35.92.017.

54.16.035 Provision of water service beyond district subject to review by boundary review board. The provision of water service beyond the boundaries of a public utility district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 48.]

54.16.040 Electric energy. A district may purchase, within or without its limits, electric current for sale and distribution within or without its limits, and construct, condemn and purchase, purchase, acquire, add to, maintain, conduct, and operate works, plants, transmission and distribution lines and facilities for generating electric current, operated either by water power, steam, or other methods, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof and any other persons, including public and private corporations, within or without its limits, with electric current for all uses, with full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges, and price thereof, free from the jurisdiction and control of the utilities and transportation commission, in all things, together with the right to purchase, handle, sell, or lease motors, lamps, transformers and all other kinds of equipment and accessories necessary and convenient for the use, distribution, and sale thereof: PROVIDED, That the commission shall not supply water to a privately owned utility for the production of electric energy, but may supply, directly or indirectly, to an instrumentality of the United States government or any publicly or privately owned public utilities which sell electric energy or water to the public, any amount of electric energy or water under its control, and contracts therefor shall extend over such period of years and contain such terms and conditions for the sale thereof as the commission of the district shall elect; such contract shall only be made pursuant to a resolution of the commission authorizing such contract, which resolution shall be introduced at a meeting of the commission at least ten days prior to the date of the adoption of the resolution: PROVIDED FURTHER, That it shall first make adequate provision for the needs of the district, both actual and prospective. [1955 c 390 § 5. Prior: 1945 c 143 § 1(d); 1931 c 1 § 6(d); Rem. Supp. 1945 § 11610(d).]

Joint operating agency: RCW 43.52.360.

Reduced utility rates for low-income senior citizens and other low-income citizens: RCW 74.38.070.

Right of city or town to acquire electrical distribution property from P.U.D.: RCW 35.92.054.

54.16.045 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

54.16.047 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

54.16.050 Water rights. A district may take, condemn and purchase, purchase and acquire any public and private property, franchises and property rights, including state, county, and school lands, and property and littoral and water rights, for any of the purposes aforesaid, and for railroads,

tunnels, pipe lines, aqueducts, transmission lines, and all other facilities necessary or convenient, and, in connection with the construction, maintenance, or operation of any such utilities, may acquire by purchase or condemnation and purchase the right to divert, take, retain, and impound and use water from or in any lake or watercourse, public or private, navigable or nonnavigable, or held, owned, or used by the state, or any subdivision thereof, or by any person for any public or private use, or any underflowing water within the state; and the district may erect, within or without its limits, dams or other works across any river or watercourse, or across or at the outlet of any lake, up to and above high water mark; and, for the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing, retaining, and distributing water, or for any other purpose authorized hereunder, the district may occupy and use the beds and shores up to the high water mark of any such lake, river, or watercourse, and acquire by purchase or by condemnation and purchase, or otherwise, any water, water rights, easements, or privileges named herein or necessary for any of such purposes, and a district may acquire by purchase, or condemnation and purchase, or otherwise, any lands, property, or privileges necessary to protect the water supply of the district from pollution: PROVIDED, That should private property be necessary for any of its purposes, or for storing water above high water mark, the district may condemn and purchase, or purchase and acquire such private property. [1955 c 390 § 6. Prior: 1945 c 143 § 1(e), part; 1931 c 1 § 6(e), part; Rem. Supp. 1945 § 11610(e), part.]

Water rights: Title 90 RCW.

54.16.060 Intertie lines. A district may build and maintain intertie lines connecting its power plant and distribution system with the power plant and distribution system owned by any other public utility district, or municipal corporation, or connect with the power plants and distribution systems owned by any municipal corporation in the district, and from any such intertie line, sell electric energy to any person, public utility district, city, town or other corporation, public or private, and, by means of transmission or pole lines, conduct electric energy from the place of production to the point of distribution, and construct and lay aqueducts, pipe or pole lines, and transmission lines along and upon public highways, roads, and streets, and condemn and purchase, purchase or acquire, lands, franchises, and rights-of-way necessary therefor. [1955 c 390 § 7. Prior: 1945 c 143 § 1(e), part; 1931 c 1 § 6(e), part; Rem. Supp. 1945 § 11610(e), part.]

54.16.070 District may borrow money, contract indebtedness, issue bonds or obligations—Guaranty fund. (1) A district may contract indebtedness or borrow money for any corporate purpose on its credit or on the revenues of its public utilities, and to evidence such indebtedness may issue general obligation bonds or revenue obligations; may issue and sell local utility district bonds of districts created by the commission, and may purchase with surplus funds such local utility district bonds, and may create a guaranty fund to insure prompt payment of all local utility district bonds. The general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. A district is autho-

rized to establish lines of credit or make other prearranged agreements, or both, to borrow money with any financial institution.

(2) Notwithstanding subsection (1) of this section, such revenue obligations and local utility district bonds may be issued and sold in accordance with chapter 39.46 RCW. [1991 c 74 § 1; 1984 c 186 § 44; 1983 c 167 § 144; 1959 c 218 § 1; 1955 c 390 § 8. Prior: 1945 c 143 § 1(f); 1931 c 1 § 6(f); Rem. Supp. 1945 § 11610(f).]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.16.080 Levy and collection of taxes—Tax anticipation warrants. A district may raise revenue by the levy of an annual tax on all taxable property within the district, not exceeding forty-five cents per thousand dollars of assessed value in any one year, exclusive of interest and redemption for general obligation bonds. The commission shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file it in its records, on or before the first Monday in September. Notice of the filing of the proposed budget and the date and place of hearing thereon shall be published for at least two consecutive weeks in a newspaper printed and of general circulation in the county. On the first Monday in October, the commission shall hold a public hearing on the proposed budget at which any taxpayer may appear and be heard against the whole or any part thereof. Upon the conclusion of the hearing, the commission shall, by resolution, adopt the budget as finally determined, and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper officer of the county in which the district is located in the same manner as provided for the certification and collection of port district taxes. The commission may, prior to the receipt of taxes raised by levy, borrow money or issue warrants of the district in anticipation of the revenue to be derived from the levy or taxes for district purposes, and the warrants shall be redeemed from the first money available from such taxes. The warrants shall not exceed the anticipated revenue of one year, and shall bear interest at a rate determined by the commission. [1981 c 156 § 18; 1973 1st ex.s. c 195 § 60; 1955 c 390 § 9. Prior: 1945 c 143 § 1(g); 1931 c 1 § 6(g); Rem. Supp. 1945 § 11610(g).]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Application of one percentum levy limitation to public utility district: State Constitution Art. 7 § 2 and RCW 84.52.050.

Collection of taxes by port districts: RCW 53.36.020.

54.16.083 Community revitalization financing—Public improvements. In addition to other authority that a public utility district possesses, a public utility district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a public utility district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 19.]

Severability—2001 c 212: See RCW 39.89.902.

54.16.085 Interfund loans. A public utility district may make and repay interfund loans between its funds. [1987 c 18 § 2.]

54.16.090 Contracts with other agencies or utilities—Gifts, etc.—Employees and experts—Advancements. A district may enter into any contract or agreement with the United States, or any state, municipality, or other utility district, or any department of those entities, or with any cooperative, mutual, consumer-owned utility, or with any investor-owned utility or with an association of any of such utilities, for carrying out any of the powers authorized by this title.

It may acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for its purposes, or for any local district therein.

It may make contracts, employ engineers, attorneys, and other technical or professional assistance; print and publish information or literature; advertise or promote the sale and distribution of electricity or water and do all other things necessary to carry out the provisions of this title.

It may advance funds, jointly fund or jointly advance funds for surveys, plans, investigations, or studies as set forth in RCW 54.16.010, including costs of investigations, design and licensing of properties and rights of the type described in RCW 54.16.020, including the cost of technical and professional assistance, and for the advertising and promotion of the sale and distribution of electricity or water. [1969 c 106 § 7; 1955 c 390 § 10. Prior: 1945 c 143 § 1(h), (i), (j), part; 1931 c 1 § 6(h), (i), (j), part; Rem. Supp. 1945 § 11610(h), (i), (j), part.]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.16.092 Employment interview expenses. When a district commission finds that a vacancy for a technical or managerial position requires special qualifications or entails responsibilities and duties of such a nature that substantial benefits will accrue to the district from personal interviews of candidates for such a vacancy to be held in the district, the district commission, by resolution adopted at a regular meeting, may authorize the payment of actual necessary travel and living expenses of such candidates incurred while in travel status. [1975 1st ex.s. c 140 § 1.]

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

54.16.095 Liability insurance for officials and employees. The board of commissioners of each public utility district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 5.]

54.16.096 Liability insurance for officers and employees authorized. See RCW 36.16.138.

54.16.097 Actions against officer, employee, or agent—Defense and costs provided by public utility district—Exception. Whenever any action, claim or proceed-

ing is instituted against any person who is or was an officer, employee, or agent of a public utility district established under this title arising out of the performance or failure of performance of duties for, or employment with any such district, the commission of the district may grant a request by such person that the attorney of the district's choosing be authorized to defend said claim, suit or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the district's funds: PROVIDED, That costs of defense and/or judgment or settlement against such person shall not be paid in any case where the court has found that such person was not acting in good faith or within the scope of his employment with or duties for the district. [1975 c 60 § 2.]

54.16.100 Manager—Appointment—Compensation—Duties. The commission, by resolution introduced at a regular meeting and adopted at a subsequent regular meeting, shall appoint and may remove at will a district manager, and shall, by resolution, fix his or her compensation.

The manager shall be the chief administrative officer of the district, in control of all administrative functions and shall be responsible to the commission for the efficient administration of the affairs of the district placed in his or her charge. The manager shall be an experienced executive with administrative ability. In the absence or temporary disability of the manager, the manager shall, with the approval of the president of the commission, designate some competent person as acting manager.

The manager may attend all meetings of the commission and its committees, and take part in the discussion of any matters pertaining to the duties of his or her department, but shall have no vote.

The manager shall carry out the orders of the commission, and see that the laws pertaining to matters within the functions of his or her department are enforced; keep the commission fully advised as to the financial condition and needs of the districts; prepare an annual estimate for the ensuing fiscal year of the probable expenses of the department, and recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made during the ensuing fiscal year, with an estimate of the costs of the development work, extensions, and additions; certify to the commission all bills, allowances, and payrolls, including claims due contractors of public works; recommend to the commission compensation of the employees of his or her office, and a scale of compensation to be paid for the different classes of service required by the district; hire and discharge employees under his or her direction; and perform such other duties as may be imposed upon the manager by resolution of the commission. It is unlawful for the manager to make any contribution of money in aid of or in opposition to the election of any candidate for public utility commissioner or to advocate or oppose any such election. [1990 c 16 § 1; 1955 c 390 § 11. Prior: 1945 c 143 § 1(j), part; 1931 c 1 § 6(j), part; Rem. Supp. 1945 § 11610(j), part.]

54.16.110 May sue and be sued—Claims. A district may sue in any court of competent jurisdiction, and may be sued in the county in which its principal office is located or in

which it owns or operates facilities. No suit for damages shall be maintained against a district except on a claim filed with the district complying in all respects with the terms and requirements for claims for damages set forth in chapter 4.96 RCW. [1993 c 449 § 11; 1979 ex.s. c 240 § 3; 1955 c 390 § 12. Prior: 1945 c 143 § 1(k); 1931 c 1 § 6(k); Rem. Supp. 1945 § 11610(k).]

Purpose—Severability—1993 c 449: See notes following RCW 4.96.010.

Claims against cities of the second class: RCW 35.31.040.

54.16.120 Local utility districts authorized. A district may, by resolution, establish and define the boundaries of local assessment districts to be known as local utility district No. . . . , for distribution, under the general supervision and control of the commission, of water for all purposes, public and private, including domestic use, irrigation, and electric energy, and for providing street lighting, or any of them, and in like manner provide for the purchasing, or otherwise acquiring, or constructing and equipping and maintaining and operating distribution systems for such purposes, and for extensions and betterments thereof, and may levy and collect in accordance with the special benefits conferred thereon, special assessments and reassessments on property specially benefited thereby, for paying the cost and expense thereof, or any portions thereof, as herein provided, and issue local improvement bonds or warrants or both to be repaid wholly or in part by collection of local improvement assessments. A district also may form local utility districts located entirely or in part outside its limits or the limits of the county in which the district is located to provide water, or sewer facilities if otherwise authorized under this title. [1999 c 154 § 2; 1975 c 46 § 1; 1955 c 390 § 13. Prior: 1951 c 209 § 1; 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

Assessments and charges against state lands: Chapter 79.44 RCW.

Local improvements, supplemental authority: Chapter 35.51 RCW.

54.16.125 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.33.210 through 84.33.270, 84.34.300 through 84.34.380, and 84.34.922.

54.16.130 Local districts—Procedure—Financing. The commission shall by resolution establish the method of procedure in all matters relating to local utility districts. A public utility district may determine by resolution what work shall be done or improvements made at the expense, in whole or in part, of the property specially benefited thereby; and adopt and provide the manner, machinery and proceedings in any way relating to the making and collecting of assessments therefor in pursuance thereof. Except as herein otherwise provided or as may hereafter be set forth by resolution, all matters and proceedings relating to the local utility district, the levying and collection of assessments, the issuance and redemption of local improvement warrants and bonds, and the enforcement of local assessment liens hereunder, shall be governed, as nearly as may be, by the laws relating to local improvements for cities and towns: PROVIDED, That no protest against a local utility district improvement shall be

received after twelve o'clock noon of the day set for hearing. Such bonds and warrants may be in any form, including bearer bonds or bearer warrants, or registered warrants or registered bonds as provided in RCW 39.46.030. Such bonds and warrants may also be issued and sold in accordance with chapter 39.46 RCW.

The commission may determine to finance the project by bonds or warrants secured by assessments against the property within the local utility district: Or it may finance the project by revenue bonds, in which case no bonds or warrants shall be issued by the local utility district, but assessments shall be levied upon the taxable property therein on the basis of special benefits up to, but not exceeding the total cost of the improvement and in such cases the entire principal and interest of such assessments shall be paid into a revenue bond fund of the district, to be used for the sole purpose of the payment of revenue bonds. [1983 c 167 § 145; 1955 c 390 § 14. Prior: 1951 c 209 § 2; 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Local improvement

first-class cities: Chapters 35.43 through 35.56 RCW.

guaranty fund: RCW 54.24.200 through 54.24.260.

54.16.140 Petition or resolution for local district—Hearing—Notice. Any such improvement shall be ordered by resolution of the commission either upon petition or resolution therefor. When a petition, signed by ten percent of the owners of land in the district to be therein described, is filed with the commission, asking that the plan or improvement therein set forth be adopted and ordered, and defining the boundaries of a local improvement district to be assessed in whole or in part to pay the cost thereof, the commission shall fix the date of hearing thereon, and give not less than two weeks notice thereof by publication. The commission may deny the petition or order the improvement, unless a majority of the owners of lands in the district file prior to twelve o'clock noon of the day of the hearing, with the secretary a petition protesting against the improvement. If the commission orders the improvement, it may alter the boundaries of the proposed local district and prepare and adopt detail plans of the local improvement, declare the estimated cost thereof, what proportion thereof shall be borne by the local improvement district, and what proportion, if any shall be borne by the entire public utility district. [1955 c 390 § 15. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

54.16.142 Local utility districts—Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local utility district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property. [1989 c 243 § 9.]

54.16.145 Local utility districts—Sanitary sewer or potable water facilities—Notice to certain property owners. Whenever it is proposed that a local utility district finance sanitary sewers or potable water facilities, additional notice of the public hearing on the proposed local utility district shall be mailed to the owners of any property located outside of the proposed local utility district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the local utility district. The notice shall include information about this restriction. [1987 c 315 § 4.]

54.16.150 Procedure when petition is signed by majority of landowners. When a petition signed by a majority of the landowners in a proposed local improvement district is filed with the commission, asking that the improvement therein described be ordered, the commission shall forthwith fix a date for hearing thereon after which it shall, by resolution, order the improvement, and may alter the boundaries of the proposed district; prepare and adopt the improvement; prepare and adopt detail plans thereof; declare the estimated cost thereof, what proportion of the cost shall be borne by the local district, and what proportion, if any, shall be borne by the entire public utility district, and provide the general funds thereof to be applied thereto, if any; acquire all lands and other properties therefor; pay all damages caused thereby; and commence in the name of the public utility district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards necessary to entitle the district to proceed with the work, and shall thereafter proceed with the work, and shall file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property in the local improvement district in proportion to the special benefits to be derived by the property in the local district from the improvement: PROVIDED, HOWEVER, No such improvement shall be ordered unless the same appears to the commission to be financially and economically feasible: AND PROVIDED FURTHER, That the commission may require as a condition to ordering such improvement or to making its determination as to the financial and economic feasibility, that all or a portion of such engineering, legal or other costs incurred or to be incurred by the commission in determining financial and economic feasibility shall be borne or guaranteed by the petitioners of the proposed local improvement district under such rules as the commission may adopt. No person shall withdraw his name from the petition after the same has been filed with the commission. [1959 c 142 § 3; 1955 c 390 § 16. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

54.16.160 Assessment roll—Hearing—Appellate review—Expenses. Before approval of the roll, a notice shall be published once each week for two successive weeks in a newspaper of general circulation in the county, stating that the roll is on file and open to inspection in the office of the secretary, and fixing a time not less than fifteen nor more than thirty days from the date of the first publication of the notice, within which protests must be filed with the secretary

against any assessments shown thereon, and fixing a time when a hearing shall be held by the commission on the protests. After the hearing the commission may alter any and all assessments shown on the roll and may, by resolution, approve it, but if an assessment is raised, a new notice, similar to the first, shall be given, and a hearing had thereon, after which final approval of the roll may be made. Any person aggrieved by the assessments shall perfect an appeal to the superior court of the county within ten days after the approval, in the manner provided for appeals from assessments levied by cities of the first class. In the event such an appeal shall be taken, the judgment of the court shall confirm the assessment insofar as it affects the property of the appellant unless the court shall find from the evidence that such assessment is founded upon a fundamentally wrong basis and/or the decision of the commission thereon was arbitrary or capricious; in which event the judgment of the court shall correct, change, modify, or annul the assessment insofar as it affects the property of the appellant. In the same manner as provided with reference to cities of the first class appellate review of the judgment of the superior court may be sought, as in other cases, within fifteen days after the date of the entry of the judgment in the superior court. Engineering, office, and other expenses necessary or incident to the improvement shall be borne by the public utility district: PROVIDED, That when a municipal corporation included in the public utility district already owns or operates a utility of a character like that for which the assessments are levied hereunder, all such engineering and other expenses shall be borne by the local assessment district. [1988 c 202 § 51; 1971 c 81 § 123; 1959 c 142 § 4; 1955 c 390 § 17. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 c 11610(l), part.]

Severability—1988 c 202: See note following RCW 2.24.050.

Procedure on appeal from assessments levied by cities of the first class: RCW 35.44.200 through 35.44.270.

54.16.165 Segregation of assessments. Whenever any land against which there has been levied any special assessment by any public utility district shall have been sold in part or subdivided, the board of commissioners of such public utility district shall have the power to order a segregation of the assessment.

Any person owning any part of the land involved in a special assessment and desiring to have such special assessment against the tracts of land segregated to apply to smaller parts thereof shall apply in writing to the board of commissioners of the public utility district which levied the assessment. If the commissioners determine that a segregation should be made they shall do so as nearly as possible on the same basis as the original assessment was levied and the total of the segregated parts of the assessment shall equal the assessment before segregation.

The commission shall then send notice thereof by mail to the several owners interested in the tract, as shown on the general tax rolls. If no protest is filed within twenty days from date of mailing said notice, the commission shall then by resolution approve said segregation. If a protest is filed, the commission shall have a hearing thereon, after mailing to the several owners at least ten days notice of the time and place thereof. After the hearing, the commission may by resolution approve said segregation, with or without change. Within ten

days after the approval, any person aggrieved by the segregation may perfect an appeal to the superior court of the county wherein the property is situated and thereafter seek appellate review, all as provided for appeals from assessments levied by cities of the first class. The resolution approving said segregation shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part, and shall order the county treasurer to make segregation on the original assessment roll as directed in the resolution. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to make the segregation ordered. The board of commissioners may require as a condition to the order of segregation that the person seeking it pay the public utility district the reasonable engineering and clerical costs incident to making the segregation. Unless otherwise provided in said resolution, the county treasurer shall apportion amounts paid on the original assessment in the same proportion as the segregated assessments bear to the original assessment. Upon segregation being made by the county treasurer, as aforesaid, the lien of the special assessment shall apply to the segregated parcels only to the extent of the segregated part of such assessment. [1988 c 202 § 52; 1971 c 81 § 124; 1959 c 142 § 1.]

Severability—1988 c 202: See note following RCW 2.24.050.

54.16.170 Apportionment of cost of improvement.

When an improvement is ordered hereunder, payment for which shall be made in part from assessments against property specially benefited, not more than fifty percent of the cost thereof shall ever be borne by the entire public utility district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed such amount, unless a majority of the electors of the district consent to or ratify the making of such expenditure. [1955 c 390 § 18. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

54.16.180 Sale, lease, disposition of properties, equipment, and materials—Procedure—Acquisition, operation of sewage system by districts in certain counties.

(1) A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as provided for the lease or disposition of like properties and facilities owned by cities and towns. The affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale, shall be necessary to authorize such a sale.

(2) A district may, without the approval of the voters, sell, convey, lease, or otherwise dispose of all or any part of the property owned by it that is located:

(a) Outside its boundaries, to another public utility district, city, town or other municipal corporation; or

(b) Within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, to any person or public body.

(3) A district may sell, convey, lease or otherwise dispose of items of equipment or materials to any other district, to any cooperative, mutual, consumer-owned or investor-owned utility, to any federal, state, or local government agency, to any contractor employed by the district or any other district, utility, or agency, or any customer of the district or of any other district or utility, from the district's stores without voter approval or resolution of the district's board, if such items of equipment or materials cannot practicably be obtained on a timely basis from any other source, and the amount received by the district in consideration for any such sale, conveyance, lease, or other disposal of such items of equipment or materials is not less than the district's cost to purchase such items or the reasonable market value of equipment or materials.

(4) A district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand may sell and convey to a city of the first class, which owns its own water system, all or any part of a water system owned by the district where a portion of it is located within the boundaries of the city, without approval of the voters, upon such terms and conditions as the district shall determine.

(5) A district located in a county with a population of from twelve thousand to less than eighteen thousand and bordered by the Columbia river may, separately or in connection with the operation of a water system, or as part of a plan for acquiring or constructing and operating a water system, or in connection with the creation of another or subsidiary local utility district, provide for the acquisition or construction, additions or improvements to, or extensions of, and operation of, a sewage system within the same service area as in the judgment of the district commission is necessary or advisable to eliminate or avoid any existing or potential danger to public health due to lack of sewerage facilities or inadequacy of existing facilities.

(6) A district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand bordering on Puget Sound may sell and convey to any city or town with a population of less than ten thousand all or any part of a water system owned by the district without approval of the voters upon such terms and conditions as the district shall determine.

(7) A district may sell and convey, lease, or otherwise dispose of, to any person or entity without approval of the voters and upon such terms and conditions as it determines, all or any part of an electric generating project owned directly or indirectly by the district, regardless of whether the project is completed, operable, or operating, as long as:

(a) The project is or would be powered by an eligible renewable resource as defined in RCW 19.285.030; and

(b) The district, or the separate legal entity in which the district has an interest in the case of indirect ownership, has:

(i) The right to lease the project or to purchase all or any part of the energy from the project during the period in which it does not have a direct or indirect ownership interest in the project; and

(ii) An option to repurchase the project or part thereof sold, conveyed, leased, or otherwise disposed of at or below fair market value upon termination of the lease of the project

or termination of the right to purchase energy from the project.

(8) Districts are municipal corporations for the purposes of this section. A commission shall be held to be the legislative body, a president and secretary shall have the same powers and perform the same duties as a mayor and city clerk, and the district resolutions shall be held to be ordinances within the meaning of statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns. [2008 c 198 § 5; 1999 c 69 § 1; 1994 c 81 § 78; 1991 c 363 § 135; 1977 ex.s. c 31 § 1; 1963 c 196 § 1; 1959 c 275 § 1; 1955 c 390 § 19. Prior: 1945 c 143 § 1(m); 1931 c 1 § 6(m); Rem. Supp. 1945 § 11610(m).]

Finding—2008 c 198: See note following RCW 39.34.030.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

54.16.190 General resolutions. The commission of a district may adopt general resolutions to carry out the purposes, objects, and provisions of this title. [1955 c 390 § 20. Prior: 1945 c 143 § 1(n); 1931 c 1 § 6(n); Rem. Supp. 1945 § 11610(n).]

54.16.200 Joint exercise of powers and joint acquisition of properties. Any two or more public utility districts organized under the provisions of the laws of this state shall have the power, by mutual agreement, to exercise jointly all powers granted to each individual district, and in the exercise of such powers shall have the right and power to acquire jointly all or any part of any electric utility properties which, at the time of the passage of this act, constitutes an interconnected and physically integrated electric utility system, whether entirely within or partly within and partly without such districts: PROVIDED, That any two or more districts so acting jointly, by mutual agreement, shall not acquire any electric utility distribution properties in any other public utility district without the consent of such district, and shall not exercise jointly the power to condemn any privately owned utility property or any public utility owned by a municipality, to levy taxes or, to create subdistricts. [1949 c 227 § 2; Rem. Supp. 1949 § 10459-15.]

***Reviser's note:** As to "the time of the passage of this act," the legislative history of chapter 227, Laws of 1949 is as follows: Passed the house March 8, 1949; passed the senate March 7, 1949; approved by the governor March 22, 1949.

Joint operating agency: RCW 43.52.360.

54.16.210 Joint acquisition, operation, etc., with city of electrical utility properties. See chapter 35.92 RCW.

54.16.220 Columbia river hydroelectric projects—Grant back of easements to former owners. Notwithstanding any other provision of law, every public utility district acquiring privately owned lands, real estate or property for reservoir purposes of a hydroelectric power project dam on the Columbia river, upon acquisition of title to said lands, whether acquired by purchase or condemnation, shall grant back to the former owners of the lands acquired upon their request therefor, whether prior to conveyance of title to the district or within sixty days thereafter, a perpetual easement appurtenant to the adjoining property for such occupancy and

use and improvement of the acquired lands as will not be detrimental to the operation of the hydroelectric project and not be in violation of the required conditions of the district's Federal Power Commission license for the project: PROVIDED, That said former owners shall not thereafter erect any structure or make any extensive physical change thereon except under a permit issued by the public utility district: PROVIDED FURTHER, That said easement shall include a provision that any shorelands thereunder shall be open to the public, and shall be subject to cancellation upon sixty days notice to the owners by the district that such lands are to be conveyed to another public agency for game or game fish purposes or public recreational use, in which event the owners shall remove any structures they may have erected thereon within a reasonable time without cost to the district. The provisions of this section shall not be applicable with respect to: (1) lands acquired from an owner who does not desire an easement for such occupancy and use; (2) lands acquired from an owner where the entire estate has been acquired; (3) lands acquired for, and reasonably necessary for, project structures (including borrow areas) or for relocation of roads, highways, railroads, other utilities or railroad industrial sites; and (4) lands heretofore acquired or disposed of by sale or lease by a public utility district for whatsoever purpose. [1965 ex.s. c 118 § 1.]

54.16.230 Sewage system works—Acquire, construct, operate, etc.—Authorizing election—Procedure. A public utility district may acquire, construct, operate, maintain, and add to sewage systems, subject to and in compliance with the county comprehensive plan, under the general powers of Title 54 RCW or through the formation of local utility districts as provided in RCW 54.16.120 through 54.16.170: PROVIDED, That prior to engaging in any sewage system works as authorized by this section, the voters of the public utility district shall first approve by majority vote a referendum proposition authorizing such district to exercise the powers set forth in this section, which proposition shall be presented at a general election. [1975 1st ex.s. c 57 § 1.]

54.16.240 Sewage system works—Resolution or petition—Voter approval or rejection. The commission of a public utility district, by resolution may, or on petition in the same manner as provided for the creation of a district under RCW 54.08.010 shall, submit to the voters for their approval or rejection the proposal that said public utility district be authorized to exercise the powers set forth in RCW 54.16.230. [1975 1st ex.s. c 57 § 2.]

54.16.250 Sewage system works—Ballot proposition—Canvass. The legislative authority of the county in which the public utility district is located, upon receipt of the resolution of the public utility district commission or petition as provided for in RCW 54.08.010, shall submit such proposal to the voters of the district at the next general election in substantially the following terms:

Shall Public Utility District No. of County be authorized to acquire, construct, operate, maintain, and add to sewage systems?

Yes

No

Within ten days after such election, the election board of the county shall canvass the returns, and if at such election a majority of voters voting on the proposition shall vote in favor of such authority, the district shall have the powers set forth in RCW 54.16.230. [1975 1st ex.s. c 57 § 3.]

54.16.260 Sewage system works—Accounts and funding. Accounts and funding for any sewage system or systems shall be kept as provided in RCW 43.09.210. [1975 1st ex.s. c 57 § 4.]

54.16.270 Sewage system works—Existing authority not affected. Nothing contained in RCW 54.16.230 through 54.16.260 shall change or alter the present authority of certain public utility districts as regards sewage systems and as provided in RCW 54.16.180. [1975 1st ex.s. c 57 § 5.]

54.16.280 Energy conservation plan—Financing authorized for energy conservation projects in structures or equipment—Limitations. Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the district if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the district could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in existing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another. For the purposes of this section, "conservation purposes in existing structures" may include projects to allow a district's customers to generate all or a portion of their own electricity through the on-site installation of a distributed electricity generation system that uses as its fuel solar, wind, geothermal, or hydropower, or other renewable resource that is available on-site and not from a commercial source. Such projects shall not be considered "a conversion from one energy source to another" which is limited to the change or substitution of one commercial energy supplier for another commercial energy supplier. Except where otherwise authorized, such assistance shall be limited to:

(1) Providing an inspection of the structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;

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(2) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the district, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards.

(3) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

(5) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [2002 c 276 § 3; 1989 c 268 § 2; 1979 ex.s. c 239 § 3.]

Findings—Intent—2002 c 276: See note following RCW 35.92.360.

Legislative declaration—Effective date—Contingency—1979 ex.s. c 239: See RCW 35.92.355 and note following RCW 35.92.360.

54.16.285 Limitations on termination of utility service for residential heating. (1) A district providing utility service for residential space heating shall not terminate such utility service between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall

not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(2) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this section. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(3) All districts providing utility service for residential space heating shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(4) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter. [1995 c 399 § 144; 1991 c 165 § 3; 1990 1st ex.s. c 1 § 3; 1986 c 245 § 3; 1985 c 6 § 19; 1984 c 251 § 2.]

Findings—1991 c 165: See note following RCW 35.21.300.

54.16.300 Combined utility functions. A public utility district by resolution may combine two or more of its separate utility functions into a single utility and combine its related funds or accounts into a single fund or account. The separate utility functions include electrical energy systems,

domestic water systems, irrigation systems, sanitary sewer systems, and storm sewer systems. All powers granted to public utility districts to acquire, construct, maintain, and operate such systems may be exercised in the joint acquisition, construction, maintenance, and operation of such combined systems. The establishment, maintenance, and operation of the combined system shall be governed by the public utility district statutes relating to one of the utility systems that is being combined, as specified in the resolution combining the utility systems. [1987 c 18 § 1.]

54.16.310 Operation, maintenance, and inspection of sewage disposal facilities, septic tanks, and wastewater disposal facilities and systems—Maintenance costs. A public utility district as authorized by a county board of health, may perform operation and maintenance, including inspections, of on-site sewage disposal facilities, alternate sewage disposal facilities, approved septic tanks or approved septic tank systems, other facilities and systems for the collection, interception, treatment, and disposal of wastewater, and for the control and protection, preservation, and rehabilitation of surface and underground waters. Those costs associated with the maintenance of private on-site sewage systems may be charged by the public utility district to the system owner. [1990 c 107 § 1.]

54.16.320 Assumption of substandard water system—Limited immunity from liability. A public utility district assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the public utility district has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 10.]

Findings—Intent—1994 c 292: See note following RCW 57.04.050.

54.16.330 Telecommunications facilities—Purposes—Limitations—Provision of wholesale telecommunications services—Eminent domain. (1) A public utility district in existence on June 8, 2000, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(a) For the district's internal telecommunications needs; and

(b) For the provision of wholesale telecommunications services within the district and by contract with another public utility district.

Nothing in this subsection shall be construed to authorize public utility districts to provide telecommunications services to end users.

(2) A public utility district providing wholesale telecommunications services shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) A public utility district providing wholesale telecommunications services shall not be required to but may establish a separate utility system or function for such purpose. In either case, a public utility district providing wholesale telecommunications services shall separately account for any revenues and expenditures for those services according to standards established by the state auditor pursuant to its authority in chapter 43.09 RCW and consistent with the provisions of this title. Any revenues received from the provision of wholesale telecommunications services must be dedicated to costs incurred to build and maintain any telecommunications facilities constructed, installed, or acquired to provide such services, including payments on debt issued to finance such services, until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance such telecommunications facilities are discharged or retired.

(4) When a public utility district provides wholesale telecommunications services, all telecommunications services rendered to the district for the district's internal telecommunications needs shall be allocated or charged at its true and full value. A public utility district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services.

(5) A public utility district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(6) Except as otherwise specifically provided, a public utility district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws of 2000 limits any existing authority of a public utility district under this title. [2004 c 158 § 1; 2000 c 81 § 3.]

Findings—2000 c 81: See note following RCW 53.08.005.

54.16.340 Wholesale telecommunications services—Petition for review of rates, terms, conditions. (1) A person or entity that has requested wholesale telecommunications services from a public utility district providing wholesale telecommunications services under this chapter may petition the commission under the procedures set forth in RCW 80.04.110 (1) through (3) if it believes the district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential. The person or entity shall provide the public utility district notice of its intent to petition the commission and an opportunity to review within thirty days

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the rates, terms, and conditions as applied to it prior to submitting its petition. In determining whether a district is providing discriminatory or preferential rates, terms, and conditions, the commission may consider such matters as service quality, cost of service, technical feasibility of connection points on the district's facilities, time of response to service requests, system capacity, and other matters reasonably related to the provision of wholesale telecommunications services. If the commission, after notice and hearing, determines that a public utility district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential, it shall issue a final order finding noncompliance with this section and setting forth the specific areas of apparent noncompliance. An order imposed under this section shall be enforceable in any court of competent jurisdiction.

(2) The commission may order a public utility district to pay a share of the costs incurred by the commission in connection with adjudicating or enforcing the provisions of this section.

(3) Without limiting other remedies at law or equity, the commission and prevailing party may also seek injunctive relief to compel compliance with an order.

(4) Nothing in this section shall be construed to affect the commission's authority and jurisdiction with respect to actions, proceedings, or orders permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56). [2000 c 81 § 5.]

Findings—2000 c 81: See note following RCW 53.08.005.

54.16.350 Tariff for irrigation pumping service—Authority to buy back electricity. The commission may approve a tariff for irrigation pumping service that allows the district to buy back electricity from customers to reduce electricity usage by those customers during the district's particular irrigation season. [2001 c 122 § 2.]

Effective date—2001 c 122: See note following RCW 80.28.310.

54.16.360 Cooperative watershed management. In addition to the authority provided in RCW 54.16.030 relating to water supply, a public utility district may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 14.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

54.16.370 Purchase of electric power and energy from joint operating agency. A district may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the district must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and

energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or district under the contract or other instrument. [2003 c 138 § 2.]

54.16.380 Appliance repair service—Operation by district. Any public utility district that has operated an electrical appliance repair service for at least ten years prior to July 24, 2005, may continue to operate an electrical appliance repair service within its service territory. [2005 c 175 § 2.]

Intent—2005 c 175: "It is the intent of the legislature to avoid unnecessary hardships on the citizens of a community by recognizing the traditional appliance repair services that have been offered for many years by any public utility district described in section 2 of this act.

The legislature understands that some of these services improve the energy efficiency of the appliance repaired, which helps citizens save money and energy as well as extending the life of the appliance.

The legislature recognizes these historic services coexist with the private sector without creating aggressive competition between public and private enterprises.

It is the intent of the legislature to have these services be financially self-supporting and not be subsidized by any other customer rate structures.

Public utility districts affected by this act are encouraged to continue to work collaboratively with the private sector in providing these services." [2005 c 175 § 1.]

54.16.385 Appliance repair service—Requirements. When a public utility district provides electrical appliance repair services under RCW 54.16.380, the public utility district shall:

(1) Charge customers the true and fair cost for the services;

(2) Keep records documenting the revenues and expenditures for the services and make those records available to the public; and

(3) Develop measures or benchmarks to track and evaluate the performance of the services. [2005 c 175 § 3.]

Intent—2005 c 175: See note following RCW 54.16.380.

54.16.390 Environmental mitigation activities. (1) A public utility district may develop and make publicly available a plan for the district to reduce its greenhouse gases emissions or achieve no-net emissions from all sources of greenhouse gases that the district owns, leases, uses, contracts for, or otherwise controls.

(2) A public utility district may, as part of its utility operation, mitigate the environmental impacts, such as greenhouse gases emissions, of its operation and any power purchases. Mitigation may include, but is not limited to, those greenhouse gases mitigation mechanisms recognized by independent, qualified organizations with proven experience in emissions mitigation activities. Mitigation mechanisms may include the purchase, trade, and banking of greenhouse gases offsets or credits. If a state greenhouse gases registry is established, a public utility district that has purchased, traded, or banked greenhouse gases mitigation mechanisms under this section shall receive credit in the registry. [2007 c 349 § 4.]

Finding—Intent—2007 c 349 § 4: "The legislature finds and declares that greenhouse gases offset contracts, credits, and other greenhouse gases mitigation efforts are a recognized utility purpose that confers a direct benefit on the utility's ratepayers. The legislature declares that section 4 of this

act is intended to reverse the result of *Okeson v. City of Seattle* (January 18, 2007), by expressly granting public utility districts the statutory authority to engage in mitigation activities to offset their utility's impact on the environment." [2007 c 349 § 3.]

54.16.400 Voluntary donations for purposes of urban forestry. (1) Public utility districts may request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation.

(2) Voluntary donations collected by public utility districts under this section may be used by the public utility district to:

(a) Support the development and implementation of evergreen community ordinances, as that term is defined in RCW 35.105.010, for cities, towns, or counties within their service areas; or

(b) Complete projects consistent with the model evergreen community management plans and ordinances developed under RCW 35.105.050.

(3) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW. [2008 c 299 § 22.]

Short title—2008 c 299: See note following RCW 35.105.010.

Chapter 54.20 RCW

CONDEMNATION PROCEEDINGS

Sections

54.20.010 Statement of operations—Decree of appropriation—Retirement of properties—Accounting—Limitation on new proceedings.

54.20.010 Statement of operations—Decree of appropriation—Retirement of properties—Accounting—Limitation on new proceedings. In any condemnation proceeding heretofore or hereafter instituted or conducted by a public utility district for the acquisition of properties, the district may serve upon the condemnee's attorneys of record and file with the court a notice of its intention to present a decree of appropriation together with a demand for a verified statement showing in reasonable detail the following information with respect to the operation of the properties since the date of verdict, if the case was tried by jury, or since the date of the judgment fixing compensation, if the case was tried by the court, namely: the cost of any improvements and betterments to the properties which were reasonably necessary and prudently made; the gross income received from the properties, betterments and improvements; the actual reasonable expense, exclusive of depreciation, incurred in the operation thereof. If the condemnee fails to serve and file the statement within fifteen days after service of the demand therefor, it may be compelled to do so by contempt proceedings, and the time during which such proceedings are pending shall not be considered in computing the time within which the district may exercise its right of appropriation. After the statement is filed, the district may pay the amount of the verdict or judgment plus (1) accrued interest thereon less the net income before allowance for depreciation, and (2) the cost of such improvements and

betterments, all as shown by the sworn statement, and concurrently obtain its decree of appropriation. The condemnee may retire from use after the verdict or judgment such items of the properties as may be reasonably necessary in the ordinary and usual course of operation thereof, in which case it shall show in its statement the reasonable value of such items retired, and the district may deduct such value from the sum otherwise payable by it. If the condemnee fails to file the statement within fifteen days after service of the demand therefor, the district at its option may pay the full amount of the judgment or verdict plus accrued interest thereon and concurrently obtain a decree of appropriation.

After payment has been made and the decree of appropriation entered as provided in this section, the district or the condemnee shall be entitled to an accounting in the condemnation proceedings to determine the true amount of each item required to be furnished in the above statement, and to payment of any balance found due in such accounting.

Whenever any such condemnation proceedings have been, or hereafter may be abandoned, no new proceedings for the acquisition of the same or substantially similar properties shall be instituted until the expiration of one year from the date of such abandonment, but such proceedings may be instituted at any time thereafter. [1945 c 130 § 3; Rem. Supp. 1945 § 10459-13. Formerly RCW 54.20.010 through 54.20.050.]

Purpose—Severability—1945 c 130: See notes following RCW 54.04.100.

**Chapter 54.24 RCW
FINANCES**

Sections

GENERAL PROVISIONS

- 54.24.010 Treasurer—Bond—Duties—Funds—Depositaries.
- 54.24.012 Destruction of canceled or paid revenue obligations and interest coupons.

BONDS OR WARRANTS—1931 ACT

- 54.24.018 Acquisition of property—Adoption of plan—Bonds or warrants—Special funds.

BONDS—REVENUE OBLIGATIONS—1941 ACT

- 54.24.020 General obligation bonds, revenue obligations for cost of utilities.
- 54.24.030 Revenue obligations—Special fund—Form, term, payment, etc.—Resolution of authority, contents—Contracts for future sale.
- 54.24.040 Considerations in creating special fund—Status of claims against fund—When lien attaches.
- 54.24.050 Covenants to secure owners of revenue obligations.
- 54.24.060 Sale, delivery of revenue obligations.
- 54.24.070 Prima facie validity of revenue obligations.
- 54.24.080 Rates and charges—Waiver of connection charges for low-income persons.
- 54.24.090 Funding, refunding revenue obligations.
- 54.24.100 Execution of revenue obligations—Signatures.
- 54.24.110 Laws and resolutions as contract.
- 54.24.120 Obligations as lawful securities and investments.

LOCAL IMPROVEMENT GUARANTY FUND

- 54.24.200 Local improvement guaranty fund.
- 54.24.210 Local improvement guaranty fund—Duties of the district.
- 54.24.220 Local improvement guaranty fund—Warrants to meet liabilities.
- 54.24.230 Local improvement guaranty fund—Certificates of delinquency—Contents, purchase, payment, issuance, sale.
- 54.24.240 Local improvement guaranty fund—Certificates of delinquency—Redemption, foreclosure.

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- 54.24.250 Local improvement guaranty fund—Subrogation of district as trustee of fund, effect on fund, disposition of proceeds.
- 54.24.260 Local improvement guaranty fund—Rights and remedies of bond or warrant holder which shall be printed on bond or warrant—Disposition of balance of fund.

GENERAL PROVISIONS

54.24.010 Treasurer—Bond—Duties—Funds—Depositaries. The treasurer of the county in which a utility district is located shall be ex officio treasurer of the district: PROVIDED, That the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the utility district. The commission may require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

All district funds shall be paid to the treasurer and shall be disbursed by him only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public utility district fund, into which shall be paid all district funds, and he shall maintain such special funds as may be created by the commission, into which he shall place all money as the commission may, by resolution, direct.

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries; if the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in *RCW 36.48.020 for deposit of county funds.

Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

All interest collected on district funds shall belong to the district and be deposited to its credit in the proper district funds.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district: PROVIDED, That the district pays the premium thereon. [1999 c 18 § 6; 1959 c 218 § 2; 1957 c 140 § 1; 1955 c 124 § 7. Prior: (i) 1931 c 1 § 9; RRS § 11613. (ii) 1931 c 1 § 8, part; RRS § 11612, part.]

*Reviser's note: RCW 36.48.020 was repealed by 1984 c 177 § 21.

54.24.012 Destruction of canceled or paid revenue obligations and interest coupons. After any revenue obligations or interest coupons have been canceled or paid they may be destroyed as directed by the district, any provisions of chapter 40.14 RCW notwithstanding: PROVIDED, That a certificate of destruction giving full descriptive reference to the documents destroyed shall be made by the person or persons authorized to perform such destruction and one copy of the certificate shall be filed with the treasurer of the district. [1959 c 218 § 15.]

BONDS OR WARRANTS—1931 ACT

54.24.018 Acquisition of property—Adoption of plan—Bonds or warrants—Special funds. (1) Whenever the commission shall deem it advisable that the public utility district purchase, purchase and condemn, acquire, or construct any such public utility, or make any additions or betterments thereto, or extensions thereof, the commission shall provide therefor by resolution, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof, as near as may be, and specify whether general or utility indebtedness is to be incurred, the amount of such indebtedness, the amount of interest and the time in which all general bonds (if any) shall be paid, not to exceed thirty years. In the event the proposed general indebtedness to be incurred will bring the nonvoter approved indebtedness of the public utility district to an amount exceeding three-fourths of one percent of the value of the taxable property of the public utility district, as the term "value of the taxable property" is defined in RCW 39.36.015, the proposition of incurring such indebtedness and the proposed plan or system shall be submitted to the qualified electors of said public utility district for their approval or rejection at the next general election held in such public utility district. Elections shall be held as provided in RCW 39.36.050.

Whenever the commission (or a majority of the qualified voters of such public utility district, voting at said election, when it is necessary to submit the same to said voters) shall have adopted a system or plan for any such public utility, as aforesaid, and shall have authorized indebtedness therefor by a three-fifths vote of the qualified voters of such district, voting at said election, general or public utility bonds may be used as hereinafter provided. The principal and interest of such general bonds shall be paid from the revenue of such public utility district after deducting costs of maintenance, operation, and expenses of the public utility district, and any deficit in the payment of principal and interest of said general bonds shall be paid by levying each year a tax upon the taxable property within said district sufficient to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. Said bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(2) All bonds and warrants issued under the authority of this chapter shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys.

(3) When the commission shall not desire to incur a general indebtedness in the purchase, condemnation and purchase, acquisition, or construction of any such public utility, or addition or betterment thereto, or extension thereof, it shall have the power to create a special fund or funds for the sole purpose of defraying the cost of such public utility, or addition or betterment thereto, or extension thereof, into which special fund or funds it may obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of such public utility, or any fixed amount out of, and not exceeding a fixed proportion of, such revenues, or a fixed amount without regard to any fixed proportion, and to issue and sell revenue bonds or warrants bearing interest at such

rate or rates, payable semiannually, executed in such manner, and payable at such times and places as the commission shall determine, but such bonds or warrants and the interest thereon, shall be payable only out of such special fund or funds. In creating any such special fund or funds, the commission shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to, and to any proportion or part of the revenues previously pledged as a fund for the payment of bonds or warrants, and shall not set aside into such special fund or funds a greater amount or proportion of the revenues and proceeds than, in its judgment, will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenues so previously pledged. Any such bonds or warrants, and interest thereon, issued against any such fund, as herein provided, shall be a valid claim of the owner thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such district within the meaning of the constitutional provisions and limitations. Each such bond or warrant shall state on its face that it is payable from a special fund, naming such fund and the resolution creating it. Said bonds and warrants shall be sold in such manner as the commission shall deem for the best interests of the district. The commission may provide in any contract for the construction and acquisition of a proposed improvement or utility that payment therefor shall be made only in such bonds or warrants at the par value thereof. In all other respects, the issuance of such utility bonds or warrants and payment therefor shall be governed by the public utility laws for cities and towns. The revenue or utility bonds or warrants may be in any form, including bearer bonds or bearer warrants, or registered bonds or registered warrants as provided in RCW 39.46.030.

(4) Notwithstanding subsection (3) of this section, any of such revenue bonds and revenue warrants may be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 45; 1983 c 167 § 146; 1971 c 12 § 1. Prior: 1970 ex.s. c 56 § 77; 1970 ex.s. c 42 § 33; 1969 ex.s. c 232 § 14; 1931 c 1 § 7; RRS § 11611. Formerly RCW 54.24.130 through 54.24.160.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Municipal utilities: Chapter 35.92 RCW.

BONDS—REVENUE OBLIGATIONS—1941 ACT

54.24.020 General obligation bonds, revenue obligations for cost of utilities. Whenever the commission of a public utility district, organized pursuant to chapter 1 of the Laws of 1931 (sections 11605 et seq. of Remington's Revised Statutes) shall deem it advisable that the district purchase, purchase and condemn, acquire or construct any public utility, or make any additions or betterments thereto or extensions thereof, the commission shall provide therefor by resolution, which shall specify and adopt the system or plan proposed and declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for

working capital for the operation of such public utility by the district and for the payment of the expenses incurred in the acquisition or construction thereof, and shall specify whether general obligation bonds or revenue obligations are to be issued to defray such cost and the amount of such general obligation bonds or revenue obligations.

The commissioners may provide in such resolution that any additional works, plants, or facilities subsequently acquired or constructed by the district for the same uses, whether or not physically connected therewith, shall be deemed additions or betterments to or extensions of such public utility. [1959 c 218 § 3; 1941 c 182 § 1; Rem. Supp. 1941 § 11611-1.]

Severability—1941 c 182: "If any section or provision of this act shall be adjudged to be invalid such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid." [1941 c 182 § 12.]

Revenue obligations defined: RCW 54.04.010.

54.24.030 Revenue obligations—Special fund—Form, term, payment, etc.—Resolution of authority, contents—Contracts for future sale. (1) Whenever the commission shall deem it advisable to issue revenue obligations for the purpose of defraying the cost or part of the cost of such public utility or any additions or betterments thereto or extensions thereof, it shall have power as a part of such plan and system to create a special fund or funds for the purpose of defraying the cost of such public utility, or additions or betterments thereto or extensions thereof, into which special fund or funds it may obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of such public utility, and all additions or betterments thereto or extensions thereof, or any fixed amount out of, and not exceeding a fixed proportion of such revenues, or a fixed amount without regard to any fixed proportion, or an amount of such revenues equal to a fixed percentage of the aggregate principal amount of revenue obligations at any time issued against the special fund or funds, and to issue and sell revenue obligations payable as to both principal and interest only out of such fund or funds.

Such revenue obligations shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, as provided in RCW 39.46.030, or both, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as the commission shall by resolution determine.

Any resolution or resolutions authorizing the issuance of any revenue obligations maturing in not exceeding six years from the date thereof (hereinafter in this section referred to as "short term obligations") may contain, in addition to all other provisions authorized by this title, and as an alternate method for the payment thereof, provisions which shall be a part of the contract with the holders of the short term obligations thereby authorized as to:

(a) Refunding the short term obligations at or prior to maturity and, if so provided, outstanding bonds by the issuance of revenue bonds of the district either by the sale of bonds and application of the proceeds to the payment of the

short term obligations and outstanding bonds or by the exchange of bonds for the short term obligations;

(b) Satisfying, paying, or discharging the short term obligations at the election of the district by the tender or delivery of revenue bonds of the district in exchange therefor: PROVIDED, That the aggregate principal amount of bonds shall not exceed by more than five percent the aggregate principal amount of the short term obligations, to satisfy, pay, or discharge said short term obligations for which the bonds are tendered or delivered;

(c) Exchanging or converting the short term obligations at the election of the owner thereof for or into the bonds of the district: PROVIDED, That the aggregate principal amount of the bonds shall not exceed by more than five percent the aggregate principal amount of the short term obligations to be exchanged for or converted into bonds;

(d) Pledging bonds of the district as collateral to secure payment of the short term obligations and providing for the terms and conditions of the pledge and the manner of enforcing the pledge, which terms and conditions may provide for the delivery of the bonds in satisfaction of the short term obligations: PROVIDED, That the aggregate principal amount of the bonds pledged shall not exceed by more than five percent the aggregate principal amount of the short term obligations to secure said short term obligations for which they are pledged;

(e) Depositing bonds in escrow or in trust with a trustee or fiscal agent or otherwise providing for the issuance and disposition of the bonds as security for carrying out any of the provisions in any resolution adopted pursuant to this section and providing for the powers and duties of the trustee, fiscal agent, or other depository and the terms and conditions upon which the bonds are to be issued, held and disposed of;

(f) Any other matters of like or different character which relate to any provision or provisions of any resolution adopted pursuant to this section.

A district shall have power to make contracts for the future sale from time to time of revenue obligations by which the purchasers shall be committed to purchase such revenue obligations from time to time on the terms and conditions stated in such contract; and a district shall have power to pay such consideration as it shall deem proper for such commitments.

(2) Notwithstanding subsection (1) of this section, such revenue obligations may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 147; 1959 c 218 § 4; 1941 c 182 § 2; Rem. Supp. 1941 § 11611-2.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

54.24.040 Considerations in creating special fund—Status of claims against fund—When lien attaches. In creating any special fund for the payment of revenue obligations, the commission shall have due regard to the cost of operation and maintenance of the plant or system constructed or added to, and to any proportion or amount of the revenues previously pledged as a fund for the payment of revenue obligations, and shall not set aside into such special fund or funds

a greater amount or proportion of the revenues and proceeds than in its judgment will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenues so previously pledged. Any such revenue obligations and interest thereon issued against any such fund as herein provided shall be a valid claim of the owner thereof only as against such special fund and the proportion or amount of the revenues pledged to such fund, but shall constitute a prior charge over all other charges or claims whatsoever, including the charge or lien of any general obligation bonds against such fund and the proportion or amount of the revenues pledged thereto. Such revenue obligations shall not constitute an indebtedness of such district within the meaning of the constitutional provisions and limitations. Each revenue obligation shall state on its face that it is payable from a special fund, naming such fund and the resolution creating it, or shall describe such alternate method for the payment thereof as shall be provided by the resolution authorizing same.

It is the intention hereof that any pledge of the revenues or other moneys or obligations made by a district shall be valid and binding from the time that the pledge is made; that the revenues or other moneys or obligations so pledged and thereafter received by a district shall immediately be subject to the lien of such pledge without any physical delivery or further act, and that the lien of any such pledge shall be valid and binding as against any parties having claims of any kind in tort, contract, or otherwise against a district irrespective of whether such parties have notice thereof. Neither the resolution or other instrument by which a pledge is created need be recorded. [1983 c 167 § 148; 1959 c 218 § 5; 1941 c 182 § 5; Rem. Supp. 1941 § 11611-5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.24.050 Covenants to secure owners of revenue obligations. Any resolution creating any such special fund or authorizing the issue of revenue obligations payable therefrom, or by such alternate method of payment as may be provided therein, shall specify the title of such revenue obligations as determined by the commission and may contain covenants by the district to protect and safeguard the security and the rights of the owners thereof, including covenants as to, among other things:

(1) The purpose or purposes to which the proceeds of sale of such obligations may be applied and the use and disposition thereof;

(2) The use and disposition of the gross revenues of the public utility, and any additions or betterments thereto or extensions thereof, the cost of which is to be defrayed with such proceeds, including the creation and maintenance of funds for working capital to be used in the operation of the public utility and for renewals and replacements to the public utility;

(3) The amount, if any, of additional revenue obligations payable from such fund which may be issued and the terms and conditions on which such additional revenue obligations may be issued;

(4) The establishment and maintenance of adequate rates and charges for electric energy, water, and other services,

facilities, and commodities sold, furnished, or supplied by the public utility;

(5) The operation, maintenance, management, accounting, and auditing of the public utility;

(6) The terms and prices upon which such revenue obligations or any of them may be redeemed at the election of the district;

(7) Limitations upon the right to dispose of such public utility or any part thereof without providing for the payment of the outstanding revenue obligations; and

(8) The appointment of trustees, depositaries, and paying agents to receive, hold, disburse, invest, and reinvest all or any part of the income, revenues, receipts, and profits derived by the district from the operation, ownership, and management of its public utility. [1983 c 167 § 149; 1959 c 218 § 6; 1945 c 143 § 2; 1941 c 182 § 3; Rem. Supp. 1945 § 11611-3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.24.060 Sale, delivery of revenue obligations. (1) Such utility revenue obligations shall be sold and delivered in such manner, at such rate or rates of interest and for such price or prices and at such time or times as the commission shall deem for the best interests of the district. The commission may, if it deem it to the best interest of the district, provide in any contract for the construction or acquisition of the public utility, or the additions or betterments thereto or extensions thereof, that payment therefor shall be made only in such revenue obligations at the par value thereof.

(2) Notwithstanding subsection (1) of this section, such obligations may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 150; 1970 ex.s. c 56 § 78; 1969 ex.s. c 232 § 83; 1959 c 218 § 7; 1941 c 182 § 4; Rem. Supp. 1941 § 11611-4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Effective date—Purpose—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

54.24.070 Prima facie validity of revenue obligations. The state auditor need not register, certify, nor sign revenue obligations after July 26, 1981. These obligations shall be held in every action, suit, or proceeding in which their validity is or may be brought into question prima facie valid and binding obligations of the districts in accordance with their terms, notwithstanding any defects or irregularities in the proceedings for the organization of the district and the election of the commissioners thereof or for the authorization and issuance of such revenue obligations or in the sale, execution, or delivery thereof. [1981 c 37 § 1; 1959 c 218 § 8; 1941 c 182 § 6; Rem. Supp. 1941 § 11611-6.]

54.24.080 Rates and charges—Waiver of connection charges for low-income persons. (1) The commission of each district which shall have revenue obligations outstanding shall have the power and shall be required to establish, maintain, and collect rates or charges for electric energy and water and other services, facilities, and commodities sold, furnished, or supplied by the district. The rates and charges

shall be fair and, except as authorized by RCW 74.38.070 and by subsections (2) and (3) of this section, nondiscriminatory, and shall be adequate to provide revenues sufficient for the payment of the principal of and interest on such revenue obligations for which the payment has not otherwise been provided and all payments which the district is obligated to set aside in any special fund or funds created for such purpose, and for the proper operation and maintenance of the public utility and all necessary repairs, replacements, and renewals thereof.

(2) The commission of a district may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under section 501(c)(3) of the federal internal revenue code as amended prior to the July 23, 1995. Waivers of connection charges for the same class of electric or gas utility service must be uniformly applied to all qualified property. Nothing in this subsection (2) authorizes the impairment of a contract.

(3) In establishing rates or charges for water service, commissioners may in their discretion consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [1995 c 140 § 3; 1991 c 347 § 21; 1959 c 218 § 9; 1941 c 182 § 7; Rem. Supp. 1941 § 11611-7.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

54.24.090 Funding, refunding revenue obligations.

Whenever any district shall have outstanding any utility revenue obligations, the commission shall have power by resolution to provide for the issuance of funding or refunding revenue obligations with which to take up and refund such outstanding revenue obligations or any part thereof at the maturity thereof or before maturity if the same be by their terms or by other agreement subject to call for prior redemption, with the right in the commission to include various series and issues of such outstanding revenue obligations in a single issue of funding or refunding revenue obligations, and to issue refunding revenue obligations to pay any redemption premium payable on the outstanding revenue obligations being funded or refunded. Such funding or refunding revenue obligations shall be payable only out of a special fund created out of the gross revenues of such public utility, and shall only be a valid claim as against such special fund and the amount of the revenues of such utility pledged to such fund. Such funding or refunding revenue obligations shall in the discretion of the commission be exchanged at par for the revenue obligations which are being funded or refunded or shall be sold in such manner, at such price and at such rate or rates of interest as the commission shall deem for the best interest of the district. Said funding or refunding [revenue] obligations shall except as specifically provided in this section, be issued in accordance with the provisions with respect to revenue obligations in chapter 182, Laws of 1941 set forth. [1970 ex.s. c 56 § 79; 1969 ex.s. c 232 § 84; 1959 c 218 § 10; 1941 c 182 § 8; Rem. Supp. 1941 c 11611-8.]

Effective date—Purpose—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

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54.24.100 Execution of revenue obligations—Signatures. (1) All revenue obligations, including funding and refunding revenue obligations, shall be executed in such manner as the commission may determine: PROVIDED, That warrants may be signed as provided in RCW 54.24.010. Any interest coupons attached to any revenue obligations may be executed with facsimile or lithographed signatures, or otherwise, as the commission may determine.

(2) Notwithstanding subsection (1) of this section, such obligations may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 151; 1981 c 37 § 2; 1959 c 218 § 11; 1941 c 182 § 9; Rem. Supp. 1941 § 11611-9.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Facsimile signatures: RCW 39.44.100 through 39.44.102; chapter 39.62 RCW.

54.24.110 Laws and resolutions as contract. The provisions of chapter 182, Laws of 1941 and the provisions of chapter 1, Laws of 1931, not hereby superseded, and of any resolution or resolutions providing for the issuance of any revenue obligations as herein set forth shall constitute a contract with the holder or holders of such revenue obligations and the agreements and covenants of the district and its commission under said acts and any such resolution or resolutions shall be enforceable by any revenue obligation holder by mandamus or any other appropriate suit or action in any court of competent jurisdiction. [1959 c 218 § 12; 1941 c 182 § 10; Rem. Supp. 1941 § 11611-10.]

Mandamus: RCW 7.16.150 through 7.16.280.

54.24.120 Obligations as lawful securities and investments. All bonds, warrants, and revenue obligations issued under the authority of chapter 1, Laws of 1931 and chapter 182, Laws of 1941 shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county, city, or town treasurer, as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys and shall constitute legal investments for trustees and other fiduciaries other than corporations doing a trust business in this state and for savings and loan associations, banks, and insurance companies doing business in this state. All such bonds, warrants, and revenue obligations and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the negotiable instruments law of this state. [1959 c 218 § 13; 1941 c 182 § 11; Rem. Supp. 1941 § 11611-11.]

Investment securities: Article 62A.8 RCW.

LOCAL IMPROVEMENT GUARANTY FUND

54.24.200 Local improvement guaranty fund. Every public utility district in the state is hereby authorized, by resolution, to create a fund for the purpose of guaranteeing, to the extent of such fund, and in the manner hereinafter provided, the payment of such of its local improvement bonds and/or warrants as the commission may determine issued to pay for any local improvement within any local utility district established within the boundaries of the public utility district. Such fund shall be designated "local improvement guaranty fund, public utility district No. . . .". For the purpose of

maintaining such fund the public utility district shall set aside and pay into it such proportion as the commissioners may direct by resolution of the monthly gross revenues of its public utilities for which local improvement bonds and/or warrants have been issued and guaranteed by said fund: PROVIDED, HOWEVER, That any obligation to make payments into said fund as herein provided shall be junior to any pledge of said gross revenues for the payment of any outstanding or future general obligation bonds or revenue bonds of the district. The proportion may be varied from time to time as the commissioners deem expedient: PROVIDED, FURTHER, That under the existence of the conditions set forth in subdivisions (1) and (2), hereunder, and when consistent with the covenants of a public utility district securing its bonds, the proportion shall be as therein specified, to wit:

(1) When bonds and/or warrants of a local utility district have been guaranteed and are outstanding and the guaranty fund does not have a cash balance equal to twenty percent of all bonds and/or warrants originally guaranteed hereunder, excluding bonds and/or warrants which have been retired in full, then twenty percent of the gross monthly revenues from each public utility for which such bonds and/or warrants have been issued and are outstanding but not necessarily from users in other parts of the public utility district as a whole, shall be set aside and paid into the guaranty fund: PROVIDED, That when, under the requirements of this subdivision, the cash balance accumulates so that it is equal to twenty percent of the total original guaranteed bonds and/or warrants, exclusive of any issue of bonds and/or warrants of a local utility district which issue has been paid and/or redeemed in full, or equal to the full amount of all bonds and/or warrants guaranteed, outstanding and unpaid, which amount might be less than twenty percent of the original total guaranteed, then no further revenue need be set aside and paid into the guaranty fund so long as such condition continues;

(2) When warrants issued against the guaranty fund remain outstanding and uncalled, for lack of funds, for six months from date of issuance, or when bonds, warrants, or any coupons or interest payments guaranteed hereunder have been matured for six months and have not been redeemed, then twenty percent of the gross monthly revenue, or such portion thereof as the commissioners determine will be sufficient to retire the warrants or redeem the coupons, interest payments, bonds and/or warrants in the ensuing six months, derived from all the users of the public utilities for which such bonds and/or warrants have been issued and are outstanding in whole or in part, shall be set aside and paid into the guaranty fund: PROVIDED, That when under the requirements of this subdivision all warrants, coupons, bonds and/or warrants specified in this subdivision have been redeemed and interest payments made, no further income need be set aside and paid into the guaranty fund under the requirements of this subdivision unless other warrants remain outstanding and unpaid for six months or other coupons, bonds and/or warrants default or interest payments are not made: PROVIDED, FURTHER, HOWEVER, That no more than a total of twenty percent of the gross monthly revenue shall be required to be set aside and paid into the guaranty fund by these subdivisions (1) and (2). [1983 c 167 § 152; 1957 c 150 § 1.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Local utility districts: RCW 54.16.120.

54.24.210 Local improvement guaranty fund—Duties of the district. To comply with the requirements of setting aside and paying into the local improvement guaranty fund a proportion of the monthly gross revenues of the public utilities of a district, for which guaranteed local improvement bonds and/or warrants have been issued and are outstanding, the district shall bind and obligate itself so long as economically feasible to maintain and operate the utilities and establish, maintain and collect such rates for water and/or electric energy, as the case may be, as will produce gross revenues sufficient to maintain and operate the utilities, and make necessary provision for the guaranty fund. The district shall alter its rates for water and/or electric energy, as the case may be, from time to time and shall vary them in different portions of its territory to comply with such requirements. [1957 c 150 § 2.]

54.24.220 Local improvement guaranty fund—Warrants to meet liabilities. When a bond, warrant, or any coupon or interest payment guaranteed by the guaranty fund matures and there are not sufficient funds in the local utility district bond redemption fund to pay it, the county treasurer shall pay it from the local improvement guaranty fund of the public utility district; if there are not sufficient funds in the guaranty fund to pay it, it may be paid by issuance and delivery of a warrant upon the local improvement guaranty fund.

When the cash balance in the local improvement guaranty fund is insufficient for the required purposes, warrants drawing interest at a rate determined by the commission may be issued by the district auditor, against the fund to meet any liability accrued against it and shall issue them upon demand of the owners of any matured coupons, bonds, interest payments, and/or warrants guaranteed hereby, or to pay for any certificate of delinquency for delinquent installments of assessments as provided hereinafter. Guaranty fund warrants shall be a first lien in their order of issuance upon the guaranty fund. [1983 c 167 § 153; 1981 c 156 § 19; 1957 c 150 § 3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.24.230 Local improvement guaranty fund—Certificates of delinquency—Contents, purchase, payment, issuance, sale. Within twenty days after the date of delinquency of any annual installment of assessments levied for the purpose of paying the local improvement bonds and/or warrants of a district guaranteed hereunder, the county treasurer shall compile a statement of all installments delinquent together with the amount of accrued interest and penalty appurtenant to each installment, and shall forthwith purchase, for the district, certificates of delinquency for all such delinquent installments. Payment for the certificates shall be made from the local improvement guaranty fund and if there is not sufficient money in that fund to pay for the certificates, the county treasurer shall accept the local improvement guaranty fund warrants in payment therefor. All certificates shall be issued in the name of the local improvement guaranty fund

and all guaranty fund warrants issued in payment therefor shall be issued in the name of the appropriate local utility district fund. When a market is available and the commissioners direct, the county treasurer shall sell any certificates belonging to the local improvement guaranty fund, for not less than face value thereof plus accrued interest from date of issuance to date of sale.

The certificates shall be issued by the county treasurer, shall bear interest at the rate of ten percent per year, shall each be for the face value of the delinquent installment, plus accrued interest to date of issuance, plus a penalty of five percent of the face value, and shall set forth the:

- (1) Description of property assessed;
 - (2) Date the installment of assessment became delinquent; and
 - (3) Name of the owner or reputed owner, if known.
- [1957 c 150 § 4.]

54.24.240 Local improvement guaranty fund—Certificates of delinquency—Redemption, foreclosure. The certificates of delinquency may be redeemed by the owner of the property assessed at any time up to two years from the date of foreclosure of the certificate.

If a certificate is not redeemed on the second occurring first day of January, after its issuance, the county treasurer shall foreclose the certificate in the manner specified for the foreclosure of the lien of local improvement assessments in cities, and if no redemption is made within the succeeding two years, from date of the decree of foreclosure, shall execute and deliver unto the public utility district, as trustee for the fund, a deed conveying fee simple title to the property described in the foreclosed certificate. [1957 c 150 § 5.]

54.24.250 Local improvement guaranty fund—Subrogation of district as trustee of fund, effect on fund, disposition of proceeds. When there is paid out of a guaranty fund any sum on the principal or interest upon local improvement bonds, and/or warrants, or on the purchase of certificates of delinquency, the public utility district, as trustee for the fund, shall be subrogated to all rights of the owner of the bonds, and/or warrants, any interest coupons, or delinquent assessment installments so paid; and the proceeds thereof, or of the assessment underlying them, shall become a part of the guaranty fund. There shall also be paid into the guaranty fund the interest received from the bank deposits of the fund, as well as any surplus remaining in the local utility district funds guaranteed hereunder, after the payment of all outstanding bonds and/or warrants payable primarily out of such local utility district funds. As among the several issues of bonds and/or warrants guaranteed by the fund, no preference shall exist, but defaulted interest coupons and bonds and/or warrants shall be purchased out of the fund in the order of their presentation.

The commissioners shall prescribe, by resolution, appropriate rules for the guaranty fund consistent herewith. So much of the money of a guaranty fund as is necessary and not required for other purposes hereunder may be used to purchase property at county tax foreclosure sales or from the county after foreclosure in cases where the property is subject to unpaid local improvement assessments securing bonds

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and/or warrants guaranteed hereunder and such purchase is deemed necessary for the purpose of protecting the guaranty fund. In such cases the funds shall be subrogated to all rights of the district. After so acquiring title to real property, the district may lease or resell and convey it in the same manner that county property may be leased or resold and for such prices and on such terms as may be determined by resolution of the commissioners. All proceeds resulting from such resales shall belong to and be paid into the guaranty fund. [1983 c 167 § 154; 1957 c 150 § 6.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.24.260 Local improvement guaranty fund—Rights and remedies of bond or warrant holder which shall be printed on bond or warrant—Disposition of balance of fund. Neither the holder nor the owner of local improvement bonds and/or warrants guaranteed hereunder shall have a claim therefor against the public utility district, except for payment from the special assessment made for the improvement for which the bonds and/or warrants were issued, and except as against the guaranty fund. The district shall not be liable to any holder or owner of such local improvement bonds and/or warrants for any loss to the guaranty fund occurring in the lawful operation thereof by the district. The remedy of the holder of a local improvement bond and/or warrant shall be confined to the enforcement of the assessment and to the guaranty fund. A copy of the foregoing part of this section shall be plainly written, printed, or engraved on each local improvement bond and/or warrant guaranteed hereby. The establishment of a guaranty fund shall not be deemed at variance from any comprehensive plan heretofore adopted by a district.

If a guaranty fund at any time has balance therein in cash, and the obligations guaranteed thereby have all been paid off, the balance may be transferred to such other fund of the district as the commissioners shall, by resolution, direct. [1957 c 150 § 7.]

**Chapter 54.28 RCW
PRIVILEGE TAXES**

Sections

- 54.28.010 Definitions.
- 54.28.011 "Gross revenue" defined.
- 54.28.020 Tax imposed—Rates—Additional tax imposed.
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- 54.28.100 Use of moneys received by taxing district.
- 54.28.110 Voluntary payments by district to taxing entity for removal of property from tax rolls.
- 54.28.120 Amount of tax if district acquires electric utility property from public service company.

Special benefit assessments—Property taxes—Exemptions: RCW 84.34.300 through 84.34.380.

54.28.010 Definitions. As used in this chapter:

(1) "Operating property" means all of the property utilized by a public utility district in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale;

(2) "Taxing districts" means counties, cities, towns, school districts, and road districts;

(3) "Distributes to consumers" means the sale of electric energy to ultimate consumers thereof, and does not include sales of electric energy for resale by the purchaser;

(4) "Wholesale value" means all costs of a public utility district associated with the generation and transmission of energy from its own generation and transmission system to the point or points of inter-connection with a distribution system owned and used by a district to distribute such energy to consumers, or in the event a distribution system owned by a district is not used to distribute such energy, then the term means the gross revenues derived by a district from the sale of such energy to consumers;

(5) "Thermal electric generating facility" means a steam-powered electrical energy producing facility utilizing nuclear or fossil fuels;

(6) "Placed in operation" means delivery of energy into a transmission or distribution system for use or sale in such a manner as to establish a value accruing to the power plant operator, except operation incidental to testing or startup adjustments;

(7) "Impacted area" for a thermal electric generating facility on a federal reservation means that area in the state lying within thirty-five statute miles of the most commonly used entrance of the federal reservation and which is south of the southern boundary of township fifteen north. [1977 ex.s. c 366 § 1; 1967 ex.s. c 26 § 22; 1959 c 274 § 1; 1957 c 278 § 7. Prior: (i) 1941 c 245 § 1, part; Rem. Supp. 1941 § 11616-1, part. (ii) 1949 c 227 § 1(f); Rem. Supp. 1949 § 11616-2(f).]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

54.28.011 "Gross revenue" defined. "Gross revenue" shall mean the amount received from the sale of electric energy excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070. [1957 c 278 § 12.]

54.28.020 Tax imposed—Rates—Additional tax imposed. (1) There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, except with respect to thermal electric generating facilities taxed under RCW 54.28.025, such tax shall be the sum of the following amounts: (a) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district; (b) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district; (c) five percent of the first four mills per kilowatt-hour of revenue obtained by the district from the sale of self-generated energy for resale.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 8; 1982 1st ex.s. c 35 § 18; 1977 ex.s. c 366 § 2; 1959 c 274 § 2; 1957 c 278 § 2. Prior: 1949 c 227 § 1(a); 1947 c 259 § 1(a); 1941 c 245 § 2(a); Rem. Supp. 1949 § 11616-2(a).]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—1947 c 259: "If any section, subsection, clause, sentence or phrase of this act be for any reason adjudged unconstitutional, such adjudication shall not invalidate the remaining portions of this act, and the legislature hereby declares that it would have enacted this act notwithstanding the omission of the portion so adjudicated invalid." [1947 c 259 § 2.]

54.28.025 Tax imposed with respect to thermal electric generating facilities—Rate—Additional tax imposed.

(1) There is hereby levied and there shall be collected from every district operating a thermal electric generating facility, as defined in RCW 54.28.010 as now or hereafter amended, having a design capacity of two hundred fifty thousand kilowatts or more, located on a federal reservation, which is placed in operation after September 21, 1977, a tax for the act or privilege of engaging within the state in the business of generating electricity for use or sale, equal to one and one-half percent of wholesale value of energy produced for use or sale, except energy used in the operation of component parts of the power plant and associated transmission facilities under control of the person operating the power plant.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 9; 1982 1st ex.s. c 35 § 19; 1977 ex.s. c 366 § 6.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

54.28.030 Districts' report to department of revenue.

On or before the fifteenth day of March of each year, each district subject to this tax shall file with the department of revenue a report verified by the affidavit of its manager or secretary on forms prescribed by the department of revenue. Such report shall state (1) the gross revenues derived by the district from the sale of all distributed energy to consumers and the respective amounts derived from such sales within each county; (2) the gross revenues derived by the district from the sale of self-generated energy for resale; (3) the amount of all generated energy distributed from each of the facilities subject to taxation by a district from its own generating facilities, the wholesale value thereof, and the basis on which the value is computed; (4) the total cost of all generating facilities and the cost of acquisition of land and land rights for such facilities or for reservoir purposes in each county; and (5) such other and further information as the department of revenue reasonably may require in order to administer the provisions of this chapter. In case of failure by a district to file such report, the department may proceed to determine the information, which determination shall be contestable by the district only for actual fraud. [1977 ex.s. c 366 § 3; 1975 1st ex.s. c 278 § 30; 1959 c 274 § 3; 1957 c 278 §

3. Prior: 1949 c 227 § 1(b); 1947 c 259 § 1(b); 1941 c 245 § 2(b); Rem. Supp. 1949 § 11616-2(b).]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

54.28.040 Tax computed—Payment—Penalties—

Disposition. (1) Before May 1st, the department of revenue shall compute the tax imposed by this chapter for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before the following June 1st.

(2) If payment of any tax is not received by the department on or before the due date, there shall be assessed a penalty of five percent of the amount of the tax; if the tax is not received within one month of the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within two months of the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax.

(3) Upon receipt of the amount of each tax imposed the department of revenue shall deposit the same with the state treasurer, who shall deposit four percent of the revenues received under RCW 54.28.020(1) and 54.28.025(1) and all revenues received under RCW 54.28.020(2) and 54.28.025(2) in the general fund of the state and shall distribute the remainder in the manner hereinafter set forth. The state treasurer shall send a duplicate copy of each transmittal to the department of revenue. [1996 c 149 § 16; 1982 1st ex.s. c 35 § 20; 1975 1st ex.s. c 278 § 31; 1957 c 278 § 4. Prior: 1949 c 227 § 1(c); 1947 c 259 § 1(c); 1941 c 245 § 2(c); Rem. Supp. 1949 § 11616-2(c).]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

54.28.050 Distribution of tax. After computing the tax imposed by RCW 54.28.020(1), the department of revenue shall instruct the state treasurer, after placing thirty-seven and six-tenths percent in the state general fund to be dedicated for the benefit of the public schools, to distribute the balance collected under RCW 54.28.020(1)(a) to each county in proportion to the gross revenue from sales made within each county; and to distribute the balance collected under RCW 54.28.020(1) (b) and (c) as follows: If the entire generating facility, including reservoir, if any, is in a single county then all of the balance to the county where such generating facility is located. If any reservoir is in more than one county, then to each county in which the reservoir or any portion thereof is located a percentage equal to the percentage determined by dividing the total cost of the generating facilities, including adjacent switching facilities, into twice the cost of land and land rights acquired for any reservoir within each county, land and land rights to be defined the same as used by the federal power commission. If the powerhouse and dam, if any, in connection with such reservoir are in more than one county, the balance shall be divided sixty percent to the county in which the owning district is located and forty percent to the other county or counties or if said powerhouse and dam, if

any, are owned by a joint operating agency organized under chapter 43.52 RCW, or by more than one district or are outside the county of the owning district, then to be divided equally between the counties in which such facilities are located. If all of the powerhouse and dam, if any, are in one county, then the balance shall be distributed to the county in which the facilities are located.

The provisions of this section shall not apply to the distribution of taxes collected under RCW 54.28.025. [1982 1st ex.s. c 35 § 21; 1980 c 154 § 8; 1977 ex.s. c 366 § 4; 1975 1st ex.s. c 278 § 32; 1959 c 274 § 4; 1957 c 278 § 5. Prior: 1949 c 227 § 1(d); 1947 c 259 § 1(d); 1941 c 245 § 2(d); Rem. Supp. 1949 § 11616-2(d).]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Effective date—1959 c 274: "The effective date of section 4 of this 1959 amendatory act shall be January 1, 1960." [1959 c 274 § 6.]

54.28.055 Distribution of tax proceeds from thermal electric generating facilities. (1) After computing the tax imposed by RCW 54.28.025(1), the department of revenue shall instruct the state treasurer to distribute the amount collected as follows:

(a) Fifty percent to the state general fund for the support of schools; and

(b) Twenty-two percent to the counties, twenty-three percent to the cities, three percent to the fire protection districts, and two percent to the library districts.

(2) Each county, city, fire protection district and library district shall receive a percentage of the amount for distribution to counties, cities, fire protection districts and library districts, respectively, in the proportion that the population of such district residing within the impacted area bears to the total population of all such districts residing within the impacted area. For the purposes of this chapter, the term "library district" includes only regional libraries as defined in RCW 27.12.010(4), rural county library districts as defined in RCW 27.12.010(5), intercounty rural library districts as defined in RCW 27.12.010(6), and island library districts as defined in RCW 27.12.010(7). The population of a library district, for purposes of such a distribution, shall not include any population within the library district and the impact area that also is located within a city or town.

(3) If any distribution pursuant to subsection (1)(b) of this section cannot be made, then that share shall be prorated among the state and remaining local districts.

(4) All distributions directed by this section to be made on the basis of population shall be calculated in accordance with data to be provided by the office of financial management. [1986 c 189 § 1; 1982 1st ex.s. c 35 § 22; 1979 c 151 § 165; 1977 ex.s. c 366 § 7.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

54.28.060 Interest. Interest at the rate as computed under RCW 82.32.050(2) shall be added to the tax hereby imposed from the due date until the date of payment. The tax

shall constitute a debt to the state and may be collected as such. [1996 c 149 § 12; 1957 c 278 § 6. Prior: 1949 c 227 § 1(e); 1947 c 259 § 1(e); 1941 c 245 § 2(e); Rem. Supp. 1949 § 11616-2(e).]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

54.28.070 Municipal taxes—May be passed on. Any city or town in which a public utility district operates works, plants or facilities for the distribution and sale of electricity shall have the power to levy and collect from such district a tax on the gross revenues derived by such district from the sale of electricity within the city or town, exclusive of the revenues derived from the sale of electricity for purposes of resale. Such tax when levied shall be a debt of the district, and may be collected as such. Any such district shall have the power to add the amount of such tax to the rates or charges it makes for electricity so sold within the limits of such city or town. [1941 c 245 § 3; Rem. Supp. 1941 § 11616-3.]

54.28.080 Additional tax for payment on bonded indebtedness of school districts. Whenever any district acquires an operating property from any private person, firm, or corporation and a portion of the operating property is situated within the boundaries of any school district and at the time of such acquisition there is an outstanding bonded indebtedness of the school district, then the public utility district shall, in addition to the tax imposed by this chapter, pay directly to the school district a proportion of all subsequent payments by the school district of principal and interest on said bonded indebtedness, said additional payments to be computed and paid as follows: The amount of principal and interest required to be paid by the school district shall be multiplied by the percentage which the assessed value of the property acquired bore to the assessed value of the total property in the school district at the time of such acquisition. Such additional amounts shall be paid by the public utility district to the school district not less than fifteen days prior to the date that such principal and interest payments are required to be paid by the school district. In addition, any public utility district which acquires from any private person, firm, or corporation an operating property situated within a school district, is authorized to make voluntary payments to such school district for the use and benefit of the school district. [1957 c 278 § 8. Prior: 1949 c 227 § 1(g); 1941 c 245 § 2; Rem. Supp. 1949 § 11616-2(g).]

54.28.090 Deposit of funds to credit of certain taxing districts. The county legislative authority of each county shall direct the county treasurer to deposit funds to the credit of each taxing district in the county, other than school districts, according to the manner they deem most equitable; except not less than an amount equal to three-fourths of one percent of the gross revenues obtained by a district from the sale of electric energy within any incorporated city or town shall be remitted to such city or town. Information furnished by the district to the county legislative authority shall be the basis for the determination of the amount to be paid to such cities or towns.

The provisions of this section shall not apply to the distribution of taxes collected under RCW 54.28.025. [1980 c 154 § 9; 1977 ex.s. c 366 § 5; 1957 c 278 § 10.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

54.28.100 Use of moneys received by taxing district. All moneys received by any taxing district shall be used for purposes for which state taxes may be used under the provisions of the state constitution. [1957 c 278 § 11.]

Revenue and taxation: State Constitution Art. 7.

54.28.110 Voluntary payments by district to taxing entity for removal of property from tax rolls. Whenever, hereafter, property is removed from the tax rolls as a result of the acquisition of operating property or the construction of a generating plant by a public utility district, such public utility district may make voluntary payments to any municipal corporation or other entity authorized to levy and collect taxes in an amount not to exceed the amount of tax revenues being received by such municipal corporation or other entity at the time of said acquisition or said construction and which are lost by such municipal corporation or other entity as a result of the acquisition of operating property or the construction of a generating plant by the public utility district: PROVIDED, That this section shall not apply to taxing districts as defined in RCW 54.28.010, and: PROVIDED FURTHER, That in the event any operating property so removed from the tax rolls is dismantled or partially dismantled the payment which may be paid hereunder shall be correspondingly reduced. [1957 c 278 § 13.]

54.28.120 Amount of tax if district acquires electric utility property from public service company. In the event any district hereafter purchases or otherwise acquires electric utility properties comprising all or a portion of an electric generation and/or distribution system from a public service company, as defined in RCW 80.04.010, the total amount of privilege taxes imposed under chapter 278, Laws of 1957 to be paid by the district annually on the combined operating property within each county where such utility property is located, irrespective of any other basis of levy contained in this chapter, will be not less than the combined total of the ad valorem taxes, based on regular levies, last levied against the electric utility property constituting the system so purchased or acquired plus the taxes paid by the district for the same year on the revenues of other operating property in the same county under terms of this chapter. If all or any portion of the property so acquired is subsequently sold, or if rates charged to purchasers of electric energy are reduced, the amount of privilege tax required under this section shall be proportionately reduced. [1957 c 278 § 14.]

Chapter 54.32 RCW

CONSOLIDATION AND ANNEXATION

Sections

54.32.001	Actions subject to review by boundary review board.
54.32.010	Consolidation of districts—Property taxed—Boundaries enlarged.

54.32.040 Right of county-wide utility district to acquire distribution properties.

Annexation of territory: RCW 54.04.035.

54.32.001 Actions subject to review by boundary review board. Actions taken under chapter 54.32 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 49.]

54.32.010 Consolidation of districts—Property taxed—Boundaries enlarged. Two or more contiguous public utility districts may become consolidated into one public utility district after proceedings had as required by *sections 8909, 8910 and 8911, of Remington’s Compiled Statutes of Washington, PROVIDED, That a ten percent petition shall be sufficient; and public utility districts shall be held to be municipal corporations within the meaning of said sections, and the commission shall be held to be the legislative body of the public utility district as the term legislative body is used in said sections: PROVIDED, That any such consolidation shall in nowise affect or impair the title to any property owned or held by any such public utility district, or in trust therefor, or any debts, demands, liabilities or obligations existing in favor of or against either of the districts so consolidated, or any proceeding then pending: PROVIDED, FURTHER, That no property within either of the former public utility districts shall ever be taxed to pay any of the indebtedness of either of the other such former districts.

The boundaries of any public utility district may be enlarged and new territory included therein, after proceedings had as required by **section 8894 of Remington’s Compiled Statutes of Washington: PROVIDED, That a ten percent petition shall be sufficient; and public utility districts shall be held to be municipal corporations within the meaning of said section, and the commission shall be held to be the legislative body of the public utility district: PROVIDED, That no property within such territory so annexed shall ever be taxed to pay any portion of any indebtedness of such public utility district contracted prior to or existing at the date of such annexation.

In all cases wherein public utility districts of less area than an entire county desire to be consolidated with a public utility district including an entire county, and in all cases wherein it is desired to enlarge a public utility district including an entire county, by annexing a lesser area than an entire county, no election shall be required to be held in the district including an entire county. [1931 c 1 § 10; RRS § 11614. Formerly RCW 54.32.010 through 54.32.030.]

Reviser’s note: *(1) Rem. Comp. Stat. §§8909, 8910, and 8911 relating to the consolidation of municipal corporations had been repealed and reenacted by 1929 c 64 at the time the above section was enacted. 1929 c 64 was compiled as RRS § 8909-1 through 8909-12; see chapter 35.10 RCW.

***(2) Rem. Comp. Stat. §8894 became chapter 35.12 RCW. RCW 35.12.010, the only section in that chapter, was repealed by 1969 ex.s. c 89 § 18.

54.32.040 Right of county-wide utility district to acquire distribution properties. Upon the formation of a county-wide public utility district in any county such district shall have the right, in addition to any other right provided by law, to acquire by purchase or condemnation any electrical distribution properties in the county from any other public

utility district or combination of public utility districts for a period of five years from the time of organization of said public utility district. [1951 c 272 § 2.]

Acquisition of electrical distribution property from public utility district by cities and towns: RCW 35.92.054.

Chapter 54.36 RCW

LIABILITY TO OTHER TAXING DISTRICTS

Sections

- 54.36.010 Definitions.
- 54.36.020 Increased financial burden on school district—Determination of number of construction pupils.
- 54.36.030 Compensation of school district for construction pupils—Computation.
- 54.36.040 Compensation of school district for construction pupils—Amount to be paid.
- 54.36.050 Compensation of school district for construction pupils—How paid when more than one project in the same school district.
- 54.36.060 Power to make voluntary payments to school district for capital construction.
- 54.36.070 Increased financial burden on county or other taxing district—Power to make payments.
- 54.36.080 Funds received by school district—Equalization apportionment.

54.36.010 Definitions. As used in this chapter: "Public utility district" means public utility district or districts or a joint operating agency or agencies.

"Construction project" means the construction of generating facilities by a public utility district. It includes the relocation of highways and railroads, by whomever done, to the extent that it is occasioned by the overflowing of their former locations, or by destruction or burying incident to the construction.

"Base-year enrollment" means the number of pupils enrolled in a school district on the first of May next preceding the date construction was commenced.

"Subsequent-year enrollment" means the number of pupils enrolled in a school district on any first of May after construction was commenced.

"Construction pupils" means pupils who have a parent who is a full time employee on the construction project and who moved into the school district subsequent to the first day of May next preceding the day the construction was commenced.

"Nonconstruction pupils" means other pupils. [1975 1st ex.s. c 10 § 1; 1973 1st ex.s. c 154 § 99; 1957 c 137 § 1.]

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

Operating agencies: Chapter 43.52 RCW.

54.36.020 Increased financial burden on school district—Determination of number of construction pupils. When as the result of a public utility district construction project a school district considers it is suffering an increased financial burden in any year during the construction project, it shall determine the number of construction pupils enrolled in the school district on the first of May of such year. [1957 c 137 § 2.]

54.36.030 Compensation of school district for construction pupils—Computation. If the subsequent-year enrollment exceeds one hundred and three percent of the base-year enrollment, the public utility district shall compen-

sate the school district for a number of construction pupils computed as follows:

(1) If the subsequent-year enrollment of nonconstruction pupils is less than the base-year enrollment, compensation shall be paid for the total number of all pupils minus one hundred and three percent of the base-year enrollment.

(2) If the subsequent-year enrollment of nonconstruction pupils is not less than the base-year enrollment, compensation shall be paid for the total number of construction pupils minus three percent of the base-year enrollment. [1957 c 137 § 3.]

54.36.040 Compensation of school district for construction pupils—Amount to be paid. The compensation to be paid per construction pupils as computed in RCW 54.36.030 shall be one-third of the average per-pupil cost of the local school district, for the school year then current. [1957 c 137 § 4.]

54.36.050 Compensation of school district for construction pupils—How paid when more than one project in the same school district. If more than one public utility district or joint operating agency is carrying on a construction project in the same school district, the number of construction pupils for whom the school district is to receive compensation shall be computed as if the projects were constructed by a single agency. The public utility districts or joint operating agencies involved shall divide the cost of such compensation between themselves in proportion to the number of construction pupils occasioned by the operations of each. [1957 c 137 § 5.]

54.36.060 Power to make voluntary payments to school district for capital construction. Public utility districts are hereby authorized to make voluntary payments to a school district for capital construction if their construction projects cause an increased financial burden for such purpose on the school district. [1957 c 137 § 6.]

54.36.070 Increased financial burden on county or other taxing district—Power to make payments. Public utilities are hereby authorized to make payments to a county or other taxing district in existence before the commencement of construction on the construction project which suffers an increased financial burden because of their construction projects, but such amount shall not be more than the amount by which the property taxes levied against the contractors engaged in the work on the construction project failed to meet said increased financial burden. [1957 c 137 § 7.]

54.36.080 Funds received by school district—Equalization apportionment. The funds paid by a public utility district to a school district under the provisions of this chapter shall not be considered a school district receipt by the superintendent of public instruction in determining equalization apportionments under *RCW 28.41.080. [1957 c 137 § 8.]

***Reviser's note:** RCW 28.41.080 was repealed by 1965 ex.s. c 154 § 12; as a part thereof said section concludes with the following proviso ". . . PROVIDED, That the provisions of such statutes herein repealed insofar as they are expressly or impliedly adopted by reference or otherwise referred to

in or for the benefit of any other statutes, are hereby preserved for such purposes."

Chapter 54.40 RCW

FIVE COMMISSIONER DISTRICTS

(Formerly: First-class districts)

Sections

54.40.010	Five commissioner districts—Requirements.
54.40.020	Existing districts—Qualifications—Voters' approval.
54.40.030	Transmittal of copies of federal hydroelectric license to county auditor.
54.40.040	Criteria, election to reclassify as a five commissioner district—Ballot form—Vote required.
54.40.050	Petition for reclassification—Certificate of sufficiency—Election.
54.40.060	Division of district.
54.40.070	Special election for commissioners from districts—Terms.

54.40.010 Five commissioner districts—Requirements. A five commissioner public utility district is a district that (1) either: (a) Has or had a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred and fifty million dollars, including interest during construction; or (b) has a population of five hundred thousand or more; and (2) voters of the district approved a ballot proposition authorizing the district to become a five commissioner district as provided under RCW 54.40.040. All other public utility districts shall be known as three commissioner districts. [1994 c 223 § 57; 1977 ex.s. c 36 § 1; 1959 c 265 § 2.]

54.40.020 Existing districts—Qualifications—Voters' approval. Every public utility district which on September 21, 1977, shall be in existence and have such a license shall be qualified to become a five commissioner district upon approval of the voters of said district, and every public utility district which on September 21, 1977, shall have become a first-class district as previously provided by chapter 265, Laws of 1959 shall be a five commissioner district. [1977 ex.s. c 36 § 2; 1959 c 265 § 3.]

54.40.030 Transmittal of copies of federal hydroelectric license to county auditor. Within five days after a public utility district shall receive a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred and fifty million dollars, including interest during construction, or, in the case of a district which on September 21, 1977, is in existence and has such a license within five days of September 21, 1977, the district shall forward a true copy of said license, certified by the secretary of the district, to the county auditor of the county wherein said district is located. [1977 ex.s. c 36 § 3; 1959 c 265 § 4.]

54.40.040 Criteria, election to reclassify as a five commissioner district—Ballot form—Vote required. A public utility district that has or had a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred fifty million dollars, including interest during construction, or has a population of five hundred thousand or more, shall be classified as a five commissioner district if voters of the district approve a ballot

proposition authorizing the change. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot in substantially the following terms:

Shall Public Utility District No. . . . be reclassified a Five Commissioner District for the purpose of increasing the number of commissioners to five YES
 NO

Should a majority of the voters voting on the question approve the proposition, the district shall be declared a five commissioner district upon the certification of the election returns. [1994 c 223 § 58; 1977 ex.s. c 36 § 4; 1959 c 265 § 5.]

54.40.050 Petition for reclassification—Certificate of sufficiency—Election. The question of reclassification of a public utility district that has or had a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred fifty million dollars, including interest during construction, or has a population of five hundred thousand or more, as a five commissioner public utility district shall be submitted to the voters if a petition proposing the change is filed with the county auditor of the county in which the district is located, identifying the district by number and praying that an election be held to determine whether it shall become a five commissioner district. The petition must be signed by a number of registered voters of the district equal to at least ten percent of the number of registered voters in the district who voted at the last general election and include each signer’s residence address.

The petition shall be filed with the county auditor for verification of the validity of the signatures. Within thirty days after receipt of the petition, the county auditor shall determine the sufficiency of the petition. If the petition is found insufficient, the person who filed the same shall be notified by mail and he shall have an additional fifteen days from the date of mailing such notice within which to submit additional signatures, and the county auditor shall have an additional thirty days after the submission of such additional signatures to determine the validity of the entire petition. No signature may be withdrawn after the petition has been filed.

If the petition, including these additional signatures if any, is found sufficient, the county auditor shall certify its sufficiency to the public utility district and if the commissioners of the public utility district had certified to the county auditor the eligibility of the district for reclassification as provided in this chapter, the county auditor shall submit to the voters of the district the question of whether the district shall become a five commissioner district. The election shall be held at the next state general election occurring sixty or more days after the petition was certified as having sufficient valid signatures. [1994 c 223 § 59; 1977 ex.s. c 36 § 5; 1959 c 265 § 6.]

54.40.060 Division of district. If the reclassification to a five commissioner district is approved by the voters, the public utility district commission within sixty days after the results of said election are certified shall divide the public

utility district into two districts of as nearly equal population as possible, and shall designate the districts as District A and District B. [1994 c 223 § 60; 1977 ex.s. c 36 § 6; 1959 c 265 § 7.]

54.40.070 Special election for commissioners from districts—Terms. Within thirty days after the public utility district commission divides the district into District A and District B, the county legislative authority shall call a special election, to be held at the next special election date provided for under *RCW 29.13.010 that occurs sixty or more days after the call, at which time the initial commissioners for District A and District B shall be elected. No primary shall be held and a special filing period shall be opened as provided in *RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for each position shall be elected.

The person who is elected receiving the greatest number of votes shall be elected to a four-year term of office, and the other person who is elected shall be elected to a two-year term of office, if the election is held in an even-numbered year, or the person who is elected receiving the greatest number of votes shall be elected to a three-year term of office, and the other person who is elected shall be elected to a one-year term of office, if the election is held in an odd-numbered year. The length of these terms of office shall be calculated from the first day in January in the year following their elections.

The newly elected commissioners shall assume office immediately after being elected and qualified and shall serve until their successors are elected and qualified and assume office in accordance with *RCW 29.04.170. Each successor shall be elected to a four-year term of office. [1994 c 223 § 61; 1977 ex.s. c 36 § 7; 1959 c 265 § 8.]

***Reviser’s note:** RCW 29.13.010, 29.15.170, 29.15.180, and 29.04.170 were recodified as RCW 29A.04.320, 29A.24.170, 29A.24.180, and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320, 29A.24.170, and 29A.24.180 were subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, 29A.24.170, and 29A.24.180, see RCW 29A.04.321, 29A.24.171, and 29A.24.181, respectively.

Chapter 54.44 RCW

NUCLEAR, THERMAL, ELECTRIC GENERATING POWER FACILITIES—JOINT DEVELOPMENT

Sections

- 54.44.010 Declaration of public purpose.
- 54.44.020 Authority to participate in and enter into agreements—Percentage of ownership—Expenses—Taxes—Payments.
- 54.44.030 Liability of city, joint operating agency, or public utility district—Extent—Limitations.
- 54.44.040 Authority to provide money and/or property, issue revenue bonds—Declaration of public purpose.
- 54.44.050 Depositories—Disbursement of funds.
- 54.44.060 Agreements to conform to applicable laws.
- 54.44.900 Liberal construction—Not to affect existing acts.
- 54.44.901 Severability—1973 1st ex.s. c 7.
- 54.44.910 Severability—1967 c 159.

54.44.010 Declaration of public purpose. It is declared to be in the public interest and for a public purpose that cities of the first class, public utility districts, joint operating agencies organized under chapter 43.52 RCW, regulated electrical companies and, rural electrical cooperatives

including generation and transmission cooperatives be permitted to participate together in the development of nuclear and other thermal power facilities and transmission facilities as hereinafter provided as one means of achieving economies of scale and thereby promoting the economic development of the state and its natural resources to meet the future power needs of the state and all its inhabitants. [1975-'76 2nd ex.s. c 72 § 1; 1973 1st ex.s. c 7 § 1; 1967 c 159 § 1.]

Severability—1975-'76 2nd ex.s. c 72: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 72 § 3.]

Legislative finding—Emergency—1973 1st ex.s. c 7: "The legislature finds that the immediate planning, financing, acquisition and construction of electric generating and transmission facilities as provided in sections 1 through 6 of this 1973 amendatory act is a public necessity to meet the power requirements of the public utility districts, cities, joint operating agencies and regulated utilities referred to in sections 1 through 6 of this 1973 amendatory act and the inhabitants of this state; further that such public utility districts, cities, joint operating agencies and regulated utilities are ready, willing and able to undertake such planning, financing, acquisition and construction of said electric generating and transmission facilities immediately upon the passage of sections 1 through 6 of this 1973 amendatory act. This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1973 1st ex.s. c 7 § 7.]

Energy facilities, site locations: Chapter 80.50 RCW.

Nuclear energy and radiation: Chapter 70.98 RCW.

54.44.020 Authority to participate in and enter into agreements—Percentage of ownership—Expenses—Taxes—Payments. (1) Except as provided in subsections (2) and (3) of this section, cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, any such cities and public utility districts which operate electric generating facilities or distribution systems and any joint operating agency shall have power and authority to participate and enter into agreements with each other and with electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the public utility commissioner of Oregon, hereinafter called "regulated utilities", and with rural electric cooperatives, including generation and transmission cooperatives for the undivided ownership of any type of electric generating plants and facilities, including, but not limited to, nuclear and other thermal power generating plants and facilities and transmission facilities including, but not limited to, related transmission facilities, hereinafter called "common facilities", and for the planning, financing, acquisition, construction, operation and maintenance thereof. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof and shall own and control a like percentage of the electrical output thereof.

(2) Cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, shall have the power and authority to participate and enter into agreements for the undivided ownership of a coal-fired thermal electric generating plant and facility placed in operation before July 1, 1975,

including related common facilities, and for the planning, financing, acquisition, construction, operation, and maintenance of the plant and facility. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by the city, district, or agency, for the acquisition and construction of the facility, and shall own and control a like percentage of the electrical output thereof. Cities of the first class, public utility districts, and joint operating agencies may enter into agreements under this subsection with each other, with regulated utilities, with rural electric cooperatives, with electric companies subject to the jurisdiction of the regulatory commission of any other state, and with any power marketer subject to the jurisdiction of the federal energy regulatory commission.

(3)(a) Except as provided in subsections (1) and (2) of this section, cities of the first class, public utility districts organized under chapter 54.08 RCW, any cities that operate electric generating facilities or distribution systems, any joint operating agency organized under chapter 43.52 RCW, or any separate legal entity comprising two or more thereof organized under chapter 39.34 RCW shall, either directly or as co-owners of a separate legal entity, have power and authority to participate and enter into agreements described in (b) and (c) of this subsection with each other, and with any of the following, either directly or as co-owners of a separate legal entity:

(i) Any public agency, as that term is defined in RCW 39.34.020;

(ii) Electrical companies that are subject to the jurisdiction of the Washington utilities and transportation commission or the regulatory commission of any state; and

(iii) Rural electric cooperatives and generation and transmission cooperatives or any wholly owned subsidiaries of either rural electric cooperatives or generation and transmission cooperatives.

(b) Agreements may provide for:

(i) The undivided ownership, or indirect ownership in the case of a separate legal entity, of common facilities that include any type of electric generating plant powered by an eligible renewable resource, as defined in RCW 19.285.030, and transmission facilities including, but not limited to, related transmission facilities, and for the planning, financing, acquisition, construction, operation, and maintenance thereof; and

(ii) The formation, operation, and ownership of a separate legal entity that may own the common facilities.

(c) Agreements must provide that each city, public utility district, or joint operating agency:

(i) Owns a percentage of any common facility or a percentage of any separate legal entity equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof; and

(ii) Owns and controls, or has a right to own and control in the case of a separate legal entity, a like percentage of the electrical output thereof.

(d) Any entity in which a public utility district participates, either directly or as co-owner of a separate legal entity, in constructing or developing a common facility pursuant to

this subsection shall comply with the provisions of chapter 39.12 RCW.

(4) Each participant shall defray its own interest and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition and construction of any common facility, or any additions or betterments thereto. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the common facility.

(5) Each city, public utility district, joint operating agency, regulated utility, and cooperatives participating in the direct or indirect ownership or operation of a common facility described in subsections (1) through (3) of this section shall pay all taxes chargeable to its share of the common facility and the electric energy generated thereby under applicable statutes as now or hereafter in effect, and may make payments during preliminary work and construction for any increased financial burden suffered by any county or other existing taxing district in the county in which the common facility is located, pursuant to agreement with such county or taxing district. [2008 c 198 § 3; 1997 c 230 § 2; 1975-'76 2nd ex.s. c 72 § 2; 1974 ex.s. c 72 § 1; 1973 1st ex.s. c 7 § 2; 1967 c 159 § 2.]

Finding—2008 c 198: See note following RCW 39.34.030.

Severability—1975-'76 2nd ex.s. c 72: See note following RCW 54.44.010.

54.44.030 Liability of city, joint operating agency, or public utility district—Extent—Limitations. In carrying out the powers granted in this chapter, each such city, public utility district, or joint operating agency shall be severally liable only for its own acts and not jointly or severally liable for the acts, omissions or obligations of others. No money or property supplied by any such city, public utility district, or joint operating agency for the planning, financing, acquisition, construction, operation or maintenance of any common facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of any city, public utility district, or joint operating agency in any common facility be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon any public utility district, city, or joint operating agency unless authorized or approved by resolution or ordinance of its governing body. [1973 1st ex.s. c 7 § 3; 1967 c 159 § 3.]

54.44.040 Authority to provide money and/or property, issue revenue bonds—Declaration of public purpose. Any such city, public utility district, or joint operating agency participating in common facilities under this chapter, without an election, may furnish money and provide property, both real and personal, issue and sell revenue bonds pledging revenues of its electric system and its interest or share of the revenues derived from the common facilities and any additions and betterments thereto in order to pay its respective share of the costs of the planning, financing, acquisition and construction thereof. Such bonds shall be issued under the provisions of applicable laws authorizing the

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issuance of revenue bonds for the acquisition and construction of electric public utility properties by cities, public utility districts, or joint operating agencies as the case may be. All moneys paid or property supplied by any such city, public utility district, or joint operating agency for the purpose of carrying out the powers conferred herein are declared to be for a public purpose. [1973 1st ex.s. c 7 § 4; 1967 c 159 § 4.]

54.44.050 Depositories—Disbursement of funds. All moneys belonging to cities, public utility districts, and joint operating agencies in connection with common facilities shall be deposited in such depositories as qualify for the deposit of public funds and shall be accounted for and disbursed in accordance with applicable law. [1973 1st ex.s. c 7 § 5; 1967 c 159 § 5.]

54.44.060 Agreements to conform to applicable laws. Any agreement with respect to work to be done or material furnished by any such city, public utility district, or joint operating agency in connection with the construction, maintenance and operation of the common facilities, and any additions and betterments thereto shall be in conformity, as near as may be, with applicable laws now or hereafter in effect relating to public utility districts or cities of the first class. [1973 1st ex.s. c 7 § 6; 1967 c 159 § 6.]

54.44.900 Liberal construction—Not to affect existing acts. The provisions of this chapter shall be liberally construed to effectuate the purposes thereof. This chapter shall not be construed to affect any existing act or part thereof relating to the construction, operation or maintenance of any public utility. [1967 c 159 § 7.]

54.44.901 Severability—1973 1st ex.s. c 7. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 7 § 8.]

54.44.910 Severability—1967 c 159. If any provisions of this act or its application to any person or circumstance shall be held invalid or unconstitutional, the remainder of this act or its application to other persons or circumstances shall not be affected. [1967 c 159 § 8.]

Chapter 54.48 RCW

AGREEMENTS BETWEEN ELECTRICAL PUBLIC UTILITIES AND COOPERATIVES

Sections

- 54.48.010 Definitions.
- 54.48.020 Legislative declaration of policy.
- 54.48.030 Agreements between public utilities and cooperatives authorized—Boundaries—Extension procedures—Purchase or sale—Approval.
- 54.48.040 Cooperatives not to be classified as public utilities or under authority of utilities and transportation commission.

54.48.010 Definitions. When used in this chapter:

(1) "Public utility" means any privately owned public utility company engaged in rendering electric service to the

public for hire, any public utility district engaged in rendering service to residential customers and any city or town engaged in the electric business.

(2) "Cooperative" means any cooperative having authority to engage in the electric business. [1969 c 102 § 1.]

54.48.020 Legislative declaration of policy. The legislature hereby declares that the duplication of the electric lines and service of public utilities and cooperatives is uneconomical, may create unnecessary hazards to the public safety, discourages investment in permanent underground facilities, and is unattractive, and thus is contrary to the public interest and further declares that it is in the public interest for public utilities and cooperatives to enter into agreements for the purpose of avoiding or eliminating such duplication. [1969 c 102 § 2.]

54.48.030 Agreements between public utilities and cooperatives authorized—Boundaries—Extension procedures—Purchase or sale—Approval. In aid of the foregoing declaration of policy, any public utility and any cooperative is hereby authorized to enter into agreements with any one or more other public utility or one or more other cooperative for the designation of the boundaries of adjoining service areas which each such public utility or each such cooperative shall observe, for the establishment of procedures for orderly extension of service in adjoining areas not currently served by any such public utility or any such cooperative and for the acquisition or disposal by purchase or sale by any such public utility or any such cooperative of duplicating utility facilities, which agreements shall be for a reasonable period of time not in excess of twenty-five years: PROVIDED, That the participation in such agreement of any public utility which is an electrical company under RCW 80.04.010, excepting cities and towns, shall be approved by the Washington utilities and transportation commission. [1969 c 102 § 3.]

54.48.040 Cooperatives not to be classified as public utilities or under authority of utilities and transportation commission. Nothing herein shall be construed to classify a cooperative having authority to engage in the electric business as a public utility or to include cooperatives under the authority of the Washington utilities and transportation commission. [1969 c 102 § 4.]

Chapter 54.52 RCW

VOLUNTARY CONTRIBUTIONS TO ASSIST LOW-INCOME CUSTOMERS

Sections

- 54.52.010 Voluntary contributions to assist low-income residential customers—Administration.
- 54.52.020 Disbursal of contributions—Quarterly report.
- 54.52.030 Contributions not considered commingling of funds.

54.52.010 Voluntary contributions to assist low-income residential customers—Administration. A public utility district may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the dis-

trict in paying their electricity bills. All funds received by the district in response to such requests shall be (1) transmitted (a) to the grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs for the state in the district's service area or (b) to a charitable organization within the district's service area; or (2) retained by the district. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their electricity bills. The grantee, charitable organization, or district is responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified. [2007 c 132 § 1; 1995 c 399 § 145; 1985 c 6 § 20; 1984 c 59 § 1.]

54.52.020 Disbursal of contributions—Quarterly report. All assistance provided under this chapter shall be disbursed by the grantee, charitable organization, or district. When applicable, the public utility district will be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check will be issued jointly payable to the customer and the public utility district. The availability of funds for assistance to a district's low-income customers as a result of voluntary contributions shall not reduce the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community, trade, and economic development within the district's service area. When applicable, the grantee or charitable organization shall provide the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance. [2007 c 132 § 2; 1995 c 399 § 146; 1985 c 6 § 21; 1984 c 59 § 2.]

54.52.030 Contributions not considered commingling of funds. Contributions received under a program implemented by a public utility district in compliance with this chapter shall not be considered a commingling of funds. [1984 c 59 § 3.]

Title 55

SANITARY DISTRICTS

Chapters

55.04 Formation and dissolution.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

Credit card use by local governments: RCW 43.09.2855.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Chapter 55.04 RCW

FORMATION AND DISSOLUTION

Sections

55.04.050 Dissolution.

55.04.060 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.

Elections: Title 29A RCW.

55.04.050 Dissolution. See port districts, chapter 53.48 RCW.

55.04.060 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

Title 57

WATER-SEWER DISTRICTS

Chapters

- 57.02 General provisions.**
- 57.04 Formation and dissolution.**
- 57.06 Validation and construction.**
- 57.08 Powers.**
- 57.12 Officers and elections.**
- 57.16 Comprehensive plan—Local improvement districts.**
- 57.20 Finances.**
- 57.22 Contracts for system extensions.**
- 57.24 Annexation of territory.**
- 57.28 Withdrawal of territory.**
- 57.32 Consolidation of districts—Transfer of part of district.**
- 57.36 Merger of districts.**
- 57.42 Disposition of property to public utility district.**
- 57.46 Voluntary contributions to assist low-income customers.**
- 57.90 Disincorporation of districts in counties with 210,000 population or more.**

Assumption of jurisdiction over district or territory to city or town: Chapter 35.13A RCW.

City sewerage, drainage, and water supply: RCW 35.21.210, chapters 35.67 and 35.92 RCW.

Conveyances of real property by public bodies—Recording: RCW 65.08.095.

County water systems, authority, procedure: Chapter 36.94 RCW.

Credit card use by local governments: RCW 43.09.2855.

Furnishing impure water: RCW 70.54.020.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Irrigation districts authorized to acquire water district's water system, authority to convey: RCW 87.03.015.

Municipal corporation may authorize investment of funds that are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.

Pollution of watershed or source of drinking water: RCW 70.54.010, 70.54.030.

Port district may provide sewer and water utilities in adjacent areas: RCW 53.08.040.

Chapter 57.02 RCW GENERAL PROVISIONS

Sections

- 57.02.001 Reclassification of water and sewer districts—Previous actions valid.
- 57.02.010 Petition signatures of property owners—Rules governing.
- 57.02.015 Board of commissioners may notify property owners about petitions—Review of petitions—Information.
- 57.02.020 Claims against district.
- 57.02.030 Title to be liberally construed.
- 57.02.040 Water-sewer district activities to be approved—Criteria for approval by county legislative authority.
- 57.02.045 Approval by county legislative authority final, when—Boundary review board approval.
- 57.02.050 Multicounty districts—Delegation of duties—Exceptions.
- 57.02.070 Ratification of actions for the formation, annexation, consolidation, or merger of water districts prior to July 10, 1982.

57.02.080 Water-sewer districts desiring to merge into irrigation districts—Procedure.

57.02.090 Elections.

Effect when city or town takes over portion of water system: RCW 57.08.035.

57.02.001 Reclassification of water and sewer districts—Previous actions valid. Every sewer district and every water district previously created shall be reclassified and shall become a water-sewer district, and shall be known as the ". . . . Water-Sewer District," or "Water-Sewer District No. . . ." or shall continue to be known as a "sewer district" or a "water district," with the existing name or number inserted, as appropriate. As used in this title, "district" means a water-sewer district, a sewer district, or a water district. All debts, contracts, and obligations previously made or incurred by or in favor of any water district or sewer district, and all bonds or other obligations issued or executed by those districts, and all assessments or levies, and all other things and proceedings done or taken by those districts or by their respective officers, are declared legal and valid and of full force and effect. [1996 c 230 § 101.]

Part headings not law—1996 c 230: "Part headings as used in this act do not constitute any part of the law." [1996 c 230 § 1700.]

Effective date—1996 c 230: "This act shall take effect July 1, 1997." [1996 c 230 § 1704.]

57.02.010 Petition signatures of property owners—Rules governing. Wherever in this title petitions are required to be signed by the owners of property, the following rules shall govern the sufficiency of the petitions:

(1) The signature of a record owner, as determined by the records of the county auditor of the county in which the real property is located, shall be sufficient without the signature of the owner's spouse.

(2) For mortgaged property, the signature of the mortgagor shall be sufficient.

(3) For property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor of the county in which the real property is located, shall be sufficient.

(4) Any officer of a corporation owning land in the district duly authorized to execute deeds or encumbrances on behalf of the corporation may sign on behalf of that corporation, except that there shall be attached to the petition a certified excerpt from the bylaws showing such authority.

(5) If any property in the district stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the personal representative, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property. [1996 c 230 § 102; 1982 1st ex.s. c 17 § 8; 1953 c 251 § 24.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.02.015 Board of commissioners may notify property owners about petitions—Review of petitions—Information. The board of commissioners of a district may notify the owner or reputed owner of any tract, parcel of land, or other property located within the area included in a petition being circulated for a local improvement district or utility local improvement district under chapter 57.16 RCW, an annexation under chapter 57.24 RCW, a consolidation under chapter 57.32 RCW, a merger under chapter 57.36 RCW, a withdrawal of territory under chapter 57.28 RCW, or a transfer of territory under RCW 57.32.160.

Upon the request of any person, the board of commissioners of a district may:

- (1) Review a proposed petition for proper drafting; and
- (2) Provide information regarding the effects of the adoption of any proposed petition. [1996 c 230 § 103; 1979 c 35 § 3. Formerly RCW 56.02.110.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.02.020 Claims against district. See chapter 4.96 RCW.

57.02.030 Title to be liberally construed. The rule of strict construction shall not apply to this title, which shall be liberally construed to carry out its purposes and objects. [1996 c 230 § 104; 1959 c 108 § 19.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.02.040 Water-sewer district activities to be approved—Criteria for approval by county legislative authority. (1) Notwithstanding any provision of law to the contrary, the following proposed actions shall be approved as provided for in RCW 57.02.045:

- (a) Formation or reorganization under chapter 57.04 RCW;
- (b) Annexation of territory under chapter 57.24 RCW;
- (c) Withdrawal of territory under chapter 57.28 RCW;
- (d) Transfer of territory under RCW 57.32.160;
- (e) Consolidation under chapter 57.32 RCW; and
- (f) Merger under chapter 57.36 RCW.

(2) At least one of the districts involved shall give notice of the proposed action to the county legislative authority, state department of ecology, and state department of health. The county legislative authority shall within thirty days of receiving notice of the proposed action approve the action or hold a hearing on the action.

(3) The county legislative authority shall decide within sixty days of a hearing whether to approve or not approve the proposed action. In approving or not approving the proposed action, the county legislative authority shall consider the following criteria:

(a) Whether the proposed action in the area under consideration is in compliance with the development program that is outlined in the county comprehensive plan, or city or town comprehensive plan where appropriate, and its supporting documents;

(b) Whether the proposed action in the area under consideration is in compliance with the basinwide water and/or

sewage plan as approved by the state department of ecology and the state department of social and health services; and

(c) Whether the proposed action is in compliance with the policies expressed in the county plan for water and/or sewage facilities.

(4) If the proposed action is inconsistent with subsection (3)(a), (b), or (c) of this section, the county legislative authority shall not approve it. If the proposed action is consistent with subsection (3)(a), (b), and (c) of this section, the county legislative authority shall approve it unless it finds that water or sewer service in the area under consideration will be most appropriately served by the county itself under the provisions of chapter 36.94 RCW, or by another district, city, town, or municipality. If there has not been adopted for the area under consideration a plan or program under subsection (3)(a), (b), or (c) of this section, the proposed action shall not be found inconsistent with such subsection.

(5) Where a district is proposed to be formed, and where no boundary review board is established in the county, the petition described in RCW 57.04.030 shall serve as the notice of proposed action under this section, and the hearing provided for in RCW 57.04.030 shall serve as the hearing provided for in this section and in RCW 57.02.045. [1996 c 230 § 105; 1988 c 162 § 7; 1971 ex.s. c 139 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

1988 validation: RCW 57.06.180.

57.02.045 Approval by county legislative authority final, when—Boundary review board approval. In any county where a boundary review board, as provided in chapter 36.93 RCW, is not established, the approval of the proposed action shall be by the county legislative authority pursuant to RCW 57.02.040 and shall be final, and the procedures required to adopt such proposed action shall be followed as provided by law.

In any county where a boundary review board, as provided in chapter 36.93 RCW, is established, a notice of intention of the proposed action shall be filed with the boundary review board as required by RCW 36.93.090 and with the county legislative authority. The county legislative authority shall transmit to the boundary review board a report of its approval or disapproval of the proposed action together with its findings and recommendations under RCW 57.02.040. Approval by the county legislative authority of the proposed action shall be final and the procedures required to adopt the proposal shall be followed as provided by law, unless the boundary review board reviews the action under RCW 36.93.100 through 36.93.180. If the county legislative authority does not approve the proposed action, the boundary review board shall review the action under RCW 36.93.150 through 36.93.180. The action of the boundary review board shall supersede approval or disapproval by the county legislative authority.

Where a district is proposed to be formed, and where no boundary review board is established in the county, the hearings provided for in RCW 57.04.030 shall serve as the hearing provided for in this section and in RCW 57.02.040. [1996 c 230 § 106; 1988 c 162 § 6; 1971 ex.s. c 139 § 3. Formerly RCW 56.02.070.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

1988 validation: RCW 57.06.180.

57.02.050 Multicounty districts—Delegation of duties—Exceptions. Whenever the boundaries or proposed boundaries of a district include or are proposed to include by means of formation, annexation, transfer, withdrawal, consolidation, or merger, territory in more than one county:

(1) All duties delegated by this title to officers of the county in which the district is located shall be delegated to the officers of the county in which the largest land area of the district is located, except that elections shall be conducted pursuant to general election law;

(2) Actions subject to review and approval under RCW 57.02.040 shall be reviewed and approved only by the officers or boundary review board in the county in which such actions are proposed to occur;

(3) Verification of voters' signatures shall be conducted by the county auditor of the county in which such signators reside; and

(4) Comprehensive plan review and approval or rejection by the respective county legislative authorities under RCW 57.16.010 shall be limited to that part of such plans within the respective counties. [1996 c 230 § 108; 1994 c 223 § 66; 1982 1st ex.s. c 17 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.02.070 Ratification of actions for the formation, annexation, consolidation, or merger of water districts prior to July 10, 1982. All actions taken in regard to the formation, annexation, consolidation, or merger of water districts taken prior to July 10, 1982, but consistent with this title, as amended, are hereby approved and ratified and shall be legal for all purposes. [1982 1st ex.s. c 17 § 7.]

57.02.080 Water-sewer districts desiring to merge into irrigation districts—Procedure. The procedures and provisions of RCW 85.08.830 through 85.08.890, which are applicable to drainage improvement districts, joint drainage improvement districts, or consolidated drainage improvement districts that desire to merge into irrigation districts, shall also apply to districts organized, or reorganized, under this title that desire to merge into irrigation districts.

The authority granted by this section shall be cumulative and in addition to any other power or authority granted by law to any district. [1996 c 230 § 107; 1977 ex.s. c 208 § 3. Formerly RCW 56.02.100.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Merger of irrigation district with drainage, joint drainage, consolidated drainage improvement, or water-sewer district: RCW 87.03.720, 87.03.725.

57.02.090 Elections. Elections in a district shall be conducted under general election laws. [1996 c 230 § 109.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

(2008 Ed.)

Chapter 57.04 RCW

FORMATION AND DISSOLUTION

Sections

- 57.04.001 Actions subject to review by boundary review board.
- 57.04.020 Districts authorized.
- 57.04.030 Petition procedure—Hearing—Boundaries.
- 57.04.050 Election—Notice—Excess tax levy.
- 57.04.055 County auditor to conduct elections—Expenses.
- 57.04.060 District created—Name—Formation expenses.
- 57.04.065 Change of name—Procedure—Effect.
- 57.04.070 When two or more petitions filed.
- 57.04.080 Act cumulative.
- 57.04.090 Dissolution—Legislative and court methods.
- 57.04.100 Dissolution—Election method.
- 57.04.110 Dissolution when district's boundaries identical with municipality.
- 57.04.120 Sewerage improvement districts located in counties with populations of from forty thousand to less than seventy thousand become sewer districts.
- 57.04.130 Sewerage improvement districts operating as sewer districts become water-sewer districts—Procedure.
- 57.04.140 Formation—Alternative method—New development.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

57.04.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 201; 1989 c 84 § 56.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.020 Districts authorized. Water-sewer districts are authorized to be established for the purposes of chapter 57.08 RCW. Such districts may include within their boundaries one or more counties, cities, and towns, or other political subdivisions. However, no portion or all of any city or town may be included without the consent by resolution of the city or town legislative authority. [1996 c 230 § 202; 1982 1st ex.s. c 17 § 9; 1929 c 114 § 1; RRS § 11579. Cf. 1913 c 161 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.030 Petition procedure—Hearing—Boundaries. (1) For the purpose of formation of water-sewer districts, a petition shall be presented to the county legislative authority of each county in which the proposed district is located. The petition shall set forth the reasons for the creation of the district, designate the boundaries of the district, and state that establishment of the district will be conducive to the public health, convenience, and welfare and will be of benefit to the property included in the district. The petition shall state the proposed name of the district, which may be ". Sewer-Water [Water-Sewer] District," ". Water District," ". Sewer District," or may be designated by a number such as ". County Water-Sewer District No. . . ." The petition shall specify the proposed property tax levy assessment, if any, which shall not exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district. The petition shall be signed by at least ten percent of the registered voters who voted in the last municipal general election, who shall be qualified voters on the date of filing the petition, residing within the district described in the petition.

The petition shall be filed with the county auditor of the county in which all or the largest geographic portion of the proposed district is located, who shall within ten days examine and verify the signatures on the petition. No person having signed such a petition shall be allowed to withdraw the person's name from the petition after the filing of the petition with the county auditor. If the area proposed to be included in the district is located in more than one county, the auditor of the county in which the largest geographic portion of the district is located shall be the lead auditor and shall immediately transfer a copy of the petitions to the auditor of each other county in which the proposed district is located. Within ten days after the lead auditor received the petition, the auditors of these other counties shall certify to the lead auditor: (a) The number of voters of that county residing in the proposed district who voted at the last municipal general election; and (b) the number of valid signatures on the petition of voters of that county residing in the proposed district. The lead auditor shall certify the sufficiency of the petition after receiving this information. If the petition shall be found to contain a sufficient number of signatures, the county auditor or lead county auditor shall then transmit it, together with a certificate of sufficiency attached thereto to the county legislative authority of each county in which the proposed district is located.

(2) If in the opinion of the county health officer the existing water, sewerage, or drainage facilities are inadequate in the district to be created, and creation of the district is necessary for public health and safety, then the legislative authority of the county may declare by resolution that a water-sewer district is a public health and safety necessity, and the district shall be organized under this title, without a petition being required.

(3) Following receipt of a petition certified to contain a sufficient number of signatures, or upon declaring a district to be a public health and safety necessity, at a regular or special meeting the county legislative authority shall cause to be published once a week for at least two weeks in one or more newspapers of general circulation in the proposed district, a notice that such a petition has been presented, stating the time of the meeting at which the petition shall be considered, and setting forth the boundaries of the proposed district. When a petition is presented for hearing, each county legislative authority shall hear the petition or may adjourn the hearing from time to time not exceeding one month in all. Any person, firm, or corporation may appear before the county legislative authority and make objections to the establishment of the district or the proposed boundary lines thereof. Upon a final hearing each county legislative authority shall make such changes in the proposed boundary lines within the county as it deems to be proper and shall establish and define the boundaries and shall find whether the proposed district will be conducive to the public health, welfare, and convenience and be of special benefit to the land included within the boundaries of the proposed district. No lands that will not, in the judgment of the county legislative authority, be benefitted by inclusion therein, shall be included within the boundaries of the district. No change shall be made by the county legislative authority in the boundary lines to include any territory outside of the boundaries described in the petition, except that the boundaries of any proposed district may be extended by the county legislative authority to include

other lands in the county upon a petition signed by the owners of all of the land within the proposed extension. [1996 c 230 § 203; 1990 c 259 § 27; 1987 c 33 § 3; 1985 c 469 § 58; 1982 1st ex.s. c 17 § 10; 1931 c 72 § 3; 1929 c 114 § 2; RRS § 11580. Cf. 1915 c 24 § 1; 1913 c 161 § 2. Formerly RCW 57.04.030 and 57.04.040.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.050 Election—Notice—Excess tax levy. Upon entry of the findings of the final hearing on the petition if one or more county legislative authorities find that the proposed district will be conducive to the public health, welfare, and convenience and will benefit the land therein, they shall present a resolution to the county auditor calling for a special election to be held at a date according to RCW 29A.04.330, at which a ballot proposition authorizing the district to be created shall be submitted to voters for their approval or rejection. The commissioners shall cause to be published a notice of the election for four successive weeks in a newspaper of general circulation in the proposed district, which notice shall state the hours during which the polls will be open, the boundaries of the district as finally adopted and the object of the election, and the notice shall also be posted ten days in ten public places in the proposed district. The district shall be created if the ballot proposition authorizing the district to be created is approved by a majority of the voters voting on the proposition.

A separate ballot proposition authorizing the district, if created, to impose a single-year excess levy for the preliminary expenses of the district shall be submitted to voters for their approval or rejection at the same special election, if the petition to create the district also proposed that a ballot proposition authorizing an excess levy be submitted to voters for their approval or rejection. The excess levy shall be proposed in the amount specified in the petition to create the district, not to exceed one dollar and twenty-five cents per thousand dollars of assessed value, and may only be submitted to voters for their approval or rejection if the special election is held in February, March, April, or May. The proposition to be effective must be approved in the manner set forth in Article VII, section 2(a) of the state Constitution. [2006 c 344 § 38; 1999 c 153 § 1; 1996 c 230 § 204; 1994 c 292 § 2; 1990 c 259 § 28; 1987 c 33 § 4; 1982 1st ex.s. c 17 § 11; 1973 1st ex.s. c 195 § 67; 1953 c 251 § 1; 1931 c 72 § 4; 1929 c 114 § 3; RRS § 11581. Cf. 1927 c 230 § 1; 1915 c 24 § 2; 1913 c 161 § 3.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Part headings not law—1999 c 153: "Part headings as used in this act do not constitute any part of the law." [1999 c 153 § 77.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Findings—Intent—1994 c 292: "The legislature finds that the monitoring and treatment requirements of the federal safe drinking water act place increasing burdens and cost on public water supply systems, especially smaller systems and rural systems. Across the state, those systems are turning to existing systems and their county governments for help, which may include assumption of the system.

It is the intent of the legislature to encourage larger existing systems to assist or acquire troubled systems or those systems burdened by federal requirements, to provide financial protection for that assistance, and to protect receivers of failed water systems." [1994 c 292 § 1.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

57.04.055 County auditor to conduct elections—Expenses. All elections held pursuant to this title, whether general or special, shall be conducted by the county auditor of the county in which the district is located. Except as provided in RCW 57.04.060, the expense of all such elections shall be paid for out of the funds of the district. [1996 c 230 § 208; 1941 c 210 § 40; Rem. Supp. 1941 § 9425-49. Formerly RCW 56.04.080.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.060 District created—Name—Formation expenses. If at the election a majority of the voters voting upon the proposition vote in favor of the formation of the district the county legislative authority shall so declare in its canvass of the returns of the election to be made within ten days after the date of the election, and the district shall then be and become a municipal corporation of the state of Washington, and the name of the district shall be the name of the district as provided in the petition and the ballot.

The county's expenses incurred in the formation of the district, including the election costs associated with the ballot proposition authorizing the district, election of the initial commissioners under RCW 57.12.030, and the ballot proposition authorizing the excess levy, shall be repaid to the county if the district is formed. [1996 c 230 § 205; 1929 c 114 § 5; RRS § 11583. Cf. 1913 c 161 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.065 Change of name—Procedure—Effect. Any district may apply to change its name by filing with the county legislative authority in which was filed the original petition for organization of the district, a certified copy of a resolution of its board of commissioners adopted by majority vote of all of the members of that board at a regular meeting thereof providing for such change of name. After approval of the new name by the county legislative authority, all proceedings for the district shall be had under the changed name, but all existing obligations and contracts of the district entered into under its former name shall remain outstanding without change and with the validity thereof unimpaired and unaffected by such change of name. A change of name heretofore made by any existing district in this state, substantially in the manner approved under this section, is ratified, confirmed, and validated. [1996 c 230 § 206; 1984 c 147 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.070 When two or more petitions filed. Whenever two or more petitions for the formation of a district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser district shall ever be created within the limits in whole or in part of any district, except as provided in RCW 36.94.420. [1996 c 230 § 207; 1985 c 141 § 6; 1981 c 45 § 9; 1929 c 114 § 4; RRS § 11582. Cf. 1913 c 161 § 4.]

(2008 Ed.)

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 36.93.090.

57.04.080 Act cumulative. *This act shall not be construed to repeal, amend, or modify any law heretofore enacted providing a method for water supply for any city or town in this state, but shall be held to be an additional and concurrent method providing for such purpose. Nor shall this act be construed to repeal **chapter 161 of the Laws of 1913, pages 533 to 552, or amendments thereto. [1929 c 114 § 24; RRS § 11601.]

Reviser's note: *(1) The language "this act" appeared in 1929 c 114, the basic water district law, which is codified as follows: RCW 57.04.020, 57.04.030, 57.04.050 through 57.04.080, 57.04.100, 57.08.010, 57.08.050, 57.12.010, 57.12.020, 57.12.030, 57.16.010, 57.16.020, 57.16.030, 57.16.040, 57.16.050, 57.16.060, 57.16.070, 57.16.080 through 57.16.100, 57.20.010, 57.20.100 through 57.20.140, 57.24.010, 57.24.020, 57.24.040, and 57.24.050.

** (2) As to the reference "chapter 161 of the Laws of 1913," see note following RCW 57.06.010.

57.04.090 Dissolution—Legislative and court methods. Dissolution of district, see chapters 36.96 and 53.48 RCW.

57.04.100 Dissolution—Election method. Any district may be disincorporated in the same manner (insofar as the same is applicable) as is provided in RCW 35.07.010 through 35.07.220 for the disincorporation of cities and towns, except that the petition for disincorporation shall be signed by not less than twenty-five percent of the voters in the district. [1996 c 230 § 209; 1994 c 81 § 80; 1929 c 114 § 25; 1917 c 147 § 1; RRS § 11602.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.110 Dissolution when district's boundaries identical with municipality. A district whose boundaries are identical with, or if the district is located entirely within, the boundaries of a city or town may be dissolved by summary dissolution proceedings if the district is free from all debts and liabilities except contractual obligations between the district and the city or town. Summary dissolution shall take place if the board of commissioners of the district votes unanimously to dissolve the district and to turn all of its property over to the city or town within which the district lies, and the council of such city or town unanimously passes an ordinance accepting the conveyance of the property and assets of the district tendered to the city or town by the district. [1996 c 230 § 210; 1955 c 358 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Acceptance by town: RCW 35.92.012.

57.04.120 Sewerage improvement districts located in counties with populations of from forty thousand to less than seventy thousand become sewer districts. (1) On and after March 16, 1979, any sewerage improvement districts created under Title 85 RCW and located in a county with a population of from forty thousand to less than seventy thou-

sand shall become districts and shall be operated, maintained, and have the same powers as districts created under this title, upon being so ordered by the county legislative authority of the county in which such district is located after a hearing of which notice is given by publication in a newspaper of general circulation within the district and mailed to any known creditors, holders of contracts, and obligees at least thirty days prior to such hearing. After such hearing if the county legislative authority finds the converting of such district to be in the best interest of that district, it shall order that such sewer improvement district shall become a district and fix the date of such conversion. All debts, contracts, and obligations created while attempting to organize or operate a sewerage improvement district and all other financial obligations and powers of the district to satisfy such obligations established under Title 85 RCW are legal and valid until they are fully satisfied or discharged under Title 85 RCW.

(2) The board of supervisors of a sewerage improvement district in a county with a population of from forty thousand to less than seventy thousand shall act as the board of commissioners of the district under subsection (1) of this section until other members of the board of commissioners of the district are elected and qualified. There shall be an election on the same date as the 1979 state general election and the seats of all three members of the governing authority of every entity which was previously known as a sewerage improvement district in a county with a population of from forty thousand to less than seventy thousand shall be up for election. The election shall be held in the manner provided for in RCW 57.12.030 for the election of the first board of commissioners of a district. Thereafter, the terms of office of the members of the governing body shall be determined under RCW 57.12.030. [1996 c 230 § 211; 1991 c 363 § 136; 1979 c 35 § 1. Formerly RCW 56.04.120.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

57.04.130 Sewerage improvement districts operating as sewer districts become water-sewer districts—Procedure. Any sewerage improvement district which has been operating as a sewer district shall be a district under this title as of March 16, 1979, upon being so ordered by the county legislative authority of the county in which such district is located after a hearing of which notice is given by publication in a newspaper of general circulation within the district and mailed to any known creditors, holders of contracts, and obligees at least thirty days prior to such hearing. After such hearing if the county legislative authority finds that the sewerage improvement district was operating as a district and that the converting of such district will be in the best interest of that district, it shall order that such sewer improvement district shall become a district immediately upon the passage of the resolution containing such order. The debts, contracts, and obligations of any sewerage improvement district which has been erroneously operating as a district are recognized as legal and binding. The members of the government authority of any sewerage improvement district which has been operating as a district and who were erroneously elected as sewer district commissioners shall be recognized as the governing

authority of a district. The members of the governing authority shall continue in office for the term for which they were elected. [1996 c 230 § 212; 1979 c 35 § 2. Formerly RCW 56.04.130.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.140 Formation—Alternative method—New development. (1) As an alternative means to forming a water-sewer district, a county legislative authority may authorize the formation of a water-sewer district to serve a new development that at the time of formation does not have any residents, at written request of sixty percent of the owners of the area to be included in the proposed district. The county legislative authority shall review the proposed district according to the procedures and criteria in RCW 57.02.040.

(2) The county legislative authority shall appoint the initial water-sewer commissioners of the district. The commissioners shall serve until seventy-five percent of the development is sold and occupied, or until some other time as specified by the county legislative authority when the district is approved. Commissioners serving under this section are not entitled to any form of compensation from the district.

(3) New commissioners shall be elected according to the procedures in chapter 57.12 RCW at the next election held under *RCW 29.13.010 that follows more than ninety days after the date seventy-five percent of the development is sold and occupied, or after the time specified by the county legislative authority when the district is approved.

(4) A water-sewer district created under this section may be transferred to a city or county, or dissolved if the district is inactive, by order of the county legislative authority at the written request of sixty percent of the owners of the area included in the district. [1997 c 447 § 4.]

***Reviser's note:** RCW 29.13.010 was recodified as RCW 29A.04.320 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

Finding—Purpose—Construction—1997 c 447: See notes following RCW 70.05.074.

Chapter 57.06 RCW

VALIDATION AND CONSTRUCTION

Sections

57.06.010	1927 validation.
57.06.020	1931 validation.
57.06.030	1943 validation.
57.06.040	1943 validation.
57.06.050	1943 validation.
57.06.060	1945 validation.
57.06.070	1945 validation.
57.06.080	1945 validation.
57.06.090	1953 validation.
57.06.100	1953 validation.
57.06.110	1953 validation.
57.06.120	1959 validation.
57.06.130	1959 severability.
57.06.140	1975 validation.
57.06.150	1975 validation.
57.06.160	1975 validation.
57.06.170	1975 validation.
57.06.180	1988 validation.
57.06.190	Sewer districts—Validation—1959 c 103.
57.06.200	Sewer districts—Formation of districts validated.
57.06.210	Sewer districts—Validation of prior mergers.

57.06.010 1927 validation. In case an attempt has been made to organize a water district not containing within its boundaries any incorporated city or town, and either through inadvertence or mistake the election for the organization of the district was held more than thirty days from the date of such certificate of the county auditor but less than sixty days from such date, such proceedings shall not be deemed invalid by reason thereof, and in case all other proceedings in connection with the organization of any such water district were regular, such proceedings are hereby validated and all bonds and warrants issued or to be issued by any such water district are hereby declared to be valid. [1927 c 230 § 2; RRS § 11581-1.]

Reviser's note: This section appeared in an act the first section of which amended RRS § 11581 which compiled 1913 c 161 § 3 as amended. 1913 c 161 was declared unconstitutional in *Drum v. University Place Water District*, 144 Wash. 585, 258 P. 505 (1927). The current basic water district act codified in this title is 1929 c 114.

57.06.020 1931 validation. Each and all of the respective areas of land heretofore organized or attempted to be organized or incorporated under *chapter 161 of the Laws of 1913, and amendments thereto, are each hereby declared to be and created into duly existing water districts having the respective boundaries set forth in their respective organization proceedings as shown in the files and records of the office of the board of county commissioners of the county in which said organization, or attempted organization is located. The water districts validated or created by this act shall have the same rights, liabilities, duties and obligations as water districts created under chapter 114 of the Laws of 1929, and amendments thereto: PROVIDED, That the provisions of this act shall apply only to those water districts which have maintained their organization as water districts since the date of their attempted incorporation or establishment: PROVIDED, HOWEVER, That nothing herein contained shall be deemed to validate the debts, contracts, bonds or other obligations executed prior to this act in connection with or in pursuance of such attempted organization, and all taxes or assessments shall hereafter be levied in accordance with the act of 1929, chapter 114, approved March 13, 1929. [1931 c 71 § 1; RRS § 11604.]

***Reviser's note:** The language "chapter 161 of the Laws of 1913" appears in 1931 c 71 § 1. See note following RCW 57.06.010.

57.06.030 1943 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts or into local improvement districts or utility local improvement districts under the provisions of chapter 114 of the Laws of 1929 and amendments thereto, are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts, as the case may be, having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1943 c 177 § 1; Rem. Supp. 1943 § 11604-13.]

57.06.040 1943 validation. All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, local improvement district, or utility local

improvement district, and all bonds or other obligations executed by such districts in connection with or in pursuance of such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1943 c 177 § 2; Rem. Supp. 1943 § 11604-14.]

57.06.050 1943 validation. The provisions of the act shall apply only to such districts attempted to be organized under chapter 114 of the Laws of 1929, and amendments thereto, which have maintained their organization as such since the date of such attempted organization, establishment, or creation. [1943 c 177 § 3; Rem. Supp. 1943 § 11604-15.]

57.06.060 1945 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts or into local improvement districts or utility local improvement districts under the provisions of Pierce's Perpetual Code 994-1 to -53, chapter 114, Laws of 1929, and amendments thereto (sections 11579 to 11604, Remington's Revised Statutes), are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts, as the case may be, having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1945 c 40 § 1; Rem. Supp. 1945 § 11604-17.]

57.06.070 1945 validation. All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, local improvement district, or utility local improvement district, and all bonds or other obligations executed by such districts in connection with or in pursuance of such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1945 c 40 § 2; Rem. Supp. 1945 § 11604-18.]

57.06.080 1945 validation. The provisions of this act shall apply only to such districts attempted to be organized under Pierce's Perpetual Code 994-1 to 53, chapter 114, Laws of 1929, and amendments thereto (sections 11579 to 11604, Remington's Revised Statutes), which have maintained their organization as such since the date of such attempted organization, establishment, or creation. [1945 c 40 § 3; Rem. Supp. 1945 § 11604-19.]

57.06.090 1953 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts, including all areas attempted to be annexed thereto, or into local improvement districts or utility local improvement districts, under the provisions of chapter 114, Laws of 1929, and amendments thereto, are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts,

as the case may be, having the respective boundaries set forth in their organization and annexation proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1953 c 251 § 25.]

57.06.100 1953 validation. All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, local improvement district, or utility local improvement district, and all bonds or other obligations executed by such districts in connection with or in pursuance of such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1953 c 251 § 26.]

57.06.110 1953 validation. The provisions of this act shall apply only to such districts attempted to be organized under chapter 114, Laws of 1929, and amendments thereto, which have maintained their organization as such since the date of such attempted organization, establishment, or creation. [1953 c 251 § 27.]

57.06.120 1959 validation. All debts, contracts and obligations heretofore made or incurred by or in favor of any water district and all bonds, warrants, or other obligations issued by such district, and all charges heretofore made by such districts, and any and all assessments heretofore levied in any local improvement districts or utility local improvement districts of any water district, and all other things and proceedings relating thereto done or taken by such water districts or by their respective officers are hereby declared to be legal and valid and of full force and effect from the date thereof: PROVIDED, That nothing in this section shall apply to ultra vires acts or acts of fraud committed by the officers or agents of said district. [1959 c 108 § 18.]

57.06.130 1959 severability. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1959 c 108 § 20.]

57.06.140 1975 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts under the provisions of chapter 114, Laws of 1929, and amendments thereto, are hereby validated and declared to be duly existing water districts, having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1975 1st ex.s. c 188 § 15.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.150 1975 validation. All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, and all bonds or other obligations executed by such districts in connection with or in pursuance of

such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers, including by persons acting as commissioners nominated by petition of at least twenty-five percent of the qualified electors of the district, and elected and qualified as otherwise provided by law, acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1975 1st ex.s. c 188 § 16.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.160 1975 validation. The holding and exercise of the office of commissioner by persons now serving as members of the first board of commissioners under or in pursuance of such attempted organization, nominated by petition of at least twenty-five percent of the qualified electors of the district, and elected and qualified as otherwise provided by law, is hereby declared legal and valid and of full force and effect. [1975 1st ex.s. c 188 § 17.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.170 1975 validation. RCW 57.06.140 through 57.06.160 shall apply only to such districts attempted to be organized under chapter 114, Laws of 1929, and amendments thereto, which have maintained their organization as such since the date of such attempted organization, establishment, or creation, or which have been merged into another municipal corporation. [1975 1st ex.s. c 188 § 18.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.180 1988 validation. The existence of all water districts formed in counties without a boundary review board in compliance with the requirements of chapter 57.04 RCW, whether or not the requirements of RCW 57.02.040 and *56.02.070 were satisfied, is validated and such districts shall be deemed to be legally formed. [1988 c 162 § 9.]

***Reviser's note:** RCW 56.02.070 was recodified as RCW 57.02.045 by 1996 c 230 § 1701, effective July 1, 1997.

57.06.190 Sewer districts—Validation—1959 c 103. All debts, contracts and obligations heretofore made or incurred by or in favor of any sewer district, all bonds, warrants, or other obligations issued by such districts, any connection or service charges made by such districts, any and all assessments heretofore levied in any utility local improvement districts of any sewer districts, and all other things and proceedings relating thereto done or taken by such sewer districts or by their respective officers are hereby declared to be legal and valid and of full force and effect from the date thereof: PROVIDED, That nothing in this section shall apply to ultra vires acts or acts of fraud committed by the officers or agents of said district. [1959 c 103 § 17. Formerly RCW 56.02.030.]

Severability—1959 c 103: See note following RCW 57.08.044.

57.06.200 Sewer districts—Formation of districts validated. The existence of all sewer districts formed in counties without a boundary review board in compliance with the requirements of *chapter 56.04 RCW, whether or not the requirements of RCW **56.02.060 and ***56.02.070

were satisfied, is validated and such districts shall be deemed to be legally formed. [1988 c 162 § 8. Formerly RCW 56.02.080.]

Reviser's note: *(1) Chapter 56.04 RCW was repealed and/or recodified in its entirety by 1996 c 230, effective July 1, 1997.

***(2) RCW 56.02.060 was repealed by 1996 c 230 § 1702, effective July 1, 1997.

****(3) RCW 56.02.070 was recodified as RCW 57.02.045 pursuant to 1996 c 230 § 1701, effective July 1, 1997.

57.06.210 Sewer districts—Validation of prior mergers. Each and all of the respective areas of land organized as a water district and heretofore attempted to be merged into a sewer district under chapter 148 of the Laws of 1969 [ex. sess.], and amendments thereto, and which have maintained their organization as part of a sewer district since the date of such attempted merger, are hereby validated and declared to be a proper merger of a water district into a sewer district. Such district shall have the respective boundaries set forth in their merger proceedings as shown by the official files of the legislative authority of the county in which such merged district is located. All debts, contracts, bonds, and other obligations heretofore executed in connection with or in pursuance of such attempted organization, and any and all assessments or levies and all other actions taken by such districts or by their respective officers acting under such attempted organization, are hereby declared legal and valid and of full force and effect. Such districts may hereafter exercise their powers only to the extent permitted by and in accordance with the provisions of *RCW 56.36.060, as now or hereafter amended. [1981 c 45 § 8. Formerly RCW 56.36.070.]

***Reviser's note:** RCW 56.36.060 was repealed by 1996 c 230 § 1702, effective July 1, 1997.

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 36.93.090.

Chapter 57.08 RCW

POWERS

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57.08.005 Powers. A district shall have the following powers:

(1) To acquire by purchase or condemnation, or both, all lands, property and property rights, and all water and water rights, both within and without the district, necessary for its purposes. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities and towns, insofar as consistent with this title, except that all assessment or reassessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the district, and the duties devolving upon the city treasurer are imposed upon the county treasurer;

(2) To lease real or personal property necessary for its purposes for a term of years for which that leased property may reasonably be needed;

(3) To construct, condemn and purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire, or own buildings and other necessary district facilities. Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer. District waterworks may include facilities which result in combined water supply and electric generation, if the electricity generated thereby is a byproduct of the water supply system. That electricity may be used by the district or sold to any entity authorized by law to use or distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of water supply. For such purposes, a district may take, condemn and purchase, acquire, and retain water from any public or navigable lake, river or watercourse, or any underflowing water, and by means of aqueducts or pipeline conduct the same throughout the district and any city or town therein and carry

it along and upon public highways, roads, and streets, within and without such district. For the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution. For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner;

(4) To purchase and take water from any municipal corporation, private person, or entity. A district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the district and inhabitants thereof and residents of Canada with an ample supply of water under the terms approved by the board of commissioners;

(5) To construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district, the inhabitants thereof, and persons outside the district with an adequate system of sewers for all uses and purposes, public and private, including but not limited to on-site sewage disposal facilities, approved septic tanks or approved septic tank systems, on-site sanitary sewerage systems, inspection services and maintenance services for private and public on-site systems, point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a district, other facilities, programs, and systems for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from wastewater with full authority to regulate the use and operation thereof and the service rates to be charged. Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer. Sewerage facilities may include facilities which result in combined sewage disposal or treatment and electric or methane gas generation, except that the electricity or methane gas generated thereby is a byproduct of the system of sewers. Such electricity or methane gas may be used by the district or sold to any entity authorized by law to distribute electricity or methane gas. Electricity and methane gas are deemed byproducts when the electrical or methane gas generation is subordinate to the primary purpose of sewage disposal or treatment. The district may also sell surplus methane gas, which may be produced as a byproduct. For such purposes a district may conduct sewage throughout the district and throughout other political subdivisions within the district, and construct and lay sewer pipe along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and

rights-of-way necessary for such sewer pipe. A district may erect sewage treatment plants within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from its sewers or its sewage treatment plant. For the purposes of sewage facilities which include facilities that result in combined sewage disposal or treatment and electric generation where the electric generation is a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owners;

(6)(a) To construct, condemn and purchase, add to, maintain, and operate systems of drainage for the benefit and use of the district, the inhabitants thereof, and persons outside the district with an adequate system of drainage, including but not limited to facilities and systems for the collection, interception, treatment, and disposal of storm or surface waters, and for the protection, preservation, and rehabilitation of surface and underground waters, and drainage facilities for public highways, streets, and roads, with full authority to regulate the use and operation thereof and, except as provided in (b) of this subsection, the service rates to be charged.

(b) The rate a district may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(c) Drainage facilities may include natural systems. Drainage facilities may include facilities which result in combined drainage facilities and electric generation, except that the electricity generated thereby is a byproduct of the drainage system. Such electricity may be used by the district or sold to any entity authorized by law to distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of drainage collection, disposal, and treatment. For such purposes, a district may conduct storm or surface water throughout the district and throughout other political subdivisions within the district, construct and lay drainage pipe and culverts along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights-of-way necessary for such drainage systems. A district may provide or erect facilities and improvements for the treatment and disposal of storm or surface water within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from storm or surface waters. For the purposes of drainage facilities which include facilities that also generate electricity as a byproduct, nothing in this section may be construed to authorize a district to condemn elec-

tric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owners;

(7) To construct, condemn, acquire, and own buildings and other necessary district facilities;

(8) To compel all property owners within the district located within an area served by the district's system of sewers to connect their private drain and sewer systems with the district's system under such penalty as the commissioners shall prescribe by resolution. The district may for such purpose enter upon private property and connect the private drains or sewers with the district system and the cost thereof shall be charged against the property owner and shall be a lien upon property served;

(9) Where a district contains within its borders, abuts, or is located adjacent to any lake, stream, groundwater as defined by RCW 90.44.035, or other waterway within the state of Washington, to provide for the reduction, minimization, or elimination of pollutants from those waters in accordance with the district's comprehensive plan, and to issue general obligation bonds, revenue bonds, local improvement district bonds, or utility local improvement bonds for the purpose of paying all or any part of the cost of reducing, minimizing, or eliminating the pollutants from these waters;

(10) Subject to subsection (6) of this section, to fix rates and charges for water, sewer, and drain service supplied and to charge property owners seeking to connect to the district's systems, as a condition to granting the right to so connect, in addition to the cost of the connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that those property owners shall bear their equitable share of the cost of the system. For the purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants. The connection charge may include interest charges applied from the date of construction of the system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the system, or at the time of installation of the lines to which the property owner is seeking to connect. In lieu of requiring the installation of permanent local facilities not planned for construction by the district, a district may permit connection to the water and/or sewer systems through temporary facilities installed at the property owner's expense, provided the property owner pays a connection charge consistent with the provisions of this chapter and agrees, in the future, to connect to permanent facilities when they are installed; or a district may permit connection to the water and/or sewer systems through temporary facilities and collect from property owners so connecting a proportionate share of the estimated cost of future local facilities needed to serve the property, as determined by the district. The

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amount collected, including interest at a rate commensurate with the rate of interest applicable to the district at the time of construction of the temporary facilities, shall be held for contribution to the construction of the permanent local facilities by other developers or the district. The amount collected shall be deemed full satisfaction of the proportionate share of the actual cost of construction of the permanent local facilities. If the permanent local facilities are not constructed within fifteen years of the date of payment, the amount collected, including any accrued interest, shall be returned to the property owner, according to the records of the county auditor on the date of return. If the amount collected is returned to the property owner, and permanent local facilities capable of serving the property are constructed thereafter, the property owner at the time of construction of such permanent local facilities shall pay a proportionate share of the cost of such permanent local facilities, in addition to reasonable connection charges and other charges authorized by this section. A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The county treasurer may charge and collect a fee of three dollars for each year for the treasurer's services. Those fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer. Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A water-sewer district shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using water-sewer district employees unless the on-site system is connected by a publicly owned collection system to the water-sewer district's sewerage system, and the on-site system represents the first step in the sewage disposal process.

Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for sewer, water, storm water control, drainage, and street lighting facilities to the same extent private persons and private property are subject to those rates and charges that are imposed by districts. In setting those rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

(11) To contract with individuals, associations and corporations, the state of Washington, and the United States;

(12) To employ such persons as are needed to carry out the district's purposes and fix salaries and any bond requirements for those employees;

(13) To contract for the provision of engineering, legal, and other professional services as in the board of commissioner's discretion is necessary in carrying out their duties;

(14) To sue and be sued;

(15) To loan and borrow funds and to issue bonds and instruments evidencing indebtedness under chapter 57.20 RCW and other applicable laws;

(16) To transfer funds, real or personal property, property interests, or services subject to RCW 57.08.015;

(17) To levy taxes in accordance with this chapter and chapters 57.04 and 57.20 RCW;

(18) To provide for making local improvements and to levy and collect special assessments on property benefitted thereby, and for paying for the same or any portion thereof in accordance with chapter 57.16 RCW;

(19) To establish street lighting systems under RCW 57.08.060;

(20) To exercise such other powers as are granted to water-sewer districts by this title or other applicable laws; and

(21) To exercise any of the powers granted to cities and counties with respect to the acquisition, construction, maintenance, operation of, and fixing rates and charges for waterworks and systems of sewerage and drainage. [2007 c 31 § 8; 2004 c 202 § 1; 2003 c 394 § 5; 1999 c 153 § 2; 1997 c 447 § 16; 1996 c 230 § 301.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.007 Concurrent service by two districts.

Except upon approval of both districts by resolution, a district may not provide a service within an area in which that service is available from another district or within an area in which that service is planned to be made available under an effective comprehensive plan of another district. [1996 c 230 § 302.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.009 Use of property not immediately necessary to district for park or recreational purposes. A district may operate and maintain a park or recreational facilities on real property that it owns or in which it has an interest that is not immediately necessary for its purposes.

If such park or recreational facilities are operated by a person other than the district, including a corporation, partnership, or other business enterprise, the person shall indemnify and hold harmless the district for any injury or damage caused by the action of the person. [1991 c 82 § 3. Formerly RCW 56.08.170.]

57.08.011 Authority to manage, operate, maintain, or repair public or private water system—Contract. A district may enter into a contract with any person, corporation, or other entity, public or private, that owns a water system

located in the district to manage, operate, maintain, or repair the water system. Such a contract may be entered into only if the general comprehensive plan of the district reflects the water system that is to be so managed, operated, maintained, or repaired.

A district shall be liable to provide the services provided in such a contract only if the required contractual payments are made to the district, and such payments shall be secured by a lien on the property served by the water system to the same extent that rates and charges imposed by the district constitute liens on the property served by the district. The responsibility for all costs incurred by the water system in complying with water quality laws, regulations, and standards shall be solely that of the water system and not the district, except to the extent payments have been made to the district for the costs of such compliance.

A district periodically may transfer to another account surplus moneys that may accumulate in an account established by the district to receive payments for the provision of services for such a water system. [1996 c 230 § 303; 1989 c 308 § 14.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.012 Fluoridation of water authorized. A water district by a majority vote of its board of commissioners may fluoridate the water supply system of the water district. The commissioners may cause the proposition of fluoridation of the water supply to be submitted to the electors of the water district at any general election or special election to be called for the purpose of voting on the proposition. The proposition must be approved by a majority of the electors voting on the proposition to become effective. [1988 c 11 § 2.]

57.08.014 Authority to adjust or delay rates or charges for low-income persons—Notice. In addition to the authority of a district to establish classifications for rates and charges and impose such rates and charges, a district may adjust or delay those rates and charges for low-income persons or classes of low-income persons, including but not limited to, low-income handicapped persons and low-income senior citizens. Other financial assistance available to low-income persons shall be considered in determining charges and rates under this section. Notification of special rates or charges established under this section shall be provided to all persons served by the district annually and upon initiating service. Information on cost shifts caused by establishment of the special rates or charges shall be included in the notification. Any reduction in charges and rates granted to low-income persons in one part of a service area shall be uniformly extended to low-income persons in all other parts of the service area. [1999 c 153 § 3; 1996 c 230 § 304; 1983 c 198 § 2.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1983 c 198: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 198 § 3.]

57.08.015 Sale of unnecessary property authorized—

Notice. The board of commissioners of a district may sell, at public or private sale, property belonging to the district if the board determines that the property is not and will not be needed for district purposes and if the board gives notice of intention to sell as in this section provided. However, no such notice of intention shall be required to sell personal property of less than two thousand five hundred dollars in value.

The notice of intention to sell shall be published once a week for two consecutive weeks in a newspaper of general circulation in the district. The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions of the bids and reserve the right to reject any and all bids for good cause. [1999 c 153 § 4; 1996 c 230 § 305; 1993 c 198 § 19; 1989 c 308 § 7; 1977 ex.s. c 299 § 2; 1953 c 50 § 1.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.016 Sale of unnecessary property authorized—

Additional requirements for sale of realty. (1) There shall be no private sale of real property where the appraised value exceeds the sum of two thousand five hundred dollars. Subject to the provisions of subsection (2) of this section, no real property of the district shall be sold for less than ninety percent of the value thereof as established by a written appraisal made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state or professionally designated real estate appraisers as defined in RCW 74.46.020. The appraisal shall be signed by the appraisers and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the appraised value thereof.

(2) If no purchasers can be obtained for the property at ninety percent or more of its appraised value after one hundred twenty days of offering the property for sale, the board of commissioners of the district may adopt a resolution stating that the district has been unable to sell the property at the ninety percent amount. The district then may sell the property at the highest price it can obtain at public auction. A notice of intention to sell at public auction shall be published once a week for two consecutive weeks in a newspaper of general circulation in the district. The notice shall describe the property, state the time and place at which it will be offered for sale and the terms of sale, and shall call for bids, fix the conditions thereof, and reserve the right to reject any and all bids for good cause. [1999 c 153 § 5; 1996 c 230 § 306; 1993 c 198 § 20; 1989 c 308 § 8; 1988 c 162 § 2; 1984 c 103 § 3; 1953 c 50 § 2.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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57.08.017 Application of sections to certain service provider agreements under chapter 70.150 RCW. RCW 57.08.015, 57.08.016, 57.08.050, and 57.08.120 shall not apply to agreements entered into under authority of chapter 70.150 RCW if there is compliance with the procurement procedure under RCW 70.150.040. [1996 c 230 § 321; 1986 c 244 § 16.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1986 c 244: See RCW 70.150.905.

57.08.020 Conveyance of water system to city or town. That water districts duly organized under the laws of the state of Washington shall have the following powers in addition to those conferred by existing statutes. Whenever any water district shall have installed a distributing system of mains and laterals and as a source of supply of water shall be purchasing or intending to purchase water from any city or town, and whenever it shall appear to be advantageous to the water consumers in said water district that such city or town shall take over the water system of the water district and supply water to the said water users, the commissioners of said water district, upon being authorized as provided in RCW 57.08.030, shall have the right to convey such distributing system to any such city or town: PROVIDED, Such city or town is willing to accept, maintain and repair the same: PROVIDED, FURTHER, That all bonded and other indebtedness of said water district except local improvement district bonds shall have been paid. [1933 c 142 § 1; RRS § 11586-1.]

57.08.030 Election on conveyance—Contract for operation of facilities. (1) Whenever any district shall have installed a distributing system of water mains and laterals, and as a source of supply of water shall be purchasing or intending to purchase water from any city or town, and whenever it appears to be advantageous to the water consumers in the district that such city or town shall take over the water system of the district and supply water to those water users, the commissioners of the district, when authorized as provided in subsection (2) of this section, shall have the right to convey the distributing system to that city or town if that city or town is willing to accept, maintain, and repair the same.

(2) Should the commissioners of the district decide that it would be to the advantage of the water consumers of the district to make the conveyance provided for in subsection (1) of this section, they shall cause the proposition of making that conveyance to be submitted to the voters of the district at any general election or at a special election to be called for the purpose of voting on the same. If at the election a majority of the voters voting on the proposition shall be in favor of making the conveyance, the district commissioners shall have the right to convey to the city or town the mains and laterals belonging to the district upon the city or town entering into a contract satisfactory to the commissioners to maintain and repair the same.

(3) Whenever a city or town located wholly or in part within a district shall enter into a contract with the commissioners of a district providing that the city or town shall take over all of the operation of the water supply facilities of the district located within its boundaries, the area of the district

located within the city or town shall upon the execution of the contract cease to be served by the district for water service purposes. However, the affected land within that city or town shall remain liable for the payment of all assessments, any lien upon the property at the time of the execution of the agreement, and for any lien of all general obligation bonds due at the date of the contract, and the city or town shall remain liable for its fair prorated share of the debt of the area for any revenue bonds, outstanding as of the date of contract. [1999 c 153 § 6; 1996 c 230 § 307; 1933 c 142 § 2; RRS § 11586-2.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.035 Effect when city or town takes over portion of water system. Whenever a city or town located wholly or in part within a water district shall enter into a contract with the commissioners of a water district providing that the city or town shall take over all of the operation of the facilities of the district located within its boundaries, such area of said water district located within said city or town shall upon the execution of said contract cease to be a part of said water district and the inhabitants therein shall no longer be permitted to vote in said water district. The land, however, within such city or town shall remain liable for the payment of all assessments, any lien upon said property at the time of the execution of said agreement and for any lien of all general obligation bonds due at the date of said contract, and the city shall remain liable for its fair prorated share of the debt of the area for any revenue bonds outstanding as of said date of contract. [1971 ex.s. c 272 § 13.]

57.08.040 City or town may accept and agree to maintain system. Whenever any city or town is selling or proposes to sell water to a district, the city or town may by ordinance accept a conveyance of any distributing system and enter into a contract with the district for the maintenance and repair of the system and the supplying of water to the district consumers. [1996 c 230 § 308; 1933 c 142 § 3; RRS § 11586-3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.044 Contracts for acquisition, use, operation, etc., authorized—Service to areas in other districts. A district may enter into contracts with any county, city, town, or any other municipal or quasi-municipal corporation, or with any private person or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the district, and necessary or desirable to carry out the purposes of the district. A district may provide water, sewer, drainage, or street lighting services to property owners in areas within or without the limits of the district, except that if the area to be served is located within another existing district duly authorized to exercise district powers in that area, then water, sewer, drainage, or street lighting service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of that other district. [1999 c 153 § 7; 1996 c

230 § 309; 1981 c 45 § 4; 1959 c 103 § 3; 1953 c 250 § 8; 1941 c 210 § 48; Rem. Supp. 1941 § 9425-57. Formerly RCW 56.08.060.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 36.93.090.

Severability—1959 c 103: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1959 c 103 § 19.]

Water-sewer districts and municipalities, joint agreements: RCW 35.67.300.

57.08.047 Provision of water, sewer, or drainage service beyond district subject to review by boundary review board. The provision of water, sewer, or drainage service beyond the boundaries of a district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1999 c 153 § 8; 1996 c 230 § 310; 1989 c 84 § 57.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.050 Contracts for materials and work—Notice—Bids—Small works roster—Requirements waived, when. (1) All work ordered, the estimated cost of which is in excess of ten thousand dollars, shall be let by contract and competitive bidding. Before awarding any such contract the board of commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. The board of commissioners may reject all bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be

returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond within ten days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the district shall be entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to requirements under subsection (1) of this section, a water-sewer district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of ten thousand dollars, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of less than fifty thousand dollars shall be made using the process provided in RCW 39.04.190. Any purchase of materials, supplies, or equipment with an estimated cost of fifty thousand dollars or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

(4) As an alternative to requirements under subsection (3) of this section, a water-sewer district may let contracts for purchase of materials, supplies, or equipment with the suppliers designated on current state agency, county, city, or town purchasing rosters for the materials, supplies, or equipment, when the roster has been established in accordance with the competitive bidding law for purchases applicable to the state agency, county, city, or town. The price and terms for purchases shall be as described on the applicable roster.

(5) The board may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2003 c 145 § 1; 2003 c 60 § 1; 2000 c 138 § 212; 1999 c 153 § 9; 1998 c 278 § 8; 1997 c 245 § 4. Prior: 1996 c 230 § 311; 1996 c 18 § 14; 1994 c 31 § 2; prior: 1993 c 198 § 21; 1993 c 45 § 8; 1989 c 105 § 2; 1987 c 309 § 2; 1985 c 154 § 2; 1983 c 38 § 2; 1979 ex.s. c 137 § 2; 1975 1st ex.s. c 64 § 2; 1965 c 72 § 1; 1947 c 216 § 2; 1929 c 114 § 21; Rem. Supp. 1947 § 11598. Cf. 1913 c 161 § 20.]

Reviser's note: This section was amended by 2003 c 60 § 1 and by 2003 c 145 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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57.08.060 Powers as to street lighting systems—Establishment. In addition to the powers given districts by law, a district shall also have power to acquire, construct, maintain, operate, and develop street lighting systems.

To establish a street lighting system, the board of commissioners shall adopt a resolution proposing a street lighting system and delineating the boundaries of the area to be served by the proposed street lighting system. The board shall conduct a public hearing on the resolution to create a street lighting system. Notice of the hearing shall be published at least once each week for two consecutive weeks in one or more newspapers of general circulation in the area to be served by the proposed street lighting system. Following the hearing, the board may by resolution establish the street lighting system.

A street lighting system shall not be established if, within thirty days following the decision of the board, a petition opposing the street lighting system is filed with the board and contains the signatures of at least forty percent of the voters registered in the area to be served by the proposed system.

The district has the same powers of imposing charges for providing street lighting, collecting delinquent street lighting charges, and financing street lighting systems by issuing general obligation bonds, issuing revenue bonds, and creating improvement districts as it has for imposing charges for providing water, collecting delinquent water service charges, and financing water systems by issuing general obligation bonds, issuing revenue bonds, and creating improvement districts. [1996 c 230 § 312; 1987 c 449 § 11; 1982 c 105 § 1; 1941 c 68 § 1; Rem. Supp. 1941 § 11604-12.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.065 Powers as to mutual systems—Overlapping districts—Operation of system of sewerage or drainage by former water district. (1) A district shall have power to establish, maintain, and operate a mutual water, sewerage, drainage, and street lighting system, a mutual system of any two or three of the systems, or separate systems.

(2) Where any two or more districts include the same territory as of July 1, 1997, none of the overlapping districts may provide any service that was made available by any of the other districts prior to July 1, 1997, within the overlapping territory without the consent by resolution of the board of commissioners of the other district or districts.

(3) A district that was a water district prior to July 1, 1997, that did not operate a system of sewerage or drainage prior to July 1, 1997, may not proceed to exercise the powers to establish, maintain, construct, and operate any system of sewerage or drainage without first obtaining written approval and certification of necessity from the department of ecology and department of health. Any comprehensive plan for a system of sewers or drainages or addition thereto or betterment thereof, proposed by a district that was a water district prior to July 1, 1997, shall be approved by the same county and state officials as were required to approve such plans adopted by a sewer district immediately prior to July 1, 1997, and as subsequently may be required. [1999 c 153 § 10; 1997 c 447 § 17; 1996 c 230 § 313; 1981 c 45 § 11; 1979 c 141 § 69; 1967 ex.s. c 135 § 3; 1963 c 111 § 1.]

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Part headings not law—1999 c 153: See note following RCW 57.04.050.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 36.93.090.

57.08.070 Participation in volunteer firefighters' relief and pension fund. See chapter 41.24 RCW.

57.08.081 Rates and charges—Delinquencies. (1) Subject to RCW 57.08.005(6), the commissioners of any district shall provide for revenues by fixing rates and charges for furnishing sewer and drainage service and facilities to those to whom service is available or for providing water, such rates and charges to be fixed as deemed necessary by the commissioners, so that uniform charges will be made for the same class of customer or service and facility. Rates and charges may be combined for the furnishing of more than one type of sewer or drainage service and facilities.

(2) In classifying customers of such water, sewer, or drainage system, the board of commissioners may in its discretion consider any or all of the following factors: The difference in cost to various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the service and facility furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful practices; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Rates shall be established as deemed proper by the commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system. Prior to furnishing services, a district may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by this section.

(3) The commissioners shall enforce collection of connection charges, and rates and charges for water supplied against property owners connecting with the system or receiving such water, and for sewer and drainage services charged against property to which and its owners to whom the service is available, such charges being deemed charges against the property served, by addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either connection charges or rates and charges for services supplied are delinquent for any specified period of time, the district shall certify the delinquencies to the auditor of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate of not more than the prime lending rate of the district's bank plus four percentage points per year shall be a lien against the property upon which

the service was received, subject only to the lien for general taxes.

(4) The district may, at any time after the connection charges or rates and charges for services supplied or available and penalties are delinquent for a period of sixty days, bring suit in foreclosure by civil action in the superior court of the county in which the real property is located. The court may allow, in addition to the costs and disbursements provided by statute, attorneys' fees, title search and report costs, and expenses as it adjudges reasonable. The action shall be in rem, and may be brought in the name of the district against an individual or against all of those who are delinquent in one action. The laws and rules of the court shall control as in other civil actions.

(5) In addition to the right to foreclose provided in this section, the district may also cut off all or part of the service after charges for water or sewer service supplied or available are delinquent for a period of thirty days.

(6) A district may determine how to apply partial payments on past due accounts.

(7) A district may provide a real property owner or the owner's designee with duplicate bills for service to tenants, or may notify an owner or the owner's designee that a tenant's service account is delinquent. However, if an owner or the owner's designee notifies the district in writing that a property served by the district is a rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the district shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the district notifies the tenant of the tenant's delinquency or by mail. When a district provides a real property owner or the owner's designee with duplicates of tenant utility service bills or notice that a tenant's utility account is delinquent, the district shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee. After January 1, 1999, if a district fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection (7), the district shall have no lien against the premises for the tenant's delinquent and unpaid charges. [2003 c 394 § 6; 1999 c 153 § 11. Prior: 1998 c 285 § 2; 1998 c 106 § 9; 1997 c 447 § 19; 1996 c 230 § 314.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Assessments and charges against state lands: Chapter 79.44 RCW.

57.08.085 Public property subject to rates and charges for drainage facilities. Except as otherwise provided in RCW 90.03.525, any public entity and public property, including state of Washington property, shall be subject to rates and charges for drainage facilities to the same extent as private persons and private property are subject to such rates and charges that are imposed by districts pursuant to RCW 57.08.005 or 57.08.081. In setting those rates and charges, consideration may be given to in-kind services, such as stream improvements or donation of property. [1999 c 153

§ 12; 1996 c 230 § 315; 1986 c 278 § 59; 1983 c 315 § 5. Formerly RCW 56.08.012.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: See note following RCW 90.03.500.

Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.

Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 35.92.021, 36.89.085, and 36.94.145.

57.08.100 Health care, group, life, and social security insurance contracts for employees', commissioners' benefit—Joint action with other districts. Subject to chapter 48.62 RCW, a district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance and/or social security insurance for the benefit of its employees and may pay all or any part of the cost thereof. Any two or more districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of a participating district may by appropriate resolution authorize its respective district to pay all or any portion of the cost thereof.

A district with five thousand or more customers providing health, group, or life insurance to its employees may provide its commissioners with the same coverage. However, the per person amounts for such insurance paid by the district shall not exceed the per person amounts paid by the district for its employees. [1996 c 230 § 316; 1991 sp.s. c 30 § 25; 1991 c 82 § 5; 1981 c 190 § 6; 1973 c 24 § 2; 1961 c 261 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Effective date, implementation, application—Severability—1991 sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Hospitalization and medical insurance authorized: RCW 41.04.180.

Hospitalization and medical insurance not deemed additional compensation: RCW 41.04.190.

57.08.105 Liability insurance for officials and employees. The board of commissioners of each district may purchase liability insurance with such limits as it may deem reasonable for the purpose of protecting its officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1996 c 230 § 317; 1973 c 125 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.107 Liability insurance for officers and employees authorized. See RCW 36.16.138.

57.08.112 Association of commissioners—Association to furnish information to legislature and governor. See RCW 44.04.170.

57.08.120 Lease of real property—Notice, hearing—Performance bond or security. A district may lease out real property which it owns or in which it has an interest and which is not immediately necessary for its purposes upon such terms as the board of commissioners deems proper. No such lease shall be made until the district has first caused notice thereof to be published twice in a newspaper in general circulation in the district, the first publication to be at least fifteen days and the second at least seven days prior to the making of such lease. The notice shall describe the property, the lessee, and the lease payments. A hearing shall be held pursuant to the terms of the notice, at which time any and all persons who may be interested shall have the right to appear and to be heard.

No such lease shall be made unless secured by a bond conditioned on the performance of the terms of the lease, with surety satisfactory to the commissioners and with a penalty of not less than one-sixth of the term of the lease or for one year's rental, whichever is greater.

No such lease shall be made for a term longer than fifty years. In cases involving leases of more than five years, the commissioners may provide for or stipulate to acceptance of a bond conditioned on the performance of a part of the term for five years or more whenever it is further provided that the lessee must procure and deliver to the commissioners renewal bonds with like terms and conditions no more than two years prior nor less than one year prior to the expiration of such bond during the entire term of the lease. However, no such bond shall be construed to secure the furnishing of any other bond by the same surety or indemnity company. The board of commissioners may require a reasonable security deposit in lieu of a bond on leased property owned by a district.

The commissioners may accept as surety on any bond required by this section an approved surety company, or may accept in lieu thereof a secured interest in property of a value at least twice the amount of the bond required, conditioned further that in the event the commissioners determine that the value of the bond security has become or is about to become impaired, additional security shall be required from the lessee.

The authority granted under this section shall not be exercised by the board of commissioners unless the property is declared by resolution of the board of commissioners to be property for which there is a future need by the district and for the use of which provision is made in the comprehensive plan of the district as the same may be amended from time to time. [2007 c 31 § 9; 1996 c 230 § 319; 1991 c 82 § 6; 1967 ex.s. c 135 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.140 RCW 39.33.060 to govern on sales by district for park and recreational purposes. The provisions of RCW 57.08.015, 57.08.016, and 57.08.120 shall have no application as to the sale or conveyance of real or personal property or any interest or right therein by a district to the county or park and recreation district wherein such property is located for park and recreational purposes, but in those cases the provisions of RCW 39.33.060 shall govern. [1996 c 230 § 320; 1971 ex.s. c 243 § 8.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1971 ex.s. c 243: See RCW 84.34.920.

57.08.150 Extensions by private party—Preparation of plans—Review by district. A district may not require that a specified engineer prepare plans or designs for extensions to its systems if the extensions are to be financed and constructed by a private party, but may review, and approve or reject, the plans or designs which have been prepared for such a private party based upon standards and requirements established by the district. [1996 c 230 § 323; 1987 c 309 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.160 Authority to assist customers in the acquisition of water conservation equipment—Limitations. Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the district if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the district to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with the use charge or separately. Loans shall not exceed one hundred twenty months in length. [1996 c 230 § 324; 1989 c 421 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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Intent—Contingent effective date—1989 c 421: See notes following RCW 35.92.017.

57.08.170 Water conservation plan—Emergency water use restrictions—Fine. A district may adopt a water conservation plan and emergency water use restrictions. The district may enforce a water conservation plan and emergency water use restrictions by imposing a fine as provided by resolution for failure to comply with any such plan or restrictions. The commissioners may provide by resolution that if a fine for failure to comply with the water conservation plan or emergency water use restrictions is delinquent for a specified period of time, the district shall certify the delinquency to the treasurer of the county in which the real property is located and serve notice of the delinquency on the subscribing water customer who fails to comply, and the fine is then a separate item for inclusion on the bill of the party failing to comply with the water conservation plan or emergency water use restrictions. [1996 c 230 § 325; 1991 c 82 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.180 Sewer, drainage, and water connections without district permission—Penalties. It is unlawful and a misdemeanor to make, or cause to be made, or to maintain any connection with any sewer, drainage, or water system of any district, or with any sewer, drainage, or water system which is connected directly or indirectly with any sewer, drainage, or water system of any district without having permission from the district. [1999 c 153 § 14; 1996 c 230 § 322; 1995 c 376 § 15; 1991 c 190 § 5.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Findings—1995 c 376: See note following RCW 70.116.060.

57.08.190 Cooperative watershed management. In addition to the authority provided in RCW 57.08.005, a water district, sewer district, or water-sewer district may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 13.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Chapter 57.12 RCW

OFFICERS AND ELECTIONS

Sections

57.12.010	Commissioners—President and secretary—Compensation.
57.12.015	Increase in number of commissioners.
57.12.017	Decrease in number of commissioners.
57.12.020	Vacancies.
57.12.030	Commissioners—Terms.
57.12.035	Commissioners—Void in candidacy, fewer than one hundred residents in district.
57.12.039	Commissioner districts.

Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on,

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request for review of, certification, remand—Sanctions when review request frivolous: RCW 29A.76.010.

57.12.010 Commissioners—President and secretary—Compensation. The governing body of a district shall be a board of commissioners consisting of three members, or five or seven members as provided in RCW 57.12.015. The board shall annually elect one of its members as president and another as secretary.

The board shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book kept for that purpose which shall be a public record.

Each commissioner shall receive ninety dollars for each day or portion thereof spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district. However, the compensation for each commissioner shall not exceed eight thousand six hundred forty dollars per year. In addition, the secretary may be paid a reasonable sum for clerical services.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during the commissioner's term of office, by a written waiver filed with the district at any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

No commissioner shall be employed full time by the district. A commissioner shall be reimbursed for reasonable expenses actually incurred in connection with district business, including subsistence and lodging while away from the commissioner's place of residence and mileage for use of a privately owned vehicle at the mileage rate authorized in RCW 43.03.060.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commis-

sions. [2008 c 31 § 1; 2007 c 469 § 5; 2001 c 63 § 1; 1998 c 121 § 5; 1996 c 230 § 401; 1985 c 330 § 6; 1980 c 92 § 2; 1975 1st ex.s. c 116 § 1; 1969 ex.s. c 148 § 8; 1959 c 108 § 5; 1959 c 18 § 1; 1945 c 50 § 2; 1929 c 114 § 7; Rem. Supp. 1945 § 11585. Cf. 1913 c 161 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1969 ex.s. c 148: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 148 § 9.]

57.12.015 Increase in number of commissioners. (1)

In the event a three-member board of commissioners of any district with any number of customers determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, or if the board of a district with any number of customers is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the district, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (name and/or number of district) be increased from three to five members?

Yes

No

If the proposition receives a majority approval at the election the board of commissioners of the district shall be increased to five members.

(2) In any district with more than ten thousand customers, if a three-member board of commissioners determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, the number of commissioners shall be so increased without an election, unless within ninety days of adoption of that resolution a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last municipal general election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section.

(3)(a) In any district with more than twenty-five thousand customers, if a five-member board of commissioners determines by resolution that it would be in the best interest of the district to increase the number of commissioners from five to seven, the number of commissioners may be so increased without an election, unless within ninety days of adoption of that resolution a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last municipal general election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section.

(b) In the event a five-member board of commissioners of any district with more than twenty-five thousand customers determines by resolution that it would be in the best interest of the district to increase the number of commissioners from five to seven, the board may submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the district, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (name and/or number of district) be increased from five to seven members?

Yes

No

If the proposition receives a majority approval at the election the board of commissioners of the district shall be increased to seven members.

(4) The two additional positions created on boards of commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next district general election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second district general election after the appointment, at which two commissioners shall be elected for six-year terms. [2001 c 63 § 2; 1996 c 230 § 402; 1994 c 223 § 67; 1991 c 190 § 6; 1990 c 259 § 29; 1987 c 449 § 12.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.12.017 Decrease in number of commissioners. (1)

Except as provided in RCW 52.14.020, in the event a five-member or seven-member board of commissioners of any district determines by resolution that it would be in the best interest of the district to decrease the number of commissioners from five to three, or from seven to five, or in the event the board is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for such a decrease in the number of commissioners of the district, the board shall submit a resolution to the county auditor. Upon receipt of the resolution, the county auditor shall call a special election to be held within the district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of (name and/or number of district) be decreased from (five/seven) members to (three/five) members?

Yes . . .

No

If the district has commissioner districts, the commissioners of the district must pass a resolution, before the submission of the proposition to the voters, to either redistrict from five commissioner districts to three commissioner districts, or from seven commissioner districts to five commissioner districts, or eliminate the commissioner districts. The

resolution takes effect upon approval of the proposition by the voters.

If the proposition receives a majority approval at the election, the board of commissioners of the district shall be decreased to three or five members.

(2) The number of members on the board of the district shall be reduced by one whenever a commissioner resigns from office or a vacancy otherwise occurs on the board, until the number of remaining members is reduced to the number of members that is chosen for the board eventually to have. The reduction of membership on the board shall not be considered to be a vacancy that is to be filled until the number of remaining members is less than the number of members on the board that is chosen for the board eventually to have.

(3) At the next three district general elections after the reduction is approved, the number of commissioners for the district that are elected shall be as follows, notwithstanding the number of commissioners whose terms expire:

(a) In the first election after the reduction, only one position shall be filled.

(b) In the second election, one position shall be filled.

Thereafter, the commissioners shall be elected in the same manner as prescribed for such districts of the state. [2001 c 63 § 3.]

57.12.020 Vacancies. A vacancy on the board shall occur and shall be filled as provided in chapter 42.12 RCW. In addition, if a commissioner is absent from three consecutive scheduled meetings unless by permission of the board, the office may be declared vacant. However, such an action shall not be taken unless the commissioner is notified by mail after two consecutive unexcused absences that the position will be declared vacant if the commissioner is absent without being excused from the next regularly scheduled meeting. [1996 c 230 § 405; 1994 c 223 § 68; 1990 c 259 § 30; 1985 c 141 § 7; 1981 c 169 § 1; 1975 1st ex.s. c 188 § 14; 1959 c 18 § 3. Prior: 1953 c 251 § 4; 1947 c 216 § 1, part; 1945 c 50 § 1, part; 1931 c 72 § 1, part; 1929 c 114 § 6, part; Rem. Supp. 1947 § 11584, part. Cf. 1913 c 161 § 7, part.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.12.030 Commissioners—Terms. Except as in this section otherwise provided, the term of office of each district commissioner shall be six years, such term to be computed from the first day of January following the election, and commissioners shall serve until their successors are elected and qualified and assume office in accordance with *RCW 29.04.170.

Three initial district commissioners shall be elected at the same election at which the proposition is submitted to the voters as to whether such district shall be formed. The election of initial district commissioners shall be null and void if the ballot proposition to form the district is not approved. Each candidate shall run for one of three separate commissioner positions. A special filing period shall be opened as provided in *RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for each position shall be elected to that position.

The initial district commissioners shall assume office immediately when they are elected and qualified. Staggering of the terms of office for the initial district commissioners shall be accomplished as follows: (1) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office in accordance with *RCW 29.04.170. [1996 c 230 § 403; 1994 c 223 § 69; 1982 1st ex.s. c 17 § 14; 1979 ex.s. c 126 § 39; 1959 c 18 § 4. Prior: 1947 c 216 § 1; 1945 c 50 § 1; 1931 c 72 § 1; 1929 c 114 § 6; Rem. Supp. 1947 § 11584. Cf. 1913 c 161 § 7.]

***Reviser’s note:** RCW 29.04.170, 29.15.170, and 29.15.180 were recodified as RCW 29A.20.040, 29A.24.170, and 29A.24.180, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.24.170 and 29A.24.180, see RCW 29A.24.171 and 29A.24.181, respectively.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Terms and compensation of county and district officers: State Constitution Art. 11 § 5.

Time of holding election for district officers: State Constitution Art. 6 § 8.

57.12.035 Commissioners—Void in candidacy, fewer than one hundred residents in district. If the district has fewer than one hundred residents, and if the filing period is reopened for a district commissioner under RCW 29A.24.171 or 29A.24.181 due to a void in candidacy, any person who is a qualified elector of the state of Washington and who holds title or evidence of title to land in the district may file as a candidate for and serve as a district commissioner. [2007 c 383 § 1.]

57.12.039 Commissioner districts. (1) Notwithstanding RCW 57.12.020 and 57.12.030, the board of commissioners may provide by majority vote that subsequent commissioners be elected from commissioner districts within the district. If the board exercises this option, it shall divide the district into three, five, or seven if the number of commissioners has been increased under RCW 57.12.015, commissioner districts of approximately equal population following current precinct and district boundaries.

(2) Commissioner districts shall be used as follows: (a) Only a registered voter who resides in a commissioner district may be a candidate for, or serve as, a commissioner of the commissioner district; and (b) only voters of a commissioner district may vote at a primary to nominate candidates

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for a commissioner of the commissioner district. Voters of the entire district may vote at a general election to elect a person as a commissioner of the commissioner district. Commissioner districts shall be redrawn as provided in *chapter 29.70 RCW.

(3) In districts in which commissioners are nominated from commissioner districts, at the inception of a five-member or a seven-member board of commissioners, the new commissioner districts shall be numbered one through five or one through seven and the incumbent commissioners shall represent up to five commissioner districts depending on the amount of commissioners. If, as a result of redrawing the district boundaries two or three of the incumbent commissioners reside in one of the new commissioner districts, the commissioners who reside in the same commissioner district shall determine by lot which of the first three or five numbered commissioner districts they shall represent for the remainder of their respective terms. A primary shall be held to nominate candidates from the remaining districts where necessary and commissioners shall be elected at large at the general election. The persons elected as commissioners from the remaining commissioner districts shall take office immediately after qualification as defined under **RCW 29.01.135. [2001 c 63 § 4; 1996 c 230 § 404; 1994 c 223 § 70; 1986 c 41 § 2.]

Reviser’s note: *(1) Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

** (2) RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.16 RCW

**COMPREHENSIVE PLAN—
LOCAL IMPROVEMENT DISTRICTS**

Sections

- 57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments.
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- 57.16.045 Additions and betterments—Annexed areas.
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- 57.16.160 Review of sewer general comprehensive plan—Time limitations—Notice of rejection of plan or extension of timeline.

Deferral of special assessments: Chapter 84.38 RCW.

Local improvements, supplemental authority: Chapter 35.51 RCW.

57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments. Before ordering any improvements or submitting to vote any proposition for incurring any indebtedness, the district commissioners shall adopt a general comprehensive plan for the type or types of facilities the district proposes to provide. A district may prepare a separate general comprehensive plan for each of these services and other services that districts are permitted to provide, or the district may combine any or all of its comprehensive plans into a single general comprehensive plan.

(1) For a general comprehensive plan of a water supply system, the commissioners shall investigate the several portions and sections of the district for the purpose of determining the present and reasonably foreseeable future needs thereof; shall examine and investigate, determine, and select a water supply or water supplies for such district suitable and adequate for present and reasonably foreseeable future needs thereof; and shall consider and determine a general system or plan for acquiring such water supply or water supplies, and the lands, waters, and water rights and easements necessary therefor, and for retaining and storing any such waters, and erecting dams, reservoirs, aqueducts, and pipe lines to convey the same throughout such district. There may be included as part of the system the installation of fire hydrants at suitable places throughout the district. The commissioners shall determine a general comprehensive plan for distributing such water throughout such portion of the district as may then reasonably be served by means of subsidiary aqueducts and pipe lines, and a long-term plan for financing the planned projects and the method of distributing the cost and expense thereof, including the creation of local improvement districts or utility local improvement districts, and shall determine whether the whole or part of the cost and expenses shall be paid from revenue or general obligation bonds.

(2) For a general comprehensive plan for a sewer system, the commissioners shall investigate all portions and sections of the district and select a general comprehensive plan for a sewer system for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan shall provide for treatment plants and other methods and services, if any, for the prevention, control, and reduction of water pollution and for the treatment and disposal of sewage and industrial and other liquid wastes now produced or which may reasonably be expected to be produced within the district and shall, for such portions of the district as may then reasonably be served, provide for the acquisition or construction and installation of laterals, trunk sewers, intercepting sewers, syphons, pumping stations or other sewage collection facilities, septic tanks, septic tank systems or drainfields, and systems for the transmission and treatment of wastewater. The general comprehensive plan shall provide a long-term plan for financing the planned projects and the method of distributing the cost and expense of the sewer system and services, including the creation of local improvement districts or utility local improvement districts; and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(3) For a general comprehensive plan for a drainage system, the commissioners shall investigate all portions and sec-

tions of the district and adopt a general comprehensive plan for a drainage system for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system to collect, treat, and dispose of storm water or surface waters, including use of natural systems and the construction or provision of culverts, storm water pipes, ponds, and other systems. The general comprehensive plan shall provide for a long-term plan for financing the planned projects and provide for a method of distributing the cost and expense of the drainage system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(4) For a general comprehensive plan for street lighting, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for street lighting for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system or systems of street lighting, provide for a long-term plan for financing the planned projects, and provide for a method of distributing the cost and expense of the street lighting system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(5) The commissioners may employ such engineering and legal service as in their discretion is necessary in carrying out their duties.

(6) Any general comprehensive plan or plans shall be adopted by resolution and submitted to an engineer designated by the legislative authority of the county in which fifty-one percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health, except that a comprehensive plan relating to street lighting shall not be submitted to or approved by the director of health. The general comprehensive plan shall be approved, conditionally approved, or rejected by the director of health and by the designated engineer within sixty days of their respective receipt of the plan. However, this sixty-day time limitation may be extended by the director of health or engineer for up to an additional sixty days if sufficient time is not available to review adequately the general comprehensive plans.

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of the district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of the county legislative authorities pursuant to the criteria in RCW 57.02.040 for approving the formation, reorganization, annexation, consolidation, or merger of districts. The resolution, ordinance, or motion of the legislative body that rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The general comprehensive plan shall not provide for the extension or location of facilities that are inconsistent with the requirements of RCW 36.70A.110. Nothing

in this chapter shall preclude a county from rejecting a proposed plan because it is in conflict with the criteria in RCW 57.02.040. Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a county legislative authority may extend this ninety-day time limitation by up to an additional ninety days where a finding is made that ninety days is insufficient to review adequately the general comprehensive plan. In addition, the commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section.

If the district includes portions or all of one or more cities or towns, the general comprehensive plan shall be submitted also to, and approved by resolution of, the legislative authorities of the cities and towns before becoming effective. The general comprehensive plan shall be deemed approved by the city or town legislative authority if the city or town legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the city or town or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a city or town legislative authority may extend this time limitation by up to an additional ninety days where a finding is made that insufficient time exists to adequately review the general comprehensive plan within these time limitations. In addition, the commissioners and the city or town legislative authority may mutually agree to an extension of the deadlines in this section.

Before becoming effective, the general comprehensive plan shall be approved by any state agency whose approval may be required by applicable law. Before becoming effective, any amendment to, alteration of, or addition to, a general comprehensive plan shall also be subject to such approval as if it were a new general comprehensive plan. However, only if the amendment, alteration, or addition affects a particular city or town, shall the amendment, alteration, or addition be subject to approval by such particular city or town governing body. [1997 c 447 § 18; 1996 c 230 § 501; 1990 1st ex.s. c 17 § 35; 1989 c 389 § 10; 1982 c 213 § 2; 1979 c 23 § 2; 1977 ex.s. c 299 § 3; 1959 c 108 § 6; 1959 c 18 § 6. Prior: 1939 c 128 § 2, part; 1937 c 177 § 1; 1929 c 114 § 10, part; RRS § 11588. Cf. 1913 c 161 § 10.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

57.16.015 Expenditures before plan adopted and approved. No expenditure for carrying on any part of a general comprehensive plan shall be made other than the necessary salaries of engineers, clerical, office expenses, and other professional expenses of the district, and the cost of engineering, surveying, preparation, and collection of data necessary for making and adopting a general plan of improvements in the district, until the general comprehensive plan of improve-

ments has been adopted by the commissioners and approved as provided in RCW 57.16.010. [1996 c 230 § 502; 1953 c 250 § 5; 1941 c 210 § 12; Rem. Supp. 1941 § 9425-21. Formerly RCW 56.08.030.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.045 Additions and betterments—Annexed areas. Whenever an area has been annexed to a district after the adoption of a general comprehensive plan, the commissioners shall adopt by resolution a plan for additions and betterments to the original comprehensive plan to provide for the needs of the area annexed. [1996 c 230 § 503.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.050 Districts authorized—Special assessments—Bonds. (1) A district may establish local improvement districts within its territory; levy special assessments and allow annual installments on the special assessments, together with interest thereon, extending over a period not exceeding twenty years, on all property specially benefited by a local improvement, on the basis of special benefits to pay in whole or in part the damage or costs of any improvements ordered in the district; and issue local improvement bonds in the local improvement district to be repaid by the collection of special assessments. The bonds may be of any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The levying, collection, and enforcement of special assessments and the issuance of bonds shall be as provided for the levying, collection, and enforcement of special assessments and the issuance of local improvement district bonds by cities and towns insofar as is consistent with this title. The duties devolving upon the city or town treasurer are imposed upon the county treasurer of the county in which the real property is located for the purposes hereof. The mode of assessment shall be determined by the commissioners by resolution.

(2) A district may establish a utility local improvement district, in lieu of a local improvement district, if the petition or resolution for establishing the local improvement district, and the approved comprehensive plan or approved amendment thereto or plan providing for additions and betterments to the original plan, previously adopted, provides that, except as set forth in this section, the special assessments shall be for the purpose of payment of improvements and payment into the revenue bond fund for the payment of revenue bonds. No warrants or bonds shall be issued in a utility local improvement district, but the collection of interest and principal on all special assessments in the utility local improvement district shall be paid into the revenue bond fund, except that special assessments paid before the issuance and sale of bonds may be deposited in a fund for the payment of costs of improvements in the utility local improvement district. Revenue bonds shall be issued using the procedures by which cities and towns issue revenue bonds, insofar as is consistent with this title.

Such revenue bonds may also be issued and sold in accordance with chapter 39.46 RCW. [1996 c 230 § 601; 1987 c 169 § 2; 1983 c 167 § 161; 1982 1st ex.s. c 17 § 15;

1953 c 251 § 13; 1939 c 128 § 1; 1929 c 114 § 9; RRS § 11587. Cf. 1913 c 161 § 9.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Assessments and charges against state lands: Chapter 79.44 RCW.

Local improvement bonds: Chapter 35.45 RCW.

57.16.060 Resolution or petition to form district—Procedure—Written protest—Notice. Local improvement districts or utility local improvement districts to carry out the whole or any portion of the general comprehensive plan of improvements or plan providing for additions and betterments to an original general comprehensive plan previously adopted may be initiated either by resolution of the board of commissioners or by petition signed by the owners according to the records of the office of the applicable county auditor of at least fifty-one percent of the area of the land within the limits of the improvement district to be created.

In case the board of commissioners desires to initiate the formation of an improvement district by resolution, it first shall pass a resolution declaring its intention to order the improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed improvement district, and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed improvement district, and fixing a date, time, and place for a public hearing on the formation of the proposed improvement district.

In case any such improvement district is initiated by petition, the petition shall set forth the nature and territorial extent of the proposed improvement requested to be ordered and the fact that the signers thereof are the owners according to the records of the applicable county auditor of at least fifty-one percent of the area of land within the limits of the improvement district to be created. Upon the filing of such petition the board shall determine whether the petition is sufficient, and the board's determination thereof shall be conclusive upon all persons. No person may withdraw his or her name from the petition after it has been filed with the board of commissioners. If the board finds the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of the improvement, designating the number of the proposed improvement district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed improvement district, and fixing a date, time, and place for a public hearing on the formation of the proposed improvement district.

Notice of the adoption of the resolution of intention, whether the resolution was adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed improvement district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the

board of commissioners. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed improvement district by mailing the notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer of the county in which the real property is located at the address shown thereon. Whenever such notices are mailed, the commissioners shall maintain a list of the reputed property owners, which list shall be kept on file at a location within the district and shall be made available for public perusal. The notices shall refer to the resolution of intention and designate the proposed improvement district by number. The notices also shall set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, and the date, time, and place of the hearing before the board of commissioners. In the case of improvements initiated by resolution, the notice also shall: (1) State that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board of commissioners no later than ten days after the public hearing; (2) state that if owners of at least forty percent of the area of land within the proposed improvement district file written protests with the secretary of the board, the power of the commissioners to proceed with the creation of the proposed improvement district shall be divested; (3) provide the name and address of the secretary of the board; and (4) state the hours and location within the district where the names of the property owners within the proposed improvement district are kept available for public perusal. In the case of the notice given each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, parcel of land, or other property. [1999 c 153 § 15; 1996 c 230 § 602; 1991 c 190 § 7; 1986 c 256 § 3; 1982 1st ex.s. c 17 § 16; 1977 ex.s. c 299 § 7; 1965 ex.s. c 39 § 1; 1959 c 18 § 11. Prior: 1953 c 251 § 14; 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12, part.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.062 Hearing—Improvement ordered—Divestment of power to order—Notice—Appeal—Assessment roll. Whether an improvement district is initiated by petition or resolution, the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the improvement district and may make such changes in the boundaries of the improvement district or such modifications in the plans for the proposed improvement as shall be deemed necessary. The board may not change the boundaries of the improvement district to include property not previously included in it without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time provided in this chapter for the original notice.

After the hearing and the expiration of the ten-day period for filing protests, the commissioners shall have jurisdiction

to overrule protests and proceed with any such improvement district initiated by petition or resolution. The jurisdiction of the commissioners to proceed with any improvement district initiated by resolution shall be divested by protests filed with the secretary of the board within ten days after the public hearing, signed by the owners, according to the records of the applicable county auditor, of at least forty percent of the area of land within the proposed improvement district.

If the commissioners find that the improvement district should be formed, they shall by resolution form the improvement district and order the improvement. After execution of the resolution forming the improvement district, the secretary of the board of commissioners shall publish, in a legal publication that serves the area subject to the improvement district, a notice setting forth that a resolution has been passed forming the improvement district and that a lawsuit challenging the jurisdiction or authority of the district to proceed with the improvement and creating the improvement district must be filed, and notice to the district served, within thirty days of the publication of the notice. The notice shall set forth the nature of the appeal. Property owners bringing the appeal shall follow the procedures set forth under RCW 57.16.090. Whenever a resolution forming an improvement district has been adopted, the formation is conclusive in all things upon all parties, and cannot be contested or questioned in any manner in any proceeding whatsoever by any person not commencing a lawsuit in the manner and within the time provided in this section, except for lawsuits made under RCW 57.16.090.

Following an appeal, if it is unsuccessful or if no appeal is made under RCW 57.16.090, the commissioners may proceed with creating the improvement district, provide the improvement and provide the general funds of the district to be applied thereto, adopt detailed plans of the improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the district such eminent domain proceedings as may be necessary to entitle the district to proceed with the improvements. The board shall thereupon proceed with the work and file with the county treasurer of the county in which the real property is located its roll levying special assessments in the amount to be paid by special assessment against the property situated within the improvement district in proportion to the special benefits to be derived by the property therein from the improvements. [1996 c 230 § 605; 1991 c 190 § 3; 1986 c 256 § 2; 1974 ex.s. c 58 § 6; 1971 ex.s. c 272 § 9; 1953 c 250 § 18; 1941 c 210 § 28; Rem. Supp. 1941 § 9425-37. Formerly RCW 56.20.030.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.065 Notice must contain statement that assessments may vary from estimates. Notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of an improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1996 c 230 § 604; 1989 c 243 § 11.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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57.16.070 Hearing on assessment roll—Notice.

Before approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the improvement district, stating that the roll is on file and open to inspection in the office of the secretary, and fixing the time, not less than fifteen or more than thirty days from the date of the first publication of the notice, within which protests must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing will be held by the commissioners on the protests. Notice shall also be given by mailing, at least fifteen days before the hearing, a similar notice to the owners or reputed owners of the land in the improvement district as they appear on the books of the treasurer of the county in which the real property is located. At the hearing, or any adjournment thereof, the commissioners may correct, change, or modify the roll, or any part thereof, or set aside the roll and order a new assessment, and may then by resolution approve it. If an assessment is raised a new notice similar to the first shall be given, after which final approval of the roll may be made. When property has been entered originally upon the roll and the assessment thereon is not raised, no objection thereto shall be considered by the commissioners or by any court on appeal unless the objection is made in writing at, or prior to, the date fixed for the original hearing upon the roll. [1996 c 230 § 606; 1982 1st ex.s. c 17 § 17; 1959 c 18 § 12. Prior: 1953 c 251 § 15; 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12, part.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.073 Sanitary sewer and potable water facilities—Notice to certain property owners. Whenever it is proposed that an improvement district finance sanitary sewer or potable water facilities, additional notice of the public hearing on the proposed improvement district shall be mailed to the owners of any property located outside of the proposed improvement district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the improvement district. The notice shall include information about this restriction. [1996 c 230 § 603; 1987 c 315 § 6.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.075 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

57.16.080 Enlarged district. If any portion of the system after its installation is not adequate for the purpose for which it was intended, or if for any reason changes, alterations, or betterments are necessary in any portion of the system after its installation, then an improvement district with boundaries which may include one or more existing improvement districts may be created in the district in the same manner as is provided herein for the creation of improvement districts. Upon the organization of such an improvement district, the plan of the improvement and the payment of the cost of the improvement shall be carried out in the same manner as is

provided herein for the carrying out of and the paying for the improvement in the improvement districts previously provided for in this title. [1996 c 230 § 607; 1959 c 18 § 13. Prior: 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.090 Review. The decision of the district board of commissioners upon any objections made within the time and in the manner herein prescribed may be reviewed by the superior court upon an appeal thereto taken in the following manner. The appeal shall be made by filing written notice of appeal with the secretary of the board of commissioners and with the clerk of the superior court in the county in which the real property is situated within ten days after publication of a notice that the resolution confirming such assessment roll has been adopted, and such notice of appeal shall describe the property and set forth the objections of such appellant to such assessment. Within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of the court a transcript consisting of the assessment roll and the appellant's objections thereto, together with the resolution confirming the assessment roll and the record of the district commissioners with reference to the assessment. The transcript, upon payment of the necessary fees therefor, shall be furnished by the secretary of the board of commissioners and shall be certified by the secretary to contain full, true, and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court, the appellant shall file a sufficient bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of the court, conditioned to prosecute such appeal without delay, and if unsuccessful to pay all costs to which the district is put by reason of such appeal. The court may order the appellant, upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, the appellant shall give written notice to the secretary of the district that such transcript is filed. The notice shall state a time, not less than three days from the service thereof, when the appellant will call up the cause for hearing. The superior court shall, at such time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury. The appeal shall have preference over all civil causes pending in the court, except eminent domain proceedings and actions of forcible entry and detainer. The judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is either founded upon a fundamentally wrong basis or a decision of the board of commissioners thereon was arbitrary or capricious, or both, in which event the judgment of the court shall correct, modify, or annul the assessment insofar as it affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, who shall modify and correct the assessment roll in accor-

dance with such decision. Appellate review of the judgment of the superior court may be sought as in other civil cases. However, the appeal must be sought within fifteen days after the date of the entry of the judgment of such superior court. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of the assessment roll, who shall thereupon modify and correct the assessment roll in accordance with the decision. [1996 c 230 § 609; 1991 c 190 § 8; 1988 c 202 § 53; 1982 1st ex.s. c 17 § 18; 1971 c 81 § 126; 1965 ex.s. c 39 § 2; 1929 c 114 § 13; RRS § 11591. Cf. 1913 c 161 § 13.]

Rules of court: Cf. *RAP* 5.2, 18.22.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1988 c 202: See note following RCW 2.24.050.

57.16.100 Conclusiveness of roll—Correction of errors. (1) Whenever any assessment roll for local improvements shall have been confirmed by the district board of commissioners, the regularity, validity, and correctness of the proceedings relating to the improvements, and to the assessment therefor, including the action of the district commissioners upon the assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in this chapter, and not appealing from the action of the commissioners in confirming such assessment roll in the manner and within the time in this chapter provided. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor. However, this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds (a) that the property about to be sold does not appear upon the assessment roll, or (b) that the assessment had been paid.

(2) This section also shall not prohibit the correction of clerical errors and errors in the computation of assessments in assessment rolls by the following procedure:

(a) The board of commissioners may file a petition with the superior court of the county wherein the real property is located, asking that the court enter an order correcting such errors and directing that the county treasurer pay a portion or all of the incorrect assessment by the transfer of funds from the district's maintenance fund, if such relief be necessary.

(b) Upon the filing of the petition, the court shall set a date for hearing and upon the hearing may enter an order as provided in (a) of this subsection. However, neither the correcting order nor the corrected assessment roll shall result in an increased assessment to the property owner. [1996 c 230 § 608; 1929 c 114 § 14; RRS § 11592. Cf. 1913 c 161 § 14.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.110 Segregation of assessment—Procedure. Whenever any land against which there has been levied any special assessment by any district shall have been sold in part

or divided, the board of commissioners of the district shall have the power to order a segregation of the assessment.

Any person desiring to have a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of commissioners of the district that levied the assessment. If the commissioners determine that a segregation should be made, they shall by resolution order the treasurer of the county in which the real property is located to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract and the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the treasurer of the county in which the real property is located who shall proceed to make the segregation. The board of commissioners may require as a condition to the order of segregation that the person seeking it pay the district the reasonable engineering and clerical costs incident to making the segregation. [1999 c 153 § 16; 1998 c 106 § 5; 1996 c 230 § 610; 1982 1st ex.s. c 17 § 19; 1953 c 251 § 23.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Segregation duties of county treasurer: RCW 36.29.160.

57.16.120 Acquisition of property subject to local improvement assessments—Payment. See RCW 79.44.190.

57.16.140 Excess sewer capacity or water supply not grounds for zoning decision challenge. The construction of or existence of sewer capacity or water supply in excess of the needs of the density allowed by zoning shall not be grounds for any legal challenge to any zoning decision by the county. [1996 c 230 § 504; 1982 c 213 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.150 Foreclosure of assessments—Attorneys’ fees. Judgments foreclosing special assessments pursuant to RCW 35.50.260 may also allow to districts, in addition to delinquent installments, interest, penalties, and costs, such attorneys’ fees as the court may adjudge reasonable. [1996 c 230 § 611; 1987 c 449 § 16.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.160 Review of sewer general comprehensive plan—Time limitations—Notice of rejection of plan or extension of timeline. For any new or revised sewer general comprehensive plan submitted by a water-sewer district for review under this chapter, the appropriate state agency shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The appropriate state agency may

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extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general comprehensive plan. For rejections of plans or extensions of the timeline, the appropriate state agency shall provide in writing to the water-sewer district the reason for such action. In addition, the governing body of the water-sewer district and the appropriate state agency may mutually agree to an extension of the deadlines contained in this section. [2002 c 161 § 2.]

**Chapter 57.20 RCW
FINANCES**

Sections

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57.20.010 General obligation bonds—Term—Issuance—Excess bond retirement levies. When general district indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations has been authorized, the district may issue its general obligation bonds in payment thereof.

The bonds shall not have terms in excess of twenty years and shall as nearly as practicable be issued for a period which will not exceed the life of the improvement to be acquired by the issuance of the bonds. The bonds shall be issued and sold in accordance with chapter 39.46 RCW. The election at which the voters are presented with a ballot proposition authorizing both the bond issue and imposition of excess bond retirement levies shall be held as provided in RCW 39.36.050.

Whenever the proposition to issue such bonds and impose such excess bond retirement levies has been approved, there shall be levied by the officers or governing body charged with the duty of levying taxes, annual levies in excess of the constitutional and/or statutory tax limitations sufficient to meet the annual or semiannual payments of principal and interest on the bonds upon all taxable property

within the district. [1984 c 186 § 53; 1983 c 167 § 162; 1973 1st ex.s. c 195 § 71; 1970 ex.s. c 56 § 83; 1969 ex.s. c 232 § 87; 1953 c 251 § 12; 1951 2nd ex.s. c 25 § 3; 1931 c 72 § 2; 1929 c 114 § 11; RRS § 11589. Cf. 1913 c 161 § 11.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

57.20.015 Refunding general obligation bonds. (1)

The board of commissioners of any district may by resolution, without submitting the matter to the voters of the district, provide for the issuance of refunding general obligation bonds to refund any outstanding general obligation bonds, or any part thereof, at maturity thereof, or before the maturity thereof if they are subject to call for prior redemption or all of the owners thereof consent thereto. Refunding bonds may be combined with an issue of bonds for other district purposes, as long as those other bonds are approved in accordance with applicable law.

(2) The total cost to the district over the life of the refunding bonds or refunding portion of an issue of bonds shall not exceed the total cost to the district which the district would have incurred but for such refunding over the remainder of the life of the bonds to be refunded thereby.

(3) The refunding bonds may be exchanged for the bonds to be refunded thereby, or may be sold in such manner as the board of commissioners deems to be for the best interest of the district, and the proceeds of such sale used exclusively for the purpose of paying, retiring, and canceling the bonds to be refunded and interest thereon. Such bonds may be of any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. [1996 c 230 § 702; 1984 c 186 § 54; 1983 c 167 § 163; 1973 1st ex.s. c 195 § 72; 1953 c 251 § 16.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Election to authorize revenue bonds: RCW 57.20.018.

57.20.018 Revenue bonds authorized—Use. (1)

The commissioners may, without submitting a proposition to the voters, authorize by resolution the district to issue revenue bonds for the construction costs, interest during the period of construction and six months thereafter, working capital or other costs of the improvements described in any part or all of a general comprehensive plan or plans, or for other purposes or functions of a district authorized by statute. The amount of the bonds to be issued shall be included in the resolution.

(2) Any resolution authorizing the issuance of revenue bonds may include provision for refunding any local improvement district bonds of a district, out of the proceeds of sale of revenue bonds, and a district may pay off any outstanding local improvement bonds with such funds either by

purchase in the open market below their par value and accrued interest or by call at par value and accrued interest at the next succeeding interest payment date. The bonds may be in any form, including bearer bonds or registered bonds as provided by RCW 39.46.030.

(3) Notwithstanding subsection (1) of this section, district revenue bonds may be issued and sold in accordance with chapter 39.46 RCW. [1996 c 230 § 703; 1987 c 449 § 14; 1983 c 167 § 160; 1977 ex.s. c 299 § 4; 1959 c 108 § 8; 1959 c 18 § 8. Prior: 1953 c 251 § 6; 1951 c 112 § 1; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part. Formerly RCW 57.16.030.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

57.20.0181 Additional revenue bonds for increased cost of improvements.

Whenever a district shall have adopted a general comprehensive plan and bonds to defray the cost thereof shall have been authorized by resolution of the board of commissioners, and before the completion of the improvements the board of commissioners shall find by resolution that the authorized bonds are not sufficient to defray the cost of such improvements due to the increase of costs of construction subsequent to the adoption of the plan, the board of commissioners may by resolution authorize the issuance and sale of additional revenue bonds for such purpose in excess of those previously issued. [1996 c 230 § 704; 1977 ex.s. c 299 § 5; 1959 c 108 § 10. Formerly RCW 57.16.035.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.019 Additions and betterments. In the same manner as provided for the adoption of an original general comprehensive plan, a plan providing for additions and betterments to the original general comprehensive plan may be adopted. Without limiting its generality "additions and betterments" shall include any necessary change in, amendment of, or addition to the general comprehensive plan.

The district may incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional tax limitation for the construction of the additions and betterments in the same way that general indebtedness may be incurred for the construction of the original general comprehensive plan after submission to the voters of the entire district in the manner the original proposition to incur indebtedness was submitted as provided in RCW 57.20.105. Upon ratification the additions and betterments may be carried out by the commissioners to the extent specified or referred to in the proposition to incur the general indebtedness.

The district may issue revenue bonds to pay for the construction of the additions and the betterments pursuant to resolution of the board of commissioners. [1996 c 230 § 705; 1984 c 186 § 52; 1977 ex.s. c 299 § 6; 1973 1st ex.s. c 195 § 70; 1959 c 108 § 9; 1959 c 18 § 9. Prior: 1953 c 251 § 7; 1951 2nd ex.s. c 25 § 2; 1951 c 112 § 2; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part. Formerly RCW 57.16.040.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

57.20.020 Revenue bonds—Special fund. (1) The commissioners shall have power and are required to create a special fund or funds for the sole purpose of paying the interest and principal of revenue bonds into which special fund or funds the commissioners shall obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of the water supply, sewer, or drainage system or any fixed amount out of and not exceeding a fixed proportion of such revenues, or a fixed amount or amounts without regard to any fixed proportion, and such bonds and the interest thereof shall be payable only out of such special fund or funds, and shall be a lien and charge against all revenues and payments received from any utility local improvement district or districts pledged to secure such bonds, subject only to operating and maintenance expenses.

In creating any such special fund or funds the commissioners shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to and to any proportion or part of the revenue previously pledged as a fund for the payment of bonds, warrants, or other indebtedness, and shall not set aside into such special fund a greater amount or proportion of the revenue and proceeds than in their judgment will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. Any such bonds and interest thereon issued against any such fund as provided in this section shall be a valid claim of the owner thereof only as against the special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of the district within the meaning of the constitutional provisions and limitations. Each such bond shall state upon its face that it is payable from a special fund, naming the fund and the resolution creating it. Such bonds shall be sold in such manner, at such price, and at such rate or rates of interest as the commissioners shall deem for the best interests of the district, either at public or private sale, and the commissioners may provide in any contract for the construction and acquirement of the proposed improvement (and for the refunding of outstanding local improvement district obligations, if any) that payment therefor shall be made in such bonds at par value thereof.

When any such special fund shall have been heretofore or shall be hereafter created and any such bonds shall have been heretofore or shall hereafter be issued against the same a fixed proportion or a fixed amount out of and not to exceed such fixed proportion, or a fixed amount or amounts without regard to any fixed proportion, of revenue shall be set aside and paid into the special fund as provided in the resolution creating such fund or authorizing such bonds. In case any district shall fail thus to set aside and pay the fixed proportion or amount, the owner of any bond payable from such special fund may bring suit or action against the district and compel such setting aside and payment.

(2) Revenue bonds payable from a special fund may be issued and sold in accordance with chapter 39.46 RCW.

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[1996 c 230 § 706; 1991 c 347 § 20; 1983 c 167 § 164; 1975 1st ex.s. c 25 § 3; 1970 ex.s. c 56 § 84; 1969 ex.s. c 232 § 88; 1959 c 108 § 11; 1939 c 128 § 3; RRS § 11588-1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.

Authority to adjust or delay rates or charges for low-income persons: RCW 57.08.014.

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

57.20.023 Covenants to guarantee payment of revenue bonds—Bonds payable from same source may be issued on parity. The board of commissioners may make such covenants as it may deem necessary to secure and guarantee the payment of the principal of and interest on revenue bonds of the district, including but not being limited to covenants for the establishment and maintenance of adequate reserves to secure or guarantee the payment of such principal and interest; the protection and disposition of the proceeds of sale of such bonds; the use and disposition of the gross revenues of the water supply system, sewer system, or drainage system of the district and any additions or betterments thereto or extensions thereof; the use and disposition of any utility local improvement district assessments; the creation and maintenance of funds for renewals and replacements of the system; the establishment and maintenance of rates and charges adequate to pay principal and interest of such bonds and to maintain adequate coverage over debt service; the maintenance, operation and management of the system and the accounting, insuring and auditing of the business in connection therewith; the terms upon which such bonds or any of them may be redeemed at the election of the district; limitations upon the right of the district to dispose of its system or any part thereof; the appointment of trustees, depositaries and paying agents to receive, hold, disburse, invest and reinvest all or any part of the proceeds of sale of the bonds and all or any part of the income, revenue and receipts of the district, and the commissioners may make such other covenants as it may deem necessary to accomplish the most advantageous sale of such bonds. The board of commissioners may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. [1996 c 230 § 707; 1959 c 108 § 12.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.025 Refunding revenue bonds. The board of commissioners of any district may by resolution provide for the issuance of refunding revenue bonds to refund outstanding general obligation bonds and/or revenue bonds, or any part thereof, and/or all outstanding local improvement district bonds, at maturity thereof, or before maturity thereof if they

are subject to call for prior redemption or all of the holders thereof consent thereto. The total interest cost to the district over the life of the refunding bonds shall not exceed the total cost to the district which the district would have incurred but for such refunding over the remainder of the life of the bonds to be refunded thereby. The refunding bonds may be exchanged for the bonds to be refunded thereby, or may be sold in such manner as the board of commissioners deems to be for the best interest of the district, and the proceeds used, except as hereinafter provided, exclusively for the purpose of paying, retiring, and canceling the bonds to be refunded and interest thereon.

All unpaid utility local improvement district assessments payable into the revenue bond redemption fund established for payment of the bonds to be refunded shall thereafter when collected be paid into the revenue bond redemption fund established for payment of the refunding revenue bonds.

Whenever local improvement district bonds have been refunded as provided by RCW 57.20.018, or pursuant to this section, all local improvement district assessments remaining unpaid shall thereafter when collected be paid into the revenue bond redemption fund established for payment of the refunding revenue bonds, and the cash balance, if any, in the local improvement guaranty fund of the district and the proceeds received from any other assets owned by such fund shall be used in whole or in part as a reserve fund for the refunding revenue bonds or be transferred in whole or in part to any other funds of the district as the board of commissioners may determine. If any warrants are outstanding against the local improvement guaranty fund of the district at the time of the issuance of such refunding revenue bonds, the bonds shall be issued in an amount sufficient also to fund and pay such outstanding warrants.

The provisions of RCW 57.20.020 shall apply to the refunding revenue bonds issued under this title. [1996 c 230 § 708; 1977 ex.s. c 299 § 8; 1959 c 108 § 13; 1953 c 251 § 17.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.027 Revenue warrants and revenue bond anticipation warrants. Districts may also issue revenue warrants and revenue bond anticipation warrants for the same purposes for which such districts may issue revenue bonds. The provisions of this chapter relating to the authorization, terms, conditions, covenants, issuance and sale of revenue bonds (exclusive of provisions relating to refunding) shall be applicable to such warrants. Districts issuing revenue bond anticipation warrants may make covenants relative to the issuance of revenue bonds to provide funds for the redemption of part or all of such warrants and may contract for the sale of such bonds and warrants. [1996 c 230 § 709; 1975 1st ex.s. c 25 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.030 Local improvement guaranty fund. Every district in the state is authorized to create a fund for the purpose of guaranteeing, to the extent of such fund, and in the manner hereinafter provided, the payment of all of its local improvement bonds issued to pay for any local improvement

within its confines. Such fund shall be designated "Local Improvement Guaranty Fund of the ". . . . Water-Sewer District," ". . . . Water District," ". . . . Sewer District," or ". . . . District No.," and shall be established by resolution of the board of commissioners. For the purpose of maintaining such fund, every district, after the establishment thereof, shall at all times set aside and pay into such a fund such proportion of the monthly gross revenues of the water supply, sewer, or drainage system of such district as the commissioners thereof may direct by resolution. This proportion may be varied from time to time as the commissioners deem expedient or necessary. However, under the existence of the conditions set forth in subsections (1) and (2) of this section, then the proportion must be as specified in subsections (1) and (2) of this section:

(1) Whenever any bonds of any local improvement district have been guaranteed under this section and RCW 57.20.080 and 57.20.090 and the guaranty fund does not have a cash balance equal to twenty percent of all bonds originally guaranteed under this section and RCW 57.20.080 and 57.20.090 (excluding issues which have been retired in full), then twenty percent of the gross monthly revenues derived from water, sewer, and drainage systems in the territory included in the local improvement district (but not necessarily from users in other parts of the district as a whole) shall be set aside and paid into the guaranty fund, except that whenever under the requirements of this subsection, the cash balance accumulates so that it is equal to twenty percent of all bonds guaranteed, or to the full amount of all bonds guaranteed, outstanding and unpaid (which amount might be less than twenty percent of the original total guaranteed), then no further money need be set aside and paid into the guaranty fund so long as the condition shall continue.

(2) Whenever any warrants issued against the guaranty fund, as provided in this section, remain outstanding and uncalled for lack of funds for six months from the date of issuance thereof; or whenever any coupons or bonds guaranteed under this section and RCW 57.20.080 and 57.20.090 have been matured for six months and have not been redeemed either in cash or by issuance and delivery of warrants upon the guaranty fund, then twenty percent of the gross monthly revenues (or such portion thereof as the commissioners of the district determine will be sufficient to retire the warrants or redeem the coupons or bonds in the ensuing six months) derived from all water, sewer, and drainage system users in the district shall be set aside and paid into the guaranty fund. However, whenever under the requirements of this subsection all warrants, coupons, or bonds specified in this subsection have been redeemed, no further income needs to be set aside and paid into the guaranty fund under the requirements of this subsection until and unless other warrants remain outstanding and unpaid for six months or other coupons or bonds default.

(3) For the purposes of complying with the requirements of setting aside and paying into the local improvement guaranty fund a proportion of the monthly gross revenues of the water supply, sewer, or drainage system of any district, as provided in subsections (1) and (2) of this section, that district shall bind and obligate itself to maintain and operate the applicable system and further bind and obligate itself to establish, maintain, and collect such rates for water, sewer, or

drainage as will produce gross revenues sufficient to maintain and operate that system and to make necessary provision for the local improvement guaranty fund as specified by this section and RCW 57.20.080 and 57.20.090. The district shall alter its rates for water, sewer, and drainage service from time to time and shall vary the same in different portions of its territory to comply with those requirements.

(4) Whenever any coupon or bond guaranteed by this section shall mature and there shall not be sufficient funds in the appropriate local improvement district bond redemption fund to pay the same, then the applicable county treasurer shall pay same from the local improvement guaranty fund of the district; if there shall not be sufficient funds in the guaranty fund to pay same, then the same may be paid by issuance and delivery of a warrant upon the local improvement guaranty fund.

(5) Whenever the cash balance in the local improvement guaranty fund is insufficient for the required purposes, warrants drawing interest at a rate determined by the commissioners may be issued by the applicable county auditor, against the fund to meet any liability accrued against it and must be issued upon demand of the holders of any maturing coupons and/or bonds guaranteed by this section, or to pay for any certificates of delinquency for delinquent installments of assessments as provided in subsection (6) of this section. Guaranty fund warrants shall be a first lien in their order of issuance upon the gross revenues set aside and paid into that fund.

(6) Within twenty days after the date of delinquency of any annual installment of assessments levied for the purpose of paying the local improvement bonds of any district guaranteed under the provisions of this section, it shall be mandatory for the county treasurer of the county in which the real property is located to compile a statement of all installments delinquent, together with the amount of accrued interest and penalty appurtenant to each of the installments. Thereupon the applicable county treasurer shall forthwith purchase (for the district) certificates of delinquency for all such delinquent installments. Payment for all such certificates of delinquency shall be made from the local improvement guaranty fund and if there shall not be sufficient money in the fund to pay for such certificates of delinquency, the applicable county treasurer shall accept the local improvement guaranty fund warrants in payment therefor. All of those certificates of delinquency shall be issued in the name of the local improvement guaranty fund and all guaranty fund warrants issued in payment therefor shall be issued in the name of the appropriate local improvement district fund. Whenever any market is available and the commissioners of the district so direct, the applicable county treasurer shall sell any certificates of delinquency belonging to the local improvement guaranty fund. However, any such sale must not be for less than face value thereof plus accrued interest from date of issuance to date of sale.

(7) Certificates of delinquency, as provided in subsection (6) of this section, shall be issued by the county treasurer of the county in which the real property is located, shall bear interest at the rate of ten percent per annum, shall be in each instance for the face value of the delinquent installment, plus accrued interest to date of issuance of certificate of delin-

quency, plus a penalty of five percent of such face value, and shall set forth:

- (a) Description of property assessed;
- (b) Date installment of assessment became delinquent;
- (c) Name of owner or reputed owner, if known.

The certificates of delinquency may be redeemed by the owner of the property assessed at any time up to two years from the date of foreclosure of such certificate of delinquency. If any such certificate of delinquency is not redeemed on the second occurring first day of January subsequent to its issuance, the county treasurer who issued the certificate of delinquency shall then proceed to foreclose such certificate of delinquency in the manner specified for the foreclosure of the lien of local improvement assessments, pursuant to chapter 35.50 RCW and if no redemption be made within the succeeding two years shall execute and deliver a deed conveying fee simple title to the property described in the foreclosed certificate of delinquency. [1996 c 230 § 710; 1982 1st ex.s. c 17 § 20; 1981 c 156 § 20; 1937 c 102 § 1; 1935 c 82 § 1; RRS § 11589-1. Formerly RCW 57.20.030 through 57.20.070.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.080 Guaranty fund—Subrogation of district as trustee. Whenever there shall be paid out of a guaranty fund any sum on account of principal or interest upon a local improvement bond, or on account of purchase of certificates of delinquency, the district, as trustee for the fund, shall be subrogated to all rights of the owner of the bonds, or any interest, or delinquent assessment installments, so paid; and the proceeds thereof, or of the assessment or assessments underlying the same, shall become a part of the guaranty fund. There shall also be paid into such guaranty fund the interest received from the bank deposits of the fund, as well as any surplus remaining in the local improvement funds guaranteed by the guaranty fund, after the payment of all outstanding bonds payable primarily out of such local improvement funds. As among the several issues of bonds guaranteed by the fund, no preference shall exist, but defaulted bonds and any defaulted interest payments shall be purchased out of the fund in the order of their presentation.

The commissioners of every district that establishes a guaranty fund shall prescribe, by resolution, appropriate rules and regulations for the guaranty fund, not inconsistent herewith. So much of the money of a guaranty fund as is necessary and is not required for other purposes under this section and RCW 57.20.030 and 57.20.090 may, at the discretion of the commissioners of the district, be used to purchase property at county tax foreclosure sales or from the county after foreclosure in cases where such property is subject to unpaid local improvement assessments securing bonds guaranteed by the guaranty fund and such purchase is deemed necessary for the purpose of protecting the guaranty fund. In such cases the guaranty fund shall be subrogated to all rights of the district. After so acquiring title to real property, the district may lease or resell and convey the same in the same manner that county property is authorized to be leased or resold and for such prices and on such terms as may be determined by resolution of the board of commissioners. Any provision of law to the contrary notwithstanding, all proceeds resulting from

such resales shall belong to and be paid into the guaranty fund. [1996 c 230 § 711; 1983 c 167 § 165; 1937 c 102 § 2; 1935 c 82 § 2; RRS § 11589-2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

57.20.090 Rights and remedies of bond owner. The owner of any local improvement bonds guaranteed under the provisions of this section and RCW 57.20.030 and 57.20.080 shall not have any claim therefor against the district by which the same is issued, except for payment from the special assessments made for the improvement for which the local improvement bonds were issued, and except as against the local improvement guaranty fund of the district; and the district shall not be liable to any owner of such local improvement bond for any loss to the guaranty fund occurring in the lawful operation thereof by the district. The remedy of the owner of a local improvement bond, in case of nonpayment, shall be confined to the enforcement of the assessment and to the guaranty fund. A copy of the foregoing part of this section shall be plainly written, printed or engraved on each local improvement bond guaranteed by this section and RCW 57.20.030 and 57.20.080. The establishment of a local improvement guaranty fund by any district shall not be deemed at variance from any comprehensive plan heretofore adopted by that district.

If any local improvement guaranty fund hereunder authorized at any time has a balance therein in cash, and the obligations guaranteed thereby have all been paid off, then such balance shall be transferred to the maintenance fund of the district. [1996 c 230 § 712; 1983 c 167 § 166; 1937 c 102 § 3; 1935 c 82 § 3; RRS § 11589-3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

57.20.105 Vote on general indebtedness. The commissioners may submit to the voters of the district at any general or special election, a proposition that the district incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional tax limitation for the construction of any part or all of the improvements described in its general comprehensive plan or plans. Elections shall be held as provided in RCW 39.36.050. The proposition authorizing both the bond issue and imposition of excess bond retirement levies must be adopted by three-fifths of the voters voting thereon, at which election the total number of persons voting on the proposition shall constitute not less than forty percent of the total number of votes cast in the district at the last preceding general election. The bonds shall not be issued to run for a period longer than thirty years from the date of the issue. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

Whenever the proposition to issue general obligation bonds and impose such excess bond retirement levies has been approved, there shall be levied by the officers or governing body charged with the duty of levying taxes, annual levies in excess of the constitutional tax limitation sufficient

to meet the annual or semiannual payments of principal and interest on the bonds upon all taxable property within the district. [1996 c 230 § 701; 1984 c 186 § 51; 1974 ex.s. c 31 § 1. Prior: 1973 1st ex.s. c 195 § 69; 1959 c 108 § 7; 1959 c 18 § 7; prior: 1953 c 251 § 5; 1951 2nd ex.s. c 25 § 1; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part. Formerly RCW 57.16.020.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Limitation on

levies: State Constitution Art. 7 § 2; RCW 84.52.010, 84.52.050 through 84.52.056.

municipal corporation indebtedness: State Constitution Art. 8 § 6.

57.20.110 Limitation of indebtedness. A district is authorized and empowered by and through its board of commissioners to contract indebtedness for its purposes, and the maintenance thereof not exceeding one-half of one percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015. [1996 c 230 § 713; 1970 ex.s. c 42 § 35; 1929 c 114 § 19; RRS § 11596. Cf. 1913 c 161 § 18.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Limitation on municipal corporation indebtedness: State Constitution Art. 8 § 6.

57.20.120 Additional indebtedness—Ballot proposition. A district may contract indebtedness in excess of the amount named in RCW 57.20.110, but not exceeding in amount, together with existing indebtedness, two and one-half percent of the value of the taxable property in that district, as the term "value of the taxable property" is defined in RCW 39.36.015, and impose excess property tax levies to retire the indebtedness whenever a ballot proposition authorizing the indebtedness and excess levies is approved as provided under Article VII, section 2, and Article VIII, section 6, of the state Constitution, at an election to be held in the district in the manner provided by this title and RCW 39.36.050. [1999 c 153 § 17; 1996 c 230 § 714; 1984 c 186 § 55; 1970 ex.s. c 42 § 36; 1929 c 114 § 20; RRS § 11597. Cf. 1913 c 161 § 19.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

57.20.130 Bonds—Payment of interest. Any coupons for the payment of interest on bonds of any district shall be considered for all purposes as warrants drawn upon the general fund of the district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such district at maturity, or thereafter, and when so

presented, if there are not funds in the treasury to pay the coupons, it shall be the duty of the county treasurer to endorse the coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter the coupons shall bear interest at the same rate as the bonds to which they were attached. When there are no funds in the treasury to make interest payments on bonds not having coupons, the overdue interest payment shall continue bearing interest at the bond rate until it is paid, unless otherwise provided in the proceedings authorizing the sale of the bonds. [1996 c 230 § 715; 1983 c 167 § 167; 1929 c 114 § 22; RRS § 11599. Cf. 1913 c 161 § 21.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

57.20.135 Treasurer—Designation—Approval—Powers and duties—Bond. Upon obtaining the approval of the county treasurer, the board of commissioners of a district with more than twenty-five hundred water customers or sewer customers may designate by resolution some other person having experience in financial or fiscal matters as the treasurer of the district. Such a treasurer shall possess all of the powers, responsibilities, and duties of, and shall be subject to the same restrictions as provided by law for, the county treasurer with regard to a district, and the county auditor with regard to district financial matters. Such treasurer shall be bonded for not less than twenty-five thousand dollars. Approval by the county treasurer authorizing such a district to designate its treasurer shall not be arbitrarily or capriciously withheld. [1996 c 230 § 716; 1988 c 162 § 11; 1983 c 57 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Ratification—1988 c 162 §§ 10 and 11: "Any action taken by a sewer district treasurer or water district treasurer prior to March 21, 1988, and consistent with sections 10 and 11 of this act is ratified and confirmed." [1988 c 162 § 12.]

57.20.140 Maintenance or general fund and special funds. The treasurer shall create and maintain a separate fund designated as the maintenance fund or general fund of the district into which shall be paid all money received by the treasurer from the collection of taxes other than taxes levied for the payment of general obligation bonds of the district and all revenues of the district other than assessments levied in local improvement districts or utility local improvement districts, and no money shall be disbursed therefrom except upon warrants of the county auditor issued by authority of the commissioners or upon a resolution of the commissioners ordering a transfer to any other fund of the district. The treasurer also shall maintain such other special funds as may be prescribed by the district, into which shall be placed such money as the board of commissioners may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by authority of the board of commissioners. [1999 c 153 § 18; 1996 c 230 § 717; 1983 c 57 § 3; 1959 c 108 § 14; 1929 c 114 § 23; RRS § 11600. Cf. 1913 c 161 § 22.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

(2008 Ed.)

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.150 Maintenance or general fund and special funds—Use of surplus in maintenance or general fund. Whenever a district has accumulated money in the maintenance fund or general fund of the district in excess of the requirements of that fund, the board of commissioners may in its discretion use any of that surplus money for any of the following purposes: (1) Redemption or servicing of outstanding obligations of the district; (2) maintenance expenses of the district; (3) construction or acquisition of any facilities necessary to carry out the purposes of the district; or (4) any other proper district purpose. [1996 c 230 § 718; 1959 c 108 § 15.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.160 Maintenance or general fund and special funds—Deposits and investments. Whenever there shall have accumulated in any general or special fund of a district money, the disbursement of which is not yet due, the board of commissioners may, by resolution, authorize the treasurer to deposit or invest such money in qualified public depositories, or to invest such money in any investment permitted at any time by RCW 36.29.020. However, the county treasurer may refuse to invest any district money the disbursement of which will be required during the period of investment to meet outstanding obligations of the district. [1996 c 230 § 719; 1986 c 294 § 13; 1983 c 66 § 22; 1981 c 24 § 4; 1973 1st ex.s. c 140 § 3; 1959 c 108 § 16.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1983 c 66: See note following RCW 39.58.010.

Public depositories: Chapter 39.58 RCW.

57.20.165 Deposit account requirements. District money shall be deposited by the district in any account, which may be interest-bearing, subject to such requirements and conditions as may be prescribed by the state auditor. The account shall be in the name of the district except upon request by the treasurer, the accounts shall be in the name of the ". . . (name of county). . . county treasurer." The treasurer may instruct the financial institutions holding the deposits to transfer them to the treasurer at such times as the treasurer may deem appropriate, consistent with regulations governing and policies of the financial institution. [1996 c 230 § 720; 1981 c 24 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.170 Maintenance or general fund and special funds—Loans from maintenance or general funds to construction funds or other funds. The board of commissioners of any district may, by resolution, authorize and direct a loan or loans from maintenance funds or general funds of the district to construction funds or other funds of the district, so long as that loan or loans do not, in the opinion of the board of commissioners, impair the ability of the district to operate and maintain its water supply, sewer, drainage, or street lighting systems. [1996 c 230 § 721; 1959 c 108 § 17.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.22 RCW CONTRACTS FOR SYSTEM EXTENSIONS

Sections

57.22.010	Contracts—Conditions.
57.22.020	Reimbursement to owner—Contract requirements.
57.22.030	Scope of reimbursement.
57.22.040	Reimbursement—Procedures.
57.22.050	District participation in financing project.

57.22.010 Contracts—Conditions. If the district approves an extension to the system, the district shall contract with owners of real estate located within the district boundaries, at an owner's request, for the purpose of permitting extensions to the district's system to be constructed by such owner at such owner's sole cost where such extensions are required as a prerequisite to further property development. The contract shall contain such conditions as the district may require pursuant to the district's adopted policies and standards. The district shall request comprehensive plan approval for such extension, if required, and connection of the extension to the district system is conditioned upon:

- (1) Construction of such extension according to plans and specifications approved by the district;
- (2) Inspection and approval of such extension by the district;
- (3) Transfer to the district of such extension without cost to the district upon acceptance by the district of such extension;
- (4) Payment of all required connection charges to the district;
- (5) Full compliance with the owner's obligations under such contract and with the district's rules and regulations;
- (6) Provision of sufficient security to the district to ensure completion of the extension and other performance under the contract;
- (7) Payment by the owner to the district of all of the district's costs associated with such extension including, but not limited to, the district's engineering, legal, and administrative costs; and
- (8) Verification and approval of all contracts and costs related to such extension. [1996 c 230 § 801; 1989 c 389 § 11.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.22.020 Reimbursement to owner—Contract requirements. (1) Except as otherwise provided in subsection (2) of this section, the contract shall also provide, subject to the terms and conditions in this section, for the reimbursement to the owner or the owner's assigns for a period not to exceed fifteen years of a portion of the costs of the facilities constructed pursuant to such contract from connection charges received by the district from other property owners who subsequently connect to or use the facilities within the period of time that the contract is effective and who did not contribute to the original cost of such facilities.

(2)(a) The contract may provide for an extension of the fifteen-year reimbursement period for a time not to exceed

the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development for a period of six months or more within the benefit area of the system extensions authorized under this chapter.

(b) Upon the extension of the reimbursement period pursuant to (a) of this subsection, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under subsection (1) of this section shall be notified by the water-sewer district of the extension filed under this subsection.

(3) Each contract shall include a provision requiring that every two years from the date the contract is executed a property owner entitled to reimbursement under this section provide the water-sewer district with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the water-sewer district may collect any reimbursement funds owed to the property owner under the contract. Such funds must be deposited in the capital fund of the water-sewer district. [2006 c 88 § 3; 1996 c 230 § 802; 1989 c 389 § 12.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.22.030 Scope of reimbursement. The reimbursement shall be a pro rata share of construction and contract administration costs of the project. Reimbursement for projects shall include, but not be limited to, design, engineering, installation, and restoration. [1996 c 230 § 803; 1989 c 389 § 13.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.22.040 Reimbursement—Procedures. The procedures for reimbursement contracts shall be governed by the following:

(1) A reimbursement area shall be formulated by the board of commissioners within a reasonable time after the acceptance of the extension. The reimbursement shall be based upon a determination by the board of commissioners of which parcels would require similar improvements upon development.

(2) The contract must be recorded in the appropriate county auditor's office after the final execution of the agreement. [1996 c 230 § 804; 1989 c 389 § 14.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.22.050 District participation in financing project. As an alternative to financing projects under this chapter solely by owners of real estate, districts may join in the financing of improvement projects and may be reimbursed in the same manner as the owners of real estate who participate in the projects, if the board of commissioners has specified the conditions of its participation in a resolution. [1996 c 230 § 805; 1989 c 389 § 15.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.24 RCW ANNEXATION OF TERRITORY

Sections

57.24.001	Actions subject to review by boundary review board.
57.24.010	Annexation authorized—Petition—Notice of hearing.
57.24.020	Hearing procedure—Boundaries—Election, notice, judges.
57.24.040	Election—Qualification of voters.
57.24.050	Expense of election.
57.24.060	Petition method is alternative to election method.
57.24.070	Petition method—Petition—Signers—Content—Certain public properties excluded from local improvement districts.
57.24.080	Petition method—Hearing—Notice.
57.24.090	Petition method—Resolution providing for annexation.
57.24.100	Petition method—Effective date of annexation—Prior indebtedness.
57.24.170	Annexation of certain unincorporated territory—Authorized—Hearing.
57.24.180	Annexation of certain unincorporated territory—Opportunity to be heard—Effective date of annexation resolution—Notice—Referendum.
57.24.190	Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation.
57.24.200	Expenditure of funds to provide certain information authorized—Limits.
57.24.210	Annexation of certain unincorporated territory with boundaries contiguous to two municipal corporations providing water or sewer service—Procedure.
57.24.220	Assumption of substandard water system—Limited immunity from liability.
57.24.230	Annexation of territory within cities—Authorized—Process.
57.24.240	Annexation of territory within cities—Hearing procedure—Election notice.
57.24.250	Annexation of territory within cities—Election.
57.24.260	Annexation of territory within cities—Alternative method.

57.24.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 901; 1989 c 84 § 58.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.010 Annexation authorized—Petition—Notice of hearing. Territory within the county or counties in which a district is located, or territory adjoining or in close proximity to a district but which is located in another county, may be annexed to and become a part of the district. All annexations shall be accomplished in the following manner: Ten percent of the number of registered voters residing in the territory proposed to be annexed who voted in the last municipal general election may file a petition with the district commissioners and cause the question to be submitted to the voters of the territory whether such territory will be annexed and become a part of the district. If the commissioners concur in the petition, they shall file it with the county auditor of the county in which all or the largest geographic portion of the real property proposed to be annexed is located, who shall, within ten days, examine the signatures thereon and certify to the sufficiency or insufficiency thereof. If the area proposed to be annexed is located in more than one county, the auditor of the county in which the largest geographic portion of the area proposed to be annexed is located shall be the lead auditor and shall immediately transfer a copy of the petitions to the auditor of each other county in which the area proposed to be

annexed is located. Within ten days after the lead auditor received the petition, the auditors of these other counties shall certify to the lead auditor: (1) The number of voters of that county residing in the area proposed to be annexed who voted at the last municipal general election; and (2) the number of valid signatures on the petition of voters of that county residing in the area proposed to be annexed. The lead auditor shall certify the sufficiency of the petition after receiving this information. If the petition contains a sufficient number of valid signatures, the lead county auditor shall transmit it, together with a certificate of sufficiency attached thereto, to the commissioners of the district.

If there are no registered voters residing in the territory to be annexed, the petition may be signed by such a number as appear of record to own at least a majority of the acreage in the territory, and the petition shall disclose the total number of acres of land in the territory and the names of all record owners of land therein. If the commissioners are satisfied as to the sufficiency of the petition and concur therein, they shall send it, together with their certificate of concurrence attached thereto to the county legislative authority of each county in which the territory proposed to be annexed is located.

The county legislative authority, upon receipt of a petition certified to contain a sufficient number of signatures of registered voters, or upon receipt of a petition signed by such a number as own at least a majority of the acreage, together with a certificate of concurrence signed by the commissioners, at a regular or special meeting shall cause to be published once a week for at least two weeks in a newspaper in general circulation throughout the territory proposed to be annexed a notice that the petition has been filed, stating the time of the meeting at which it shall be presented, and setting forth the boundaries of the territory proposed to be annexed. [1996 c 230 § 902; 1990 c 259 § 31; 1989 c 308 § 4; 1988 c 162 § 14; 1982 1st ex.s. c 17 § 21; 1959 c 18 § 15. Prior: 1951 2nd ex.s. c 25 § 5; 1931 c 72 § 5, part; 1929 c 114 § 15, part; RRS § 11593, part. Cf. 1913 c 161 § 15, part.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.020 Hearing procedure—Boundaries—Election, notice, judges. When such petition is presented for hearing, the legislative authority of each county in which the territory proposed to be annexed is located shall hear the petition or may adjourn the hearing from time to time not exceeding one month in all, and any person, firm, or corporation may appear before the county legislative authority and make objections to the proposed boundary lines or to annexation of the territory described in the petition. Upon a final hearing each county legislative authority shall make such changes in the proposed boundary lines within the county as it deems to be proper and shall establish and define such boundaries and shall find whether the proposed annexation as established by the county legislative authority to the district will be conducive to the public health, welfare and convenience and will be of special benefit to the land included within the boundaries of the territory proposed to be annexed to the district. No lands which will not, in the judgment of the county legislative authority, be benefited by inclusion therein, shall be included within the boundaries of the territory as so established and

defined. No change shall be made by the county legislative authority in the boundary lines, including any territory outside of the boundary lines described in the petition. No person having signed such petition shall be allowed to withdraw such person's name therefrom after the filing of the petition with the board of commissioners.

Upon the entry of the findings of the final hearing each county legislative authority, if it finds the proposed annexation to be conducive to the public health, welfare, and convenience and to be of special benefit to the land proposed to be annexed and included within the boundaries of the district, shall give notice of a special election to be held within the boundaries of the territory proposed to be annexed to the district for the purpose of determining whether the same shall be annexed to the district. The notice shall particularly describe the boundaries established by the county legislative authority, and shall state the name of the district to which the territory is proposed to be annexed, and the notice shall be published in a newspaper of general circulation in the territory proposed to be annexed at least once a week for a minimum of two successive weeks prior to the election and shall be posted for the same period in at least four public places within the boundaries of the territory proposed to be annexed, which notice shall designate the places within the territory proposed to be annexed where the election shall be held, and the proposition to the voters shall be expressed on ballots which contain the words:

For Annexation to District
or
Against Annexation to District

The county legislative authority shall name the persons to act as judges at that election. [1996 c 230 § 903; 1982 1st ex.s. c 17 § 22; 1959 c 18 § 16. Prior: 1931 c 72 § 5; 1929 c 114 § 15; RRS § 11593. Cf. 1913 c 161 § 15. Formerly RCW 57.24.010, 57.24.020, and 57.24.030.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.040 Election—Qualification of voters. (1) The annexation election shall be held on the date designated in the notice and shall be conducted in accordance with the general election laws of the state. If the original petition for annexation is signed by qualified voters, then only qualified voters at the date of election residing in the territory proposed to be annexed, shall be permitted to vote at the election.

(2) If the original petition for annexation is signed by property owners as provided for in this chapter, then no person shall be entitled to vote at that election unless at the time of the filing of the original petition he or she owned land in the district of record and in addition thereto at the date of election shall be a qualified voter of the county in which such district is located. It shall be the duty of the county auditor, upon request of the county legislative authority, to certify the names of all persons owning land in the district at the date of the filing of the original petition as shown by the records of the auditor's office; and at any such election the county auditor may require any such property owner offering to vote to take an oath that the property owner is a qualified voter of the county before the property owner shall be allowed to vote. However, at any election held under the provisions of this

chapter an officer or agent of any corporation having its principal place of business in the county and owning land at the date of filing the original petition in the district duly authorized in writing may cast a vote on behalf of such corporation. When so voting the person shall file with the county auditor such a written instrument of that person's authority.

(3) If the majority of the votes cast upon the question of such election shall be for annexation, then the territory concerned shall immediately be and become annexed to such district and the same shall then forthwith be a part of the district, the same as though originally included in that district. [1999 c 153 § 19; 1996 c 230 § 904; 1929 c 114 § 16; RRS § 11593-1.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.050 Expense of election. All elections held pursuant to this chapter, whether general or special, shall be conducted by the county auditor of the county in which the district is located. The expense of all such elections shall be paid for out of the funds of such district. [1999 c 153 § 20; 1996 c 230 § 905; 1929 c 114 § 17; RRS § 11594. Cf. 1913 c 161 § 16.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.060 Petition method is alternative to election method. The method of annexation provided for in RCW 57.24.070 through 57.24.100 shall be an alternative method to that specified in RCW 57.24.010 through 57.24.050. [1953 c 251 § 22.]

57.24.070 Petition method—Petition—Signers—Content—Certain public properties excluded from local improvement districts. As an alternative method of annexation, a petition for annexation of an area contiguous to a district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights-of-way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Those county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation. [1996 c 230 § 906; 1985 c 141 § 8; 1953 c 251 § 18.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.080 Petition method—Hearing—Notice. If the petition for annexation filed with the board of commissioners complies with the requirements of law, as proved to the satisfaction of the board of commissioners, it may entertain the petition, fix the date for public hearing thereon, and cause notice of the hearing to be published in one issue of a newspaper of general circulation in the area proposed to be annexed and also posted in three public places within the area proposed for annexation. The notice shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of publication and posting of the notice shall be borne by the signers of the petition. [1953 c 251 § 19.]

57.24.090 Petition method—Resolution providing for annexation. Following the hearing the board of commissioners shall determine by resolution whether annexation shall be made. It may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the resolution a certified copy shall be filed with the legislative authority of the county in which the annexed property is located. [1996 c 230 § 907; 1953 c 251 § 20.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.100 Petition method—Effective date of annexation—Prior indebtedness. Upon the date fixed in the resolution the area annexed shall become a part of the district.

No property within the limits of the territory so annexed shall ever be taxed or assessed to pay any portion of the indebtedness of the district to which it is annexed contracted prior to or existing at the date of annexation; nor shall any such property be released from any taxes or assessments levied against it or from liability for payment of outstanding bonds or warrants issued prior to such annexation. [1953 c 251 § 21.]

57.24.170 Annexation of certain unincorporated territory—Authorized—Hearing. When there is, within a district, unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to the district, the board of commissioners may resolve to annex that territory to the district. The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the district and one or more newspapers of general circulation within the area to be annexed. [1996 c 230 § 908; 1982 c 146 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.180 Annexation of certain unincorporated territory—Opportunity to be heard—Effective date of annexation resolution—Notice—Referendum. On the date set for hearing under RCW 57.24.170, residents or property owners of the area included in the resolution for annex-

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ation shall be afforded an opportunity to be heard. The board of commissioners may provide by resolution for annexation of the territory described in the resolution, but the effective date of the resolution shall be not less than forty-five days after the passage thereof. The board of commissioners shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the resolution, in one or more newspapers of general circulation within the district and in one or more newspapers of general circulation within the area to be annexed. Upon the filing of a timely and sufficient referendum petition under RCW 57.24.190, a referendum election shall be held under RCW 57.24.190, and the annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto. After the expiration of the forty-fifth day from but excluding the date of passage of the annexation resolution, if no timely and sufficient referendum petition has been filed, under RCW 57.24.190, the area annexed shall become a part of the district upon the date fixed in the resolution of annexation. [1996 c 230 § 909; 1982 c 146 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.190 Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation. The annexation resolution under RCW 57.24.180 shall be subject to referendum for forty-five days after the passage thereof. Upon the filing of a timely and sufficient referendum petition with the board of commissioners, signed by registered voters in number equal to not less than ten percent of the registered voters in the area to be annexed who voted in the last municipal general election, the question of annexation shall be submitted to the voters of such area in a general election if one is to be held within ninety days or at a special election called for that purpose by the board of commissioners in accordance with *RCW 29.13.010 and 29.13.020. Notice of that election shall be given under RCW 57.24.020 and the election shall be conducted under RCW 57.24.040. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation resolution, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the district upon the date fixed in the resolution of annexation upon transmitting the resolution to the county legislative authority. [1996 c 230 § 910; 1990 c 259 § 32; 1982 c 146 § 6.]

***Reviser's note:** RCW 29.13.010 and 29.13.020 were recodified as RCW 29A.04.320 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.200 Expenditure of funds to provide certain information authorized—Limits. A district may expend

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funds to inform residents in areas proposed for annexation into the district of the following:

- (1) Technical information and data;
- (2) The fiscal impact of the proposed improvement; and
- (3) The types of improvements planned.

Expenditures under this section shall be limited to research, preparation, printing, and mailing of the information. [1996 c 230 § 911; 1986 c 258 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.210 Annexation of certain unincorporated territory with boundaries contiguous to two municipal corporations providing water or sewer service—Procedure. When there is unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to two municipal corporations providing either water or sewer service, one of which is a water-sewer district, the legislative authority of either of the contiguous municipal corporations may resolve to annex such territory to that municipal corporation, provided a majority of the legislative authority of the other contiguous municipal corporation concurs. In such event, the municipal corporation resolving to annex such territory may proceed to effect the annexation by complying with RCW 57.24.170 through 57.24.190. For purposes of this section, "municipal corporation" means a water-sewer district, city, or town. [2002 c 76 § 1; 1996 c 230 § 912; 1995 c 279 § 2; 1987 c 449 § 17.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.220 Assumption of substandard water system—Limited immunity from liability. A district assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the district has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1996 c 230 § 913; 1994 c 292 § 8.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Findings—Intent—1994 c 292: See note following RCW 57.04.050.

57.24.230 Annexation of territory within cities—Authorized—Process. (1) If a district acquires either water facilities or sewer facilities, or both from a city, and the district and the city within which the facilities are located enter into an agreement stating that the district will seek annexation of territory within that city, the district commissioners may initiate a process for the annexation of such territory.

(2) The annexation process shall commence upon the adoption of a resolution by the commissioners calling for the

question of annexation to be submitted to the voters of the territory proposed for annexation and setting forth the boundaries thereof. The resolution must be filed with the county legislative authority of each county in which the territory proposed for annexation is located.

(3) Upon receipt of the resolution, the county legislative authority shall cause a hearing to be held as provided in RCW 57.24.240. [2007 c 31 § 1.]

57.24.240 Annexation of territory within cities—Hearing procedure—Election notice. (1) If a resolution calling for an annexation election as provided in RCW 57.24.230 is presented for hearing, the legislative authority of each county in which the territory proposed for annexation is located shall hear the resolution or may adjourn and reconvene the hearing as deemed necessary for its purposes. The hearing, however, may not exceed four weeks in duration. Any person, firm, or corporation may appear before the legislative authority or authorities and make objections to the proposed boundary lines or to annexation of the territory described in the resolution.

(2) Upon a final hearing, each county legislative authority may make changes to the proposed boundary lines within the county as it deems proper and shall formally establish and define the boundaries. Each legislative authority also shall find whether the proposed annexation will be conducive to the public health, welfare, and convenience and whether it will be of special benefit to the land included within the boundaries of the proposed annexation. No lands that will not, in the judgment of the legislative authority, benefit by inclusion therein, may be included within the boundaries of the territory as established and defined. The legislative authority may not include within the territory proposed for annexation any territory outside of the boundary lines described in the resolution adopted by the district under RCW 57.24.230(2).

(3) Upon the entry of the findings of the final hearing, each county legislative authority, if it finds the proposed annexation satisfies the requirements of subsection (2) of this section, shall give notice of a special election to be held within the boundaries of the territory proposed for annexation for the purpose of determining whether the same shall be annexed to the district. The notice shall:

(a) Describe the boundaries established by the legislative authority;

(b) State the name of the district to which the territory is proposed to be annexed;

(c) Be published in a newspaper of general circulation in the territory proposed for annexation at least once a week for a minimum of two successive weeks prior to the election;

(d) Be posted for the same period in at least four public places within the boundaries of the territory proposed for annexation; and

(e) Designate the places within the territory proposed for annexation where the election shall be held.

(4) The proposition to the voters shall be expressed on ballots containing the words:

For Annexation to District
or
Against Annexation to District

The county legislative authority shall name the persons to act as judges at that election. [2007 c 31 § 2.]

57.24.250 Annexation of territory within cities—Election. (1) The annexation election shall be held on the date designated in the notice and shall be conducted in accordance with the general election laws of the state. Qualified voters residing within the territory proposed for annexation shall be permitted to vote at the election.

(2) If the majority of the votes cast upon the question of such election are for annexation, the territory concerned shall immediately be deemed annexed to the district and the same shall then forthwith be a part of the district, the same as though originally included in that district. [2007 c 31 § 3.]

57.24.260 Annexation of territory within cities—Alternative method. The method of annexation provided for in RCW 57.24.230 through 57.24.250 is an alternative method and is additional to other methods provided for in this chapter. [2007 c 31 § 4.]

Chapter 57.28 RCW

WITHDRAWAL OF TERRITORY

Sections

57.28.001	Actions subject to review by boundary review board.
57.28.010	Withdrawal authorized—Petition.
57.28.020	Petition of residents.
57.28.030	Petition of landowners.
57.28.035	Alternative procedure—Resolution.
57.28.040	Notice of hearing—Bond for costs.
57.28.050	Hearing—Findings.
57.28.060	Transmission to county legislative authorities.
57.28.070	Notice of hearing before county legislative authority.
57.28.080	Hearing—Findings.
57.28.090	Election on withdrawal.
57.28.100	Notice of election—Election—Canvass.
57.28.110	Taxes and assessments unaffected.

57.28.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 1001; 1989 c 84 § 59.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.010 Withdrawal authorized—Petition. Territory within a district may be withdrawn therefrom in the following manner and upon the following conditions: The petition for withdrawal shall be in writing and shall designate the boundaries of the territory proposed to be withdrawn from the district and shall be signed by at least twenty-five percent of the qualified voters residing within the territory so designated who are qualified voters on the date of filing such petition. The petition shall set forth that the territory proposed to be withdrawn is of such location or character that water and sewer services cannot be furnished to it by the district at reasonable cost, and shall further set forth that the withdrawal of such territory will be of benefit to such territory and conducive to the general welfare of the balance of the district.

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[1996 c 230 § 1002; 1941 c 55 § 1; Rem. Supp. 1941 § 11604-1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.020 Petition of residents. The petition for withdrawal shall be filed with the county auditor of each county in which the district is located, and after the filing no person having signed the petition shall be allowed to withdraw the person's name therefrom. Within ten days after such filing, each county auditor shall examine and verify the signatures of signers residing in the respective county. The petition shall be transmitted to the auditor of the county in which all or the major geographic portion of the district is located, who shall certify to the sufficiency or insufficiency of the signatures. If the area proposed to be withdrawn is located in more than one county, the auditor of the county in which the largest geographic portion of the area proposed to be withdrawn is located shall be the lead auditor and shall immediately transfer a copy of the petitions to the auditor of each other county in which the area proposed to be withdrawn is located. Within ten days after the lead auditor received the petition, the auditors of these other counties shall certify to the lead auditor: (1) The number of voters of that county residing in the area proposed to be withdrawn who voted at the last municipal general election; and (2) the number of valid signatures on the petition of voters of that county residing in the area proposed to be withdrawn. The lead auditor shall certify the sufficiency of the petition after receiving this information. If such petition be found by such county auditor to contain sufficient signatures, the petition, together with a certificate of sufficiency attached thereto, shall be transmitted to the board of commissioners of the district. [1996 c 230 § 1003; 1982 1st ex.s. c 17 § 23; 1941 c 55 § 2; Rem. Supp. 1941 § 11604-2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.030 Petition of landowners. In the event there are no qualified voters residing within the territory proposed to be withdrawn, the petition for withdrawal may be signed by such persons as appear of record to own at least a majority of the acreage within such territory, in which event the petition shall also state the total number of acres and the names of all record owners of the land within such territory. The petition so signed shall be filed with the board of commissioners of the district, and after such filing no person having signed the same shall be allowed to withdraw that person's name. [1996 c 230 § 1004; 1941 c 55 § 3; Rem. Supp. 1941 § 11604-3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.035 Alternative procedure—Resolution. As an alternative procedure to those set forth in RCW 57.28.010 through 57.28.030, the withdrawal of territory within a district may be commenced by a resolution of the board of commissioners that sets forth boundaries of the territory to be withdrawn and sets a date for the public hearing required under RCW 57.28.050. Upon the final hearing, the board of commissioners shall make such changes in the proposed

boundaries as they deem proper, except that no changes in the boundary lines may be made by the board of commissioners to include lands not within the boundaries of the territory as described in such resolution.

Whenever the board of commissioners proposes to commence the withdrawal of any portion of its territory located within a city or town using the alternative procedures herein authorized, it shall first notify such city or town of their [its] intent to withdraw the territory. If the legislative authority of the city or town takes no action within sixty days of receipt of notification, the district may proceed with the resolution method.

If the city or town legislative authority disapproves of use of the alternative procedures, the board of commissioners may proceed using the process established under RCW 57.28.010 through 57.28.030.

A withdrawal procedure commenced under this section shall be subject to the procedures and requirements set forth in RCW 57.28.040 through 57.28.110. [1996 c 230 § 1005; 1985 c 153 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.040 Notice of hearing—Bond for costs. Upon receipt by the board of commissioners of a petition and certificate of sufficiency of the auditor, or if the petition is signed by landowners and the board of commissioners is satisfied as to the sufficiency of the signatures thereon, it shall at a regular or special meeting fix a date for hearing on the petition and give notice that the petition has been filed, stating the time and place of the meeting of the board of commissioners at which the petition will be heard and setting forth the boundaries of the territory proposed to be withdrawn. The notice shall be published at least once a week for two successive weeks in a newspaper of general circulation therein, and if no such newspaper is printed in the county, then in some newspaper of general circulation in the county and district. Any additional notice of the hearing may be given as the board of commissioners may by resolution direct.

Prior to fixing the time for a hearing on any such petition, the board of commissioners in its discretion may require the petitioners to furnish a satisfactory bond conditioned that the petitioners shall pay all costs incurred by the district in connection with the petition, including the cost of an election if one is held pursuant thereto, and should the petitioners fail or refuse to post such a bond, if one is required by the district board of commissioners, then there shall be no duty on the part of the board of commissioners to act upon the petition. [1996 c 230 § 1006; 1985 c 469 § 59; 1951 c 112 § 3; 1941 c 55 § 4; Rem. Supp. 1941 § 11604-4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.050 Hearing—Findings. The petition for withdrawal shall be heard at the time and place specified in such notice or the hearing may be adjourned from time to time, not exceeding one month in all, and any person may appear at such hearing and make objections to the withdrawal of such territory or to the proposed boundary lines thereof. Upon final hearing on the petition for withdrawal, the board of commissioners of the district shall make such changes in the

proposed boundary lines as it deems to be proper, except that no changes in the boundary lines shall be made by the board of commissioners to include lands not within the boundaries of the territory as described in such petition. In establishing and defining such boundaries the board of commissioners shall exclude any property which is then being furnished with water, sewer, or drainage service by the district or which is included in any distribution or collection system the construction of which is included within any duly established local improvement district or utility local improvement district, and the territory as finally established and defined must be substantial in area and consist of adjoining or contiguous properties. The board of commissioners shall thereupon make and by resolution adopt findings of fact as to the following questions:

(1) Would the withdrawal of such territory be of benefit to such territory?

(2) Would such withdrawal be conducive to the general welfare of the balance of the district?

Such findings shall be entered in the records of the district, together with any recommendations the board of commissioners may by resolution adopt. [1999 c 153 § 21; 1996 c 230 § 1007; 1986 c 109 § 1; 1941 c 55 § 5; Rem. Supp. 1941 § 11604-5.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.060 Transmission to county legislative authorities. Within ten days after the final hearing the board of commissioners of the district shall transmit to the county legislative authority of each county in which the district is located the petition for withdrawal, together with a copy of the findings and recommendations of the board of commissioners of the district certified by the secretary of the district to be a true and correct copy of such findings and recommendations as the same appear on the records of the district. [1996 c 230 § 1008; 1982 1st ex.s. c 17 § 24; 1941 c 55 § 6; Rem. Supp. 1941 § 11604-6.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.070 Notice of hearing before county legislative authority. Upon receipt of the petition and certified copy of the findings and recommendations adopted by the district commissioners, the county legislative authority of each county in which the district is located at a regular or special meeting shall fix a time and place for hearing thereon and shall cause to be published at least once a week for two or more weeks in successive issues of a newspaper of general circulation in the district, a notice that such petition has been presented to the county legislative authority stating the time and place of the hearing thereon, setting forth the boundaries of the territory proposed to be withdrawn as such boundaries are established and defined in the findings or recommendations of the board of commissioners of the district. [1996 c 230 § 1009; 1982 1st ex.s. c 17 § 25; 1941 c 55 § 7; Rem. Supp. 1941 § 11604-7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.080 Hearing—Findings. The petition shall be heard at the time and place specified in the notice, or the hearing may be adjourned from time to time, not exceeding one month in all, and any person may appear at the hearing and make objections to the withdrawal of the territory. Upon final hearing on the petition the county legislative authority shall thereupon make, enter, and by resolution adopt its findings of fact on the questions set forth in RCW 57.28.050. If the findings of fact answer the questions affirmatively, and if they are the same as the findings made by the district commissioners, then the county legislative authority shall by resolution declare that the territory be withdrawn from that district, and thereupon the territory shall be withdrawn and excluded from that district the same as if it had never been included therein except for the lien of taxes as hereinafter set forth. However, the boundaries of the territory withdrawn shall be the boundaries established and defined by the district board of commissioners and shall not be altered or changed by the county legislative authority unless the unanimous consent of the district commissioners be given in writing to any such alteration or change. [1996 c 230 § 1010; 1941 c 55 § 8; Rem. Supp. 1941 § 11604-8.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.090 Election on withdrawal. If the findings of any county legislative authority answer any of the questions of fact set forth in RCW 57.28.050 in the negative, or if any of the findings of the county legislative authority are not the same as the findings of the district board of commissioners upon the same question, then in either of such events, the petition for withdrawal shall be deemed denied. Thereupon, and in such event, the county legislative authority of each county in which the district is located shall by resolution cause a special election to be held not less than thirty days or more than sixty days from the date of the final hearing of any county legislative authority upon the petition for withdrawal, at which election the proposition expressed on the ballots shall be substantially as follows:

"Shall the territory established and defined by the district board of commissioners at its meeting held on the (insert date of final hearing of district board of commissioners upon the petition for withdrawal) be withdrawn from district (naming it).

YES NO

[1996 c 230 § 1011; 1982 1st ex.s. c 17 § 26; 1941 c 55 § 9; Rem. Supp. 1941 § 11604-9.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.100 Notice of election—Election—Canvass. Notice of the election shall be posted and published in the same manner provided by law for the posting and publication of notice of elections to annex territory to districts. The territory described in the notice shall be that established and defined by the district board of commissioners. All qualified voters residing within the district shall have the right to vote at the election. If a majority of the votes cast favor the withdrawal from the district of such territory, then within ten days

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after the official canvass of the election the county legislative authority of each county in which the district is located shall by resolution establish that the territory has been withdrawn, and the territory shall thereupon be withdrawn and excluded from the district the same as if it had never been included therein except for the lien of any taxes as hereinafter set forth. [1996 c 230 § 1012; 1982 1st ex.s. c 17 § 27; 1941 c 55 § 10; Rem. Supp. 1941 § 11604-10.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.110 Taxes and assessments unaffected. Taxes or assessments levied or assessed against property located in territory withdrawn from a district shall remain a lien and be collected as by law provided when the taxes or assessments are levied or assessed prior to the withdrawal or when the levies or assessments are duly made to provide revenue for the payment of general obligations or general obligation bonds of the district duly incurred or issued prior to the withdrawal. [1996 c 230 § 1013; 1941 c 55 § 11; Rem. Supp. 1941 § 11604-11.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.32 RCW

**CONSOLIDATION OF DISTRICTS—
TRANSFER OF PART OF DISTRICT**

Sections

- 57.32.001 Actions subject to review by boundary review board.
- 57.32.010 Consolidation authorized—Petition method—Resolution method.
- 57.32.020 Certificate of sufficiency.
- 57.32.021 Procedure upon receipt of certificate of sufficiency—Agreement, contents—Comprehensive plan.
- 57.32.022 Certification of agreement—Election, notice and conduct.
- 57.32.023 When consolidation effective—Cessation of former districts—Rights and powers of consolidated district.
- 57.32.024 Vesting of funds and property in consolidated district—Outstanding indebtedness.
- 57.32.130 Commissioners—Number.
- 57.32.160 Transfer of part of district—Procedure.

Assumption of jurisdiction over water or sewer district by city: Chapter 35.13A RCW.

57.32.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 1101; 1989 c 84 § 60.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.010 Consolidation authorized—Petition method—Resolution method. Two or more districts may be joined into one consolidated district. The consolidation may be initiated in either of the following ways: (1) Ten percent of the voters residing within each of the districts proposed to be consolidated may petition the board of commissioners of their respective districts to cause the question to be submitted to the voters of the districts proposed to be consolidated; or (2) the board of commissioners of each of the districts proposed to be consolidated may by resolution determine that the consolidation of the districts shall be conducive to the public health, welfare, and convenience and to be of

special benefit to the lands of the districts. [1996 c 230 § 1102; 1989 c 308 § 11; 1982 1st ex.s. c 17 § 28; 1967 ex.s. c 39 § 1; 1943 c 267 § 1; Rem. Supp. 1943 § 11604-20.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.020 Certificate of sufficiency. If the consolidation proceedings are initiated by petitions, upon the filing of such petitions with the boards of commissioners of the districts, the boards of commissioners of each district shall file such petitions with the auditor of the county in which all or the largest geographic portion of the respective districts is located, who shall within ten days examine and verify the signatures of the signers residing in the county. If the districts proposed to be consolidated include areas located in more than one county, the auditor of the county in which the largest geographic portion of the consolidating districts is located shall be the lead auditor and shall immediately transfer a copy of the petitions to the auditor of each other county in which the consolidating districts are located. Within ten days after the lead auditor received the petition, the auditors of these other counties shall certify to the lead auditor: (1) The number of voters of that county residing in each consolidating district; and (2) the number of valid signatures on the petition of voters of that county residing in each consolidating district. The lead auditor shall certify the sufficiency of the petition after receiving this information. If all of such petitions shall be found to contain a sufficient number of signatures, the county auditor shall transmit the same, together with a certificate of sufficiency attached thereto, to the board of commissioners of each of the districts proposed for consolidation.

If there are no voters residing in one or more of the districts proposed to be consolidated, such petitions may be signed by such a number of landowners as appear of record to own at least a majority of the acreage in the pertinent district, and the petitions shall disclose the total number of acres of land in that district and shall also contain the names of all record owners of land therein. [1996 c 230 § 1103; 1982 1st ex.s. c 17 § 30; 1967 ex.s. c 39 § 2; 1943 c 267 § 2; Rem. Supp. 1943 § 11604-21.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.021 Procedure upon receipt of certificate of sufficiency—Agreement, contents—Comprehensive plan. Upon receipt by the boards of commissioners of the districts proposed for consolidation, hereinafter referred to as the "consolidating districts", of the lead county auditor's certificate of sufficiency of the petitions, or upon adoption by the boards of commissioners of the consolidating districts of their resolutions for consolidation, the boards of commissioners of the consolidating districts shall, within ninety days, enter into an agreement providing for consolidation. The agreement shall set forth the method and manner of consolidation, a comprehensive plan or scheme of water supply, sewer, and drainage services for the consolidated district, and if the comprehensive plan or scheme of water supply, sewer, and drainage services provides that one or more of the consolidating districts or the proposed consolidated district issue revenue bonds for either the construction or other costs of any part or all of the comprehensive plan, or both, then the details

thereof shall be set forth. The requirement that a comprehensive plan or scheme of water supply, sewer, and drainage services for the consolidated district be set forth in the agreement for consolidation shall be satisfied if the existing comprehensive plans or schemes of the consolidating districts are incorporated therein by reference and any changes or additions thereto are set forth in detail. [1996 c 230 § 1104; 1967 ex.s. c 39 § 8.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.022 Certification of agreement—Election, notice and conduct. The boards of commissioners of the consolidating districts shall certify the agreement to the county auditors of the respective counties in which the districts are located. A special election shall be called by the county auditors for the purpose of submitting to the voters of each of the consolidating districts the proposition of whether or not the several districts shall be consolidated into one district. The proposition shall give the title of the proposed consolidated district. Notice of the election shall be given and the election conducted in accordance with the general election laws. [1996 c 230 § 1105; 1994 c 223 § 71; 1982 1st ex.s. c 17 § 31; 1967 ex.s. c 39 § 9.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.023 When consolidation effective—Cessation of former districts—Rights and powers of consolidated district. If at the election a majority of the voters in each of the consolidating districts vote in favor of the consolidation, the consolidation shall be authorized. The consolidation shall be effective and the consolidating districts shall cease to exist and shall then be and become a new district and municipal corporation of the state of Washington, upon the certification of the election results. The name of the new district shall be ". . . . Water-Sewer District," ". . . . Water District," ". . . . Sewer District," or ". . . . District No.," which shall be the name appearing on the ballot. The district shall have all and every power, right, and privilege possessed by other water-sewer, sewer, or water districts of the state of Washington. The district may issue revenue bonds to pay for the construction of any additions and betterments set forth in the comprehensive plan of water supply, sewer, and drainage services contained in the agreement for consolidation and any future additions and betterments to the comprehensive plan of water supply, sewer, and drainage services, as its board of district commissioners shall by resolution adopt, without submitting a proposition therefor to the voters of the district. [1999 c 153 § 22; 1996 c 230 § 1106; 1994 c 223 § 72; 1982 1st ex.s. c 17 § 32; 1967 ex.s. c 39 § 10.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.024 Vesting of funds and property in consolidated district—Outstanding indebtedness. Upon the formation of any consolidated district, all funds, rights, and property, real and personal, of the former districts, shall vest in and become the property of the consolidated district.

Unless the agreement for consolidation provides to the contrary, any outstanding indebtedness of any form, owed by the districts, shall remain the obligation of the area of the original debtor district and the board of commissioners of the consolidated district shall make such levies, assessments, or charges for service upon that area or the users therein as shall pay off the indebtedness at maturity. [1996 c 230 § 1107; 1967 ex.s. c 39 § 11.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.130 Commissioners—Number. The commissioners of the districts consolidated into any new consolidated district shall become commissioners thereof until their respective terms of office expire or until they resign from office if the resignation is before the expiration of their terms of office. At each election of commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire, the total number of commissioners in the consolidated district shall be reduced to three. However, if the agreement provides that the consolidated district eventually will be governed by a five-member board of commissioners, one commissioner shall be elected to a six-year term of office at the first district general election following the consolidation, two commissioners shall be elected to six-year terms of office at the second district general election following the consolidation, and two commissioners shall be elected to six-year terms of office at the third district general election following the consolidation. [1996 c 230 § 1108; 1985 c 141 § 9; 1943 c 267 § 13; Rem. Supp. 1943 § 11604-32.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.160 Transfer of part of district—Procedure. A part of one district may be transferred into an adjacent district if the area can be better served thereby. Such transfer can be accomplished by a petition, directed to both districts, signed by the owners according to the records of the county auditor of not less than sixty percent of the area of land to be transferred. If a majority of the commissioners of each district approves the petition, copies of the approving resolutions shall be filed with the county legislative authority which shall act upon the petition as a proposed action in accordance with RCW 57.02.040. [1996 c 230 § 1109; 1987 c 449 § 18.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

**Chapter 57.36 RCW
MERGER OF DISTRICTS**

Sections

57.36.001	Actions subject to review by boundary review board.
57.36.010	Merger of districts authorized.
57.36.020	Initiation of merger—Procedure.
57.36.030	Agreement—Certification to county auditor—Election—Notice, conduct.
57.36.040	When merger effective—Cessation of merging district—Commissioners.
57.36.050	Vesting of funds and property in merger district—Outstanding indebtedness.
57.36.060	Persons serving on both boards to hold only one position after merger.

57.36.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 1201; 1989 c 84 § 61.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.010 Merger of districts authorized. Whenever one or more districts desire to merge into another district, the district or districts desiring to merge into the other district shall be referred to as the "merging district" or "merging districts" and the district into which the merging district or districts desire to merge shall be referred to as the "merger district." After the merger, the merger district shall survive under its original name or number. [1996 c 230 § 1202; 1989 c 308 § 12; 1982 1st ex.s. c 17 § 29; 1967 ex.s. c 39 § 3; 1961 c 28 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.020 Initiation of merger—Procedure. A merger of districts may be initiated in either of the following ways:

(1) Whenever the boards of commissioners of districts determine by resolution that the merger of such districts shall be conducive to the public health, welfare, and convenience and to be of special benefit to the lands of such districts.

(2) Whenever ten percent of the voters residing within the merging district or districts petition the board of commissioners of the merging district or districts for a merger, and the board of commissioners of the merger district determines by resolution that the merger of the districts shall be conducive to the public health, welfare, and convenience of the districts. [1996 c 230 § 1203; 1967 ex.s. c 39 § 4; 1961 c 28 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.030 Agreement—Certification to county auditor—Election—Notice, conduct. Whenever a merger is initiated in either of the two ways provided under this chapter, the boards of commissioners of the districts shall enter into an agreement providing for the merger. The agreement must be entered into within ninety days following completion of the last act in initiation of the merger.

The respective boards of commissioners shall certify the agreement to the county auditor of each county in which the districts are located. Each county auditor shall call a special election for the purpose of submitting to the voters of the respective districts the proposition of whether the merging district or districts shall be merged into the merger district. Notice of the elections shall be given and the elections conducted in accordance with the general election laws. [1996 c 230 § 1204; 1982 1st ex.s. c 17 § 33; 1967 ex.s. c 39 § 5; 1961 c 28 § 3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.040 When merger effective—Cessation of merging district—Commissioners. If at such election a majority of the voters of the merging district or districts shall vote in favor of the merger, the merger shall be authorized.

The merger shall be effective and the merging district or districts shall cease to exist and shall become a part of the merger district, upon the certification of the election results. The commissioners of the merging district or districts shall hold office as commissioners of the new merged district until their respective terms of office expire or until they resign from office if the resignation is before the expiration of their terms of office. The election of commissioners in the merger district after the merger shall occur as provided in RCW 57.32.130 in a consolidated district after the consolidation. [1999 c 153 § 23; 1996 c 230 § 1205; 1982 c 104 § 2; 1967 ex.s. c 39 § 6; 1961 c 28 § 4.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.050 Vesting of funds and property in merger district—Outstanding indebtedness. All funds and property, real and personal, of the merging district or districts, shall vest in and become the property of the merger district. Unless the agreement of merger provides to the contrary, any outstanding indebtedness of any form, owed by the districts, shall remain the obligation of the area of the original debtor district; and the commissioners of the merger district shall make such levies, assessments, or charges for service upon such area or the users therein as shall pay off such indebtedness at maturity. [1996 c 230 § 1207; 1967 ex.s. c 39 § 7; 1961 c 28 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.060 Persons serving on both boards to hold only one position after merger. A person who serves on the board of commissioners of a merging district and a merger district shall hold only one position on the board of commissioners of the merger district and shall only receive compensation, expenses, and benefits that are available to a single commissioner. [1996 c 230 § 1206; 1988 c 162 § 4. Formerly RCW 57.40.135.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.42 RCW

DISPOSITION OF PROPERTY TO PUBLIC UTILITY DISTRICT

Sections

- 57.42.010 Authorized.
- 57.42.020 Disposition must be in public interest—Filings—Indebtedness.
- 57.42.030 Hearing—Notice—Decree.

57.42.010 Authorized. Subject to the provisions of RCW 57.42.020 and 57.42.030, any district created under the provisions of this title may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to a public utility district in the same county on such terms as may be mutually agreed upon by the board of com-

missioners of each district. [1996 c 230 § 1301; 1973 1st ex.s. c 56 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.42.020 Disposition must be in public interest—Filings—Indebtedness. No district shall dispose of its property to a public utility district unless the respective board of commissioners of each district shall determine by resolution that such disposition is in the public interest and conducive to the public health, welfare, and convenience. Copies of each resolution, together with copies of the proposed disposition agreement, shall be filed with the legislative authority of the county in which the district is located and with the superior court of that county. Unless the proposed agreement provides otherwise, any outstanding indebtedness of any form owed by the water district shall remain the obligation of the area of the district, and the board of commissioners of the public utility district shall be empowered to make such levies, assessments, or charges upon that area or the water, sewer, or drainage users therein as shall pay off the indebtedness at maturity. [1996 c 230 § 1302; 1973 1st ex.s. c 56 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.42.030 Hearing—Notice—Decree. Within ninety days after the resolutions and proposed agreement have been filed with the court, the court shall fix a date for a hearing and shall direct that notice of the hearing be given by publication. After reviewing the proposed agreement and considering other evidence presented at the hearing, the court may determine by decree that the proposed disposition is in the public interest and conducive to the public health, welfare, and convenience. In addition, the decree shall authorize the payment of all or a portion of the indebtedness of the district relating to property disposed of under such decree. Pursuant to the court decree, the district shall dispose of its property under the terms of the disposition agreement with the public utility district. [1996 c 230 § 1303; 1973 1st ex.s. c 56 § 3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.46 RCW

VOLUNTARY CONTRIBUTIONS TO ASSIST LOW-INCOME CUSTOMERS

Sections

- 57.46.010 Voluntary contributions to assist low-income residential customers—Administration.
- 57.46.020 Disbursement of contributions—Quarterly report.
- 57.46.030 Contributions not considered commingling of funds.

57.46.010 Voluntary contributions to assist low-income residential customers—Administration. A district may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their district bills. All funds received by the district in response to such requests shall be transmitted to the grantee of the department of community, trade, and economic development which administers federally funded energy assistance

programs for the state in the district's service area or to a charitable organization within the district's service area. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their district bills. The grantee or charitable organization shall be responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified. [1996 c 230 § 1401; 1995 c 399 § 149; 1993 c 45 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.46.020 Disbursement of contributions—Quarterly report. All assistance provided under this chapter shall be disbursed by the grantee or charitable organization. Where possible the district shall be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check shall be issued jointly payable to the customer and the district. The availability of funds for assistance to a district's low-income customers as a result of voluntary contributions shall not reduce the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community, trade, and economic development within the district's service area. The grantee or charitable organization shall provide the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance. [1996 c 230 § 1402; 1995 c 399 § 150; 1993 c 45 § 6.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.46.030 Contributions not considered commingling of funds. Contributions received under a program implemented by a district in compliance with this chapter shall not be considered a commingling of funds. [1996 c 230 § 1403; 1993 c 45 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.90 RCW

DISINCORPORATION OF DISTRICTS IN COUNTIES WITH 210,000 POPULATION OR MORE

Sections

57.90.001	Actions subject to review by boundary review board.
57.90.010	Disincorporation authorized.
57.90.020	Proceedings, how commenced—Public hearings.
57.90.030	Findings—Order—Supervision of liquidation.
57.90.040	Distribution of assets.
57.90.050	Assessments to retire indebtedness.
57.90.100	Disposal of real property on abandonment of irrigation district right-of-way—Right of adjacent owners.

Dissolution of

port districts: RCW 53.46.060.

water-sewer districts: Chapter 57.04 RCW.

(2008 Ed.)

57.90.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 1501; 1989 c 84 § 63.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.90.010 Disincorporation authorized. Water-sewer, park and recreation, metropolitan park, county rural library, cemetery, flood control, mosquito control, diking and drainage, irrigation or reclamation, weed, health, or fire protection districts, and any air pollution control authority or regional fire protection service authority, hereinafter referred to as "special districts," which are located wholly or in part within a county with a population of two hundred ten thousand or more may be disincorporated when the district has not actively carried out any of the special purposes or functions for which it was formed within the preceding consecutive five-year period. [2004 c 129 § 13; 1999 c 153 § 24; 1996 c 230 § 1502; 1991 c 363 § 137; 1979 ex.s. c 30 § 11; 1963 c 55 § 1.]

Captions not law—Severability—2004 c 129: See RCW 52.26.900 and 52.26.901.

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

57.90.020 Proceedings, how commenced—Public hearings. Upon the filing with the county legislative authority of each county in which the district is located of a resolution of any governmental unit calling for the disincorporation of a special district, or upon the filing with the county legislative authority of each county in which the district is located of the petition of twenty percent of the voters within a special district calling for the disincorporation of the special district, the county legislative authority shall hold public hearings to determine whether or not any services have been provided within a consecutive five year period and whether the best interests of all persons concerned will be served by the proposed dissolution of the special district. [1996 c 230 § 1503; 1982 1st ex.s. c 17 § 35; 1963 c 55 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.90.030 Findings—Order—Supervision of liquidation. If the county legislative authority finds that no services have been provided within the preceding consecutive five-year period and that the best interests of all persons concerned will be served by disincorporating the special district, it shall order that such action be taken, specify the manner in which it is to be accomplished and supervise the liquidation of any assets and the satisfaction of any outstanding indebtedness. [1996 c 230 § 1504; 1963 c 55 § 3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.90.040 Distribution of assets. If a special district is disincorporated the proceeds of the sale of any of its assets,

together with money on hand in the treasury of the special district, shall after payment of all costs and expenses and all outstanding indebtedness be paid to the county treasurer to be placed to the credit of the school district, or districts, in which such special district is situated. [1996 c 230 § 1505; 1963 c 55 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.90.050 Assessments to retire indebtedness. If a special district is disincorporated and the proceeds of the sale of any of its assets, together with money on hand in the treasury of the special district, are insufficient to retire any outstanding indebtedness, together with all costs and expenses of liquidation, the county legislative authority shall levy assessments in the manner provided by law against the property in the special district in amounts sufficient to retire the indebtedness and pay the costs and expenses. [1996 c 230 § 1506; 1963 c 55 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.90.100 Disposal of real property on abandonment of irrigation district right-of-way—Right of adjacent owners. Whenever as the result of abandonment of an irrigation district right-of-way real property held by an irrigation district is to be sold or otherwise disposed of, notice shall be given to the owners of the lands adjoining that real property and such owners shall have the right of first refusal to purchase at the appraised price all or any part of the real property to be sold or otherwise disposed of which adjoins or is adjacent to their land.

Real property to be sold or otherwise disposed of under this section shall have been first appraised by the county assessor or by a person designated by the county assessor.

Notice under this section shall be sufficient if sent by registered mail to the owner at the address shown in the tax records of the county in which the land is situated. Notice under this section shall be in addition to any notice required by law.

After sixty days from the date of sending of notice, if no applications for purchase have been received by the irrigation district or other person or entity sending notice, the rights of first refusal of owners of adjoining lands shall be deemed to have been waived, and the real property may be disposed of or sold.

If two or more owners of adjoining lands apply to purchase the same real property, or apply to purchase overlapping parts of the real property, the respective rights of the applicants may be determined in the superior court of the county in which the real property is situated. The court may divide the real property in question between some or all of the applicants or award the whole to one applicant, as justice may require. [1996 c 230 § 1507; 1971 ex.s. c 125 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Title 58

BOUNDARIES AND PLATS

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- 58.09** Surveys—Recording.
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(2008 Ed.)

Chapter 58.04 RCW BOUNDARIES

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- 58.04.011 Authorization to enter upon any land or waters for purpose of resolving dispute.
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Survey of county boundaries: RCW 36.04.400.

Tidelands, shorelands—Boundary of shorelands when water lowered: RCW 79.125.500.

58.04.001 Purpose—Remedies. The purpose of this chapter is to provide alternative procedures for fixing boundary points or lines when they cannot be determined from the existing public record and landmarks or are otherwise in dispute. This chapter does not impair, modify, or supplant any other remedy available at law or equity. [1996 c 160 § 1.]

58.04.003 Definition of surveyor. As used in this chapter, "surveyor" means every person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW. [1996 c 160 § 2.]

58.04.007 Affected landowners may resolve dispute over location of a point or line—Procedures. Whenever a point or line determining the boundary between two or more parcels of real property cannot be identified from the existing

public record, monuments, and landmarks, or is in dispute, the landowners affected by the determination of the point or line may resolve any dispute and fix the boundary point or line by one of the following procedures:

(1) If all of the affected landowners agree to a description and marking of a point or line determining a boundary, they shall document the agreement in a written instrument, using appropriate legal descriptions and including a survey map, filed in accordance with chapter 58.09 RCW. The written instrument shall be signed and acknowledged by each party in the manner required for a conveyance of real property. The agreement is binding upon the parties, their successors, assigns, heirs and devisees and runs with the land. The agreement shall be recorded with the real estate records in the county or counties in which the affected parcels of real estate or any portion of them is located;

(2) If all of the affected landowners cannot agree to a point or line determining the boundary between two or more parcels of real estate, any one of them may bring suit for determination as provided in RCW 58.04.020. [1996 c 160 § 3.]

58.04.011 Authorization to enter upon any land or waters for purpose of resolving dispute. Any surveyor authorized by the court and the surveyor's employees may, without liability for trespass, enter upon any land or waters and remain there while performing the duties as required in RCW 58.04.001 through 58.04.007 and this section. The persons named in this section may, without liability for trespass, investigate, construct, or place a monument or reference monuments for the position of any land boundary mark or general land office corner or mark and subdivisional corners thereof. Persons entering lands under the authority of RCW 58.04.001 through 58.04.007 and this section must exercise due care not to damage property while on land or waters performing their duties, and are liable for property damage, if any, caused by their negligence or willful misconduct. Where practical, the persons named in this section must announce and identify themselves and their intention before entering upon private property in the performance of their duties. [1996 c 160 § 4.]

58.04.015 Disturbing a survey monument—Penalty—Cost. A person who intentionally disturbs a survey monument placed by a surveyor in the performance of the surveyor's duties is guilty of a gross misdemeanor and is liable for the cost of the reestablishment. [1996 c 160 § 5.]

58.04.020 Suit to establish lost or uncertain boundaries—Mediation may be required. (1) Whenever the boundaries of lands between two or more adjoining proprietors have been lost, or by time, accident or any other cause, have become obscure, or uncertain, and the adjoining proprietors cannot agree to establish the same, one or more of the adjoining proprietors may bring a civil action in equity, in the superior court, for the county in which such lands, or part of them are situated, and that superior court, as a court of equity, may upon the complaint, order such lost or uncertain boundaries to be erected and established and properly marked.

(2) The superior court may order the parties to utilize mediation before the civil action is allowed to proceed. [1996 c 160 § 8; 1886 p 104 § 1; RRS § 947.]

58.04.030 Commissioners—Survey and report. Said court may, in its discretion, appoint commissioners, not exceeding three competent and disinterested persons, one or more of whom shall be practical surveyors, residents of the state, which commissioners shall be, before entering upon their duties, duly sworn to perform their said duties faithfully, and the said commissioners shall thereupon, survey, erect, establish and properly mark said boundaries, and return to the court a plat of said survey, and the field notes thereof, together with their report. Said report shall be advisory and either party may except thereto, in the same manner as to a report of referees. [1886 p 105 § 2; RRS § 948.]

58.04.040 Proceedings, conduct of—Costs. The proceedings shall be conducted as other civil actions, and the court, on final decree, shall apportion the costs of the proceedings equitably, and the cost so apportioned, shall be a lien upon the said lands, severally, as against any transfer or incumbrance made of, or attaching to said lands, from the time of the filing of the complaint: PROVIDED, A notice of lis pendens, is filed in the auditor's office of the proper county, in accordance with law. [1886 p 105 § 3; RRS § 949.]

Chapter 58.08 RCW PLATS—RECORDING

Sections

58.08.010	Town plat to be recorded—Requisites.
58.08.015	Effect of donation marked on plat.
58.08.020	Additions.
58.08.030	Plats to be acknowledged—Certificate that taxes and assessments are paid.
58.08.035	Platted streets, public highways—Lack of compliance, penalty.
58.08.040	Deposit to cover anticipated taxes and assessments.
58.08.050	Official plat—Platted streets as public highways.

Cities and towns—Recording of ordinance and plat on effective date of reduction: RCW 35.16.050.

Record of platted tidelands and shorelands: RCW 79.125.040.

58.08.010 Town plat to be recorded—Requisites. Any person or persons, who may hereafter lay off any town within this state, shall, previous to the sale of any lots within such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a plat of said town, with the public grounds, (if any there be,) streets, lanes and alleys, with their respective widths properly marked, and the lots regularly numbered, and the size stated on said plat. [Code 1881 § 2328; 1862 p 431 § 1; 1857 p 25 § 1; RRS § 9288.]

58.08.015 Effect of donation marked on plat. Every donation or grant to the public, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town, or wherein such donation or grant may have been made, shall be considered, to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees, for his, her

or their use, for the purposes intended by the donor or donors, grantor or grantors, as aforesaid. [Code 1881 § 2329; 1862 p 431 § 2; 1857 p 26 § 2; RRS § 9310. Formerly RCW 58.08.060.]

58.08.020 Additions. Every person hereinafter laying off any lots in addition to any town, shall, previous to the sale of such lots, have the same recorded under the like regulations as are provided for recording the original plat of said town, and thereafter the same shall be considered an addition thereto. [Code 1881 § 2330; 1862 p 431 § 3; 1857 p 26 § 3; RRS § 9289.]

58.08.030 Plats to be acknowledged—Certificate that taxes and assessments are paid. Every person whose duty it may be to comply with the foregoing regulations shall at or before the time of offering such plat for record, acknowledge the same before the auditor of the proper county, or any other officer who is authorized by law to take acknowledgment of deeds, a certificate of which acknowledgment shall be indorsed on or annexed to such plat and recorded therewith. In all cases where any person or persons, corporation or corporations shall desire to file a plat, map, subdivision or replat of any property or shall desire to vacate the whole or any portion of any existing plat, map, subdivision or replat, such person or persons, corporation or corporations must, at the time of filing the same for record or of filing a petition for vacation thereof, file therewith a certificate from the proper officer or officers who may be in charge of the collection of taxes for which the property affected may be liable at that date, that all taxes which have been levied and become chargeable against such property at such date have been duly paid, satisfied and discharged and must file therewith a certificate from the proper officer or officers, who may be in charge of the collections, that all delinquent assessments for which the property affected may be liable at that date and that all special assessments assessed against said property, which, under the plat filed, become streets, alleys and other public places, have been paid. [1927 c 188 § 1; 1893 c 129 § 1; Code 1881 § 2331; 1862 p 431 § 4; 1857 p 26 § 4; RRS § 9290.]

Acknowledgments: Chapter 64.08 RCW.

Taxes collected by treasurer—Dates of delinquency: RCW 84.56.020.

58.08.035 Platted streets, public highways—Lack of compliance, penalty. All streets, lanes and alleys, laid off and recorded in accordance with *the foregoing provisions, shall be considered, to all intents and purposes, public highways, and any person who may lay off any town or any addition to any town in this state, and neglect or refuse to comply with the requisitions aforesaid, shall forfeit and pay for the use of said town, for every month he may delay a compliance with the provisions of this chapter, a sum not exceeding one hundred dollars, nor less than five dollars, to be recovered by civil action, in the name of the treasurer of the county. [Code 1881 § 2332; 1862 p 431 § 5; 1857 p 26 § 5; no RRS.]

***Reviser's note:** "the foregoing provisions" refer to earlier sections of chapter 178, Code of 1881 codified (as amended) in RCW 58.08.010 through 58.08.030.

Platted streets as public highways: RCW 58.08.050.

Regulation of surveys and plats: RCW 58.10.040.

(2008 Ed.)

58.08.040 Deposit to cover anticipated taxes and assessments. Prior to any person recording a plat, replat, or altered plat subsequent to May 31st in any year and prior to the date of the collection of taxes in the ensuing year, the person shall deposit with the county treasurer a sum equal to the product of the county assessor's latest valuation on the property less improvements in such subdivision multiplied by the current year's dollar rate increased by twenty-five percent on the property platted. The treasurer's receipt shall be evidence of the payment. The treasurer shall appropriate so much of the deposit as will pay the taxes and assessments on the property when the levy rates are certified by the assessor using the value of the property at the time of filing a plat, replat, or altered plat, and in case the sum deposited is in excess of the amount necessary for the payment of the taxes and assessments, the treasurer shall return, to the party depositing, the amount of excess. [2008 c 17 § 2; 1997 c 393 § 11; 1994 c 301 § 16; 1991 c 245 § 14; 1989 c 378 § 2; 1973 1st ex.s. c 195 § 74; 1969 ex.s. c 271 § 34; 1963 c 66 § 1; 1909 c 200 § 1; 1907 c 44 § 1; 1893 c 129 § 2; RRS § 9291.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1969 ex.s. c 271: See RCW 58.17.910.

Assessment date: RCW 84.40.020.

Property taxes—Collection of taxes: Chapter 84.56 RCW.

58.08.050 Official plat—Platted streets as public highways. Whenever any city or town has been surveyed and platted and a plat thereof showing the roads, streets and alleys has been filed in the office of the auditor of the county in which such city or town is located, such plat shall be deemed the official plat of such city, or town, and all roads, streets and alleys in such city or town as shown by such plat, be and the same are declared public highways: PROVIDING, That nothing herein shall apply to any part of a city or town that has been vacated according to law. [Code 1881 § 3049; 1877 p 314 § 1; RRS § 9292.]

Platted streets, public highways—Lack of compliance, penalty: RCW 58.08.035.

Streets and alleys over first-class tidelands—Control of: RCW 35.21.250.

Streets over tidelands declared public highways: RCW 35.21.230.

Chapter 58.09 RCW

SURVEYS—RECORDING

Sections

58.09.010	Purpose—Short title.
58.09.020	Definitions.
58.09.030	Compliance with chapter required.
58.09.040	Records of survey—Contents—Filing—Replacing corner, filing record.
58.09.050	Records of survey—Processing—Requirements.
58.09.060	Records of survey, contents—Record of corner, information.
58.09.070	Coordinates—Map showing control scheme required.
58.09.080	Certificates—Required—Forms.
58.09.090	When record of survey not required.
58.09.100	Filing fee.
58.09.110	Duties of county auditor.
58.09.120	Monuments—Requirements.
58.09.130	Monuments disturbed by construction activities—Procedure—Requirements.
58.09.140	Noncompliance grounds for revocation of land surveyor's license.
58.09.900	Severability—1973 c 50.

58.09.010 Purpose—Short title. The purpose of this chapter is to provide a method for preserving evidence of land surveys by establishing standards and procedures for monumenting and for recording a public record of the surveys. Its provisions shall be deemed supplementary to existing laws relating to surveys, subdivisions, platting, and boundaries.

This chapter shall be known and may be cited as the "Survey Recording Act". [1973 c 50 § 1.]

58.09.020 Definitions. As used in this chapter:

(1) "Land surveyor" shall mean every person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW, as now or hereafter amended.

(2) "Washington coordinate system" shall mean that system of plane coordinates as established and designated by chapter 58.20 RCW.

(3) "Survey" shall mean the locating and monumenting in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners. [1973 c 50 § 2.]

58.09.030 Compliance with chapter required. Any land surveyor engaged in the practice of land surveying may prepare maps, plats, reports, descriptions, or other documentary evidence in connection therewith.

Every map, plat, report, description, or other document issued by a licensed land surveyor shall comply with the provisions of this chapter whenever such map, plat, report, description, or other document is filed as a public record.

It shall be unlawful for any person to sign, stamp, or seal any map, report, plat, description, or other document for filing under this chapter unless he be a land surveyor. [1973 c 50 § 3.]

58.09.040 Records of survey—Contents—Filing—Replacing corner, filing record. After making a survey in conformity with sound principles of land surveying, a land surveyor may file a record of survey with the county auditor in the county or counties wherein the lands surveyed are situated.

(1) It shall be mandatory, within ninety days after the establishment, reestablishment or restoration of a corner on the boundary of two or more ownerships or general land office corner by survey that a land surveyor shall file with the county auditor in the county or counties wherein the lands surveyed are situated a record of such survey, in such form as to meet the requirements of this chapter, which through accepted survey procedures, shall disclose:

(a) The establishment of a corner which materially varies from the description of record;

(b) The establishment of one or more property corners not previously existing;

(c) Evidence that reasonable analysis might result in alternate positions of lines or points as a result of an ambiguity in the description;

(d) The reestablishment of lost government land office corners.

(2) When a licensed land surveyor, while conducting work of a preliminary nature or other activity that does not constitute a survey required by law to be recorded, replaces or restores an existing or obliterated general land office corner, it is mandatory that, within ninety days thereafter, he shall file with the county auditor in the county in which said corner is located a record of the monuments and accessories found or placed at the corner location, in such form as to meet the requirements of this chapter. [1973 c 50 § 4.]

58.09.050 Records of survey—Processing—Requirements. The records of survey to be filed under authority of this chapter shall be processed as follows:

(1)(a) The record of survey filed under RCW 58.09.040(1) shall be an original map, eighteen by twenty-four inches, that is legibly drawn in black ink on mylar and is suitable for producing legible prints through scanning, microfilming, or other standard copying procedures.

(b) The following are allowable formats for the original that may be used in lieu of the format set forth under (a) of this subsection:

(i) Photo mylar with original signatures;

(ii) Any standard material as long as the format is compatible with the auditor's recording process and records storage system. This format is only allowed in those counties that are excepted from permanently storing the original document as required in RCW 58.09.110(5);

(iii) An electronic version of the original if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

A two inch margin on the left edge and a one-half inch margin on other edges of the map shall be provided. The auditor shall reject for recording any maps not suitable for producing legible prints through scanning, microfilming, or other standard copying procedures.

(2) Information required by RCW 58.09.040(2) shall be filed on a standard form eight and one-half inches by fourteen inches as designed and prescribed by the department of natural resources. The auditor shall reject for recording any records of corner information not suitable for producing legible prints through scanning, microfilming, or other standard copying procedures. An electronic version of the standard form may be filed if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

(3) Two legible prints of each record of survey as required under the provisions of this chapter shall be furnished to the county auditor in the county in which the survey is to be recorded. The auditor, in those counties using imag-

ing systems, may require only the original, and fewer prints, as needed, to meet the requirements of their duties. If any of the prints submitted are not suitable for scanning or micro-filing the auditor shall not record the original.

(4) Legibility requirements are set forth in the recorder’s checklist under RCW 58.09.110. [1999 c 39 § 1; 1973 c 50 § 5.]

58.09.060 Records of survey, contents—Record of corner, information. (1) The record of survey as required by RCW 58.09.040(1) shall show:

- (a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location and giving other data relating thereto;
- (b) Bearing trees, corner accessories or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow;
- (c) Name and legal description of tract in which the survey is located and ties to adjoining surveys of record;
- (d) Certificates required by RCW 58.09.080;
- (e) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines and areas shown.

(2) The record of corner information as required by RCW 58.09.040(2) shall be on a standard form showing:

- (a) An accurate description and location, in reference to the corner position, of all monuments and accessories found at the corner;
- (b) An accurate description and location, in reference to the corner position, of all monuments and accessories placed or replaced at the corner;
- (c) Basis of bearings used to describe or locate such monuments or accessories;
- (d) Corollary information that may be helpful to relocate or identify the corner position;
- (e) Certificate required by RCW 58.09.080. [1973 c 50 § 6.]

58.09.070 Coordinates—Map showing control scheme required. When coordinates in the Washington coordinate system are shown for points on a record of survey map, the map may not be recorded unless it also shows, or is accompanied by a map showing, the control scheme through which the coordinates were determined from points of known coordinates. [1973 c 50 § 7.]

58.09.080 Certificates—Required—Forms. Certificates shall appear on the record of survey map as follows:

SURVEYOR’S CERTIFICATE

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of in, 19. . .

Name of Person
(Signed and Sealed)
Certificate No.

AUDITOR’S CERTIFICATE

Filed for record this day of, 19. . . atM. in book of at page at the request of

(Signed)
County Auditor

[1973 c 50 § 8.]

58.09.090 When record of survey not required. (1) A record of survey is not required of any survey:

(a) When it has been made by a public officer in his official capacity and a reproducible copy thereof has been filed with the county engineer of the county in which the land is located. A map so filed shall be indexed and kept available for public inspection. A record of survey shall not be required of a survey made by the United States bureau of land management. A state agency conducting surveys to carry out the program of the agency shall not be required to use a land surveyor as defined by this chapter;

(b) When it is of a preliminary nature;

(c) When a map is in preparation for recording or shall have been recorded in the county under any local subdivision or platting law or ordinance;

(d) When it is a retracement or resurvey of boundaries of platted lots, tracts, or parcels shown on a filed or recorded and surveyed subdivision plat or filed or recorded and surveyed short subdivision plat in which monuments have been set to mark all corners of the block or street centerline intersections, provided that no discrepancy is found as compared to said recorded information or information revealed on other subsequent public survey map records, such as a record of survey or city or county engineer’s map. If a discrepancy is found, that discrepancy must be clearly shown on the face of the required new record of survey. For purposes of this exemption, the term discrepancy shall include:

(i) A nonexisting or displaced original or replacement monument from which the parcel is defined and which non-existence or displacement has not been previously revealed in the public record;

(ii) A departure from proportionate measure solutions which has not been revealed in the public record;

(iii) The presence of any physical evidence of encroachment or overlap by occupation or improvement; or

(iv) Differences in linear and/or angular measurement between all controlling monuments that would indicate differences in spatial relationship between said controlling monuments in excess of 0.50 feet when compared with all locations of public record: That is, if these measurements agree with any previously existing public record plat or map within the stated tolerance, a discrepancy will not be deemed to exist under this subsection.

(2) Surveys exempted by foregoing subsections of this section shall require filing of a record of corner information pursuant to RCW 58.09.040(2). [1992 c 106 § 1; 1973 c 50 § 9.]

58.09.100 Filing fee. The charge for filing any record of survey and/or record of corner information shall be fixed by the board of county commissioners. [1973 c 50 § 10.]

58.09.110 Duties of county auditor. The auditor shall accept for recording those records of survey and records of corner information that are in compliance with the recorder's checklist as jointly developed by a committee consisting of the survey advisory board and two representatives from the Washington state association of county auditors. This checklist shall be adopted in rules by the department of natural resources.

(1) The auditor shall keep proper indexes of such record of survey by the name of owner and by quarter-quarter section, township, and range, with reference to other legal subdivisions.

(2) The auditor shall keep proper indexes of the record of corner information by section, township, and range.

(3) After entering the recording data on the record of survey and all prints received from the surveyor, the auditor shall send one of the surveyor's prints to the department of natural resources in Olympia, Washington, for incorporation into the statewide survey records repository. However, the county and the department of natural resources may mutually agree to process the original or an electronic version of the original in lieu of the surveyor's print.

(4) After entering the recording data on the record of corner information the auditor shall send a legible copy, suitable for scanning, to the department of natural resources in Olympia, Washington. However, the county and the department of natural resources may mutually agree to process the original or an electronic version of the original in lieu of the copy.

(5) The auditor shall permanently keep the original document filed using storage and handling processes that do not cause excessive deterioration of the document. A county may be exempted from the requirement to permanently store the original document if it has a document scanning, filming, or other process that creates a permanent, archival record that meets or surpasses the standards as adopted in rule by the division of archives and records management in chapter 434-663 or 434-677 WAC. The auditor must be able to provide full-size copies upon request. The auditor shall maintain a copy or image of the original for public reference.

(6) If the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system, the auditor may accept for recording electronic versions of the documents required by this chapter. The electronic version shall be a standard raster file format acceptable to the county.

(7) This section does not supersede other existing recording statutes. [1999 c 39 § 2; 1973 c 50 § 11.]

58.09.120 Monuments—Requirements. Any monument set by a land surveyor to mark or reference a point on a property or land line shall be permanently marked or tagged with the certificate number of the land surveyor setting it. If the monument is set by a public officer it shall be marked by an appropriate official designation.

Monuments set by a land surveyor shall be sufficient in number and durability and shall be efficiently placed so as not to be readily disturbed in order to assure, together with

monuments already existing, the perpetuation or reestablishment of any point or line of a survey. [1973 c 50 § 12.]

58.09.130 Monuments disturbed by construction activities—Procedure—Requirements. When adequate records exist as to the location of subdivision, tract, street, or highway monuments, such monuments shall be located and referenced by or under the direction of a land surveyor at the time when streets or highways are reconstructed or relocated, or when other construction or activity affects their perpetuation. Whenever practical a suitable monument shall be reset in the surface of the new construction. In all other cases permanent witness monuments shall be set to perpetuate the location of preexisting monuments. Additionally, sufficient controlling monuments shall be retained or replaced in their original positions to enable land lines, property corners, elevations and tract boundaries to be reestablished without requiring surveys originating from monuments other than the ones disturbed by the current construction or activity.

It shall be the responsibility of the governmental agency or others performing construction work or other activity to provide for the monumentation required by this section. It shall be the duty of every land surveyor to cooperate with such governmental agency or other person in matters of maps, field notes, and other pertinent records. Monuments set to mark the limiting lines of highways, roads, or streets shall not be deemed adequate for this purpose unless specifically noted on the records of the improvement works with direct ties in bearing or azimuth and distance between those and other monuments of record. [1973 c 50 § 13.]

58.09.140 Noncompliance grounds for revocation of land surveyor's license. Noncompliance with any provision of this chapter, as it now exists or may hereafter be amended, shall constitute grounds for revocation of a land surveyor's authorization to practice the profession of land surveying and as further set forth under RCW 18.43.105 and 18.43.110. [1973 c 50 § 14.]

58.09.900 Severability—1973 c 50. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 50 § 15.]

Chapter 58.10 RCW

DEFECTIVE PLATS LEGALIZED

Sections

58.10.010	Defective plats legalized—1881 Code.
58.10.020	Certified copy of plat as evidence.
58.10.030	Resurvey and corrected plat—Corrected plat as evidence.
58.10.040	Regulation of surveys and plats.

58.10.010 Defective plats legalized—1881 Code. All city or town plats or any addition or additions thereto, heretofore made and recorded in the county auditor's office of any county in Washington state, showing lots, blocks, streets, alleys or public grounds, shall be conclusive evidence of the location and size of the lots, blocks and public grounds and the location and width of each and every street or alley

marked, laid down or appearing on such plat, and that all the right, title, interest or estate which the person or persons making or recording such plat, or causing the same to be made, or recorded, had at the time of making or recording such plat in or to such streets, alleys or public grounds was thereby dedicated to public use, whether the same was made, executed or acknowledged in accordance with the provisions of the laws of this state in force at the time of making the same or not. [Code 1881 § 2338; RRS § 9306. Formerly RCW 58.08.080.]

58.10.020 Certified copy of plat as evidence. A copy of any city or town plat or addition thereto recorded in the manner provided for in RCW 58.10.010, certified by the county auditor of the county in which the same is recorded to be a true copy of such record and the whole thereof, shall be received in evidence in all the courts of this state, with like effect as the original. [Code 1881 § 2339; RRS § 9307. Formerly RCW 58.08.070.]

Rules of court: *ER 803(a)(14).*

Certified copies

of instruments, or transcripts of county commissioners' proceedings: RCW 5.44.070.

of recorded instruments as evidence: RCW 5.44.060.

Copies of business and public records as evidence: RCW 5.46.010.

Instruments to be recorded or filed: RCW 65.04.030.

Photostatic or photographic copies of public or business records admissible in evidence: RCW 40.20.030.

58.10.030 Resurvey and corrected plat—Corrected plat as evidence. Whenever the recorded plat of any city or addition thereto does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or addition, the city council of the city in which the land so platted is located, is hereby authorized and empowered by ordinance and the action of its proper officers, to cause a new and correct survey and plat of such city or addition to be made, and recorded in the office of the county auditor of the county in which such city or addition is located, which corrected plat shall follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the officer or surveyor making the same shall be endorsed thereon, referring to the original plat corrected thereby, and the deficit existing therein, and corrected by such new survey and plat; and the ordinance authorizing the making of such plat shall be recorded in the office of the county auditor of said county and said certificate shall show where said ordinance is recorded, and such plat when so made and recorded, or a copy thereof certified as provided in RCW 58.10.020 shall be admissible in evidence in all the courts in this state. [Code 1881 § 2340; RRS § 9308. Formerly RCW 58.12.130.]

58.10.040 Regulation of surveys and plats. All incorporated cities in the state of Washington are hereby authorized and empowered to regulate and prescribe the manner and form of making any future survey or plat of lands within their respective limits and enforce such regulations by a fine of not exceeding one hundred dollars, to be recovered by and in the name of such city, or imprisonment not exceeding twenty days for each violation of any ordinance regulating such survey and platting: PROVIDED, That nothing in this

chapter shall be construed so as to apply to additions to towns in which no lots have been sold. [Code 1881 § 2341; RRS § 9309. Formerly RCW 58.12.140.]

Platted streets, public highways—Lack of compliance, penalty: RCW 58.08.035.

Chapter 58.17 RCW

PLATS—SUBDIVISIONS—DEDICATIONS

Sections

- 58.17.010 Purpose.
- 58.17.020 Definitions.
- 58.17.030 Subdivisions to comply with chapter, local regulations.
- 58.17.033 Proposed division of land—Consideration of application for preliminary plat or short plat approval—Requirements defined by local ordinance.
- 58.17.035 Alternative method of land division—Binding site plans.
- 58.17.040 Chapter inapplicable, when.
- 58.17.050 Assessors plat—Compliance.
- 58.17.060 Short plats and short subdivisions—Summary approval—Regulations—Requirements.
- 58.17.065 Short plats and short subdivisions—Filing.
- 58.17.070 Preliminary plat of subdivisions and dedications—Submission for approval—Procedure.
- 58.17.080 Filing of preliminary plat—Notice.
- 58.17.090 Notice of public hearing.
- 58.17.092 Public notice—Identification of affected property.
- 58.17.095 Ordinance may authorize administrative review of preliminary plat without public hearing.
- 58.17.100 Review of preliminary plats by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval.
- 58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages.
- 58.17.120 Disapproval due to flood, inundation or swamp conditions—Improvements—Approval conditions.
- 58.17.130 Bond in lieu of actual construction of improvements prior to approval of final plat—Bond or security to assure successful operation of improvements.
- 58.17.140 Time limitation for approval or disapproval of plats—Extensions.
- 58.17.150 Recommendations of certain agencies to accompany plats submitted for final approval.
- 58.17.155 Short subdivision adjacent to state highway—Notice to department of transportation.
- 58.17.160 Requirements for each plat or replat filed for record.
- 58.17.165 Certificate giving description and statement of owners must accompany final plat—Dedication, certificate requirements if plat contains—Waiver.
- 58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies.
- 58.17.180 Review of decision.
- 58.17.190 Approval of plat required before filing—Procedure when unapproved plat filed.
- 58.17.195 Approval of plat or short plat—Written finding of conformity with applicable land use controls.
- 58.17.200 Injunctive action to restrain subdivision, sale, transfer of land where final plat not filed.
- 58.17.205 Agreements to transfer land conditioned on final plat approval—Authorized.
- 58.17.210 Building, septic tank or other development permits not to be issued for land divided in violation of chapter or regulations—Exceptions—Damages—Rescission by purchaser.
- 58.17.212 Vacation of subdivision—Procedure.
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- 58.17.275 Proposals to adopt, amend, or repeal local ordinances—Advance notice.

58.17.280	Naming and numbering of short subdivisions, subdivisions, streets, lots and blocks.
58.17.290	Copy of plat as evidence.
58.17.300	Violations—Penalties.
58.17.310	Approval of plat within irrigation district without provision for irrigation prohibited.
58.17.320	Compliance with chapter and local regulations—Enforcement.
58.17.330	Hearing examiner system—Adoption authorized—Procedures—Decisions.
58.17.900	Validation of existing ordinances and resolutions.
58.17.910	Severability—1969 ex.s. c 271.
58.17.920	Effective date and application of 1974 ex.s. c 134.

Fees for filing subdivision plats and short plats: RCW 58.24.070.

58.17.010 Purpose. The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state. The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to promote effective use of land; to promote safe and convenient travel by the public on streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; to provide for the expeditious review and approval of proposed subdivisions which conform to zoning standards and local plans and policies; to adequately provide for the housing and commercial needs of the citizens of the state; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description. [1981 c 293 § 1; 1969 ex.s. c 271 § 1.]

Reviser's note: Throughout this chapter, the phrase "this act" has been changed to "this chapter." "This act" [1969 ex.s. c 271] also consists of amendments to RCW 58.08.040 and 58.24.040 and the repeal of RCW 58.16.010 through 58.16.110.

Severability—1981 c 293: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 293 § 16.]

58.17.020 Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(1) "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section.

(2) "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys, or other divisions and dedications.

(3) "Dedication" is the deliberate appropriation of land by an owner for any general and public uses, reserving to himself or herself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and, the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.

A dedication of an area of less than two acres for use as a public park may include a designation of a name for the park, in honor of a deceased individual of good character.

(4) "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

(5) "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

(6) "Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. However, the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine. The legislative authority of any county planning under RCW 36.70A.040 that has adopted a comprehensive plan and development regulations in compliance with chapter 36.70A RCW may by ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine in any urban growth area.

(7) "Binding site plan" means a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

(8) "Short plat" is the map or representation of a short subdivision.

(9) "Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels.

(10) "Block" is a group of lots, tracts, or parcels within well defined and fixed boundaries.

(11) "County treasurer" shall be as defined in chapter 36.29 RCW or the office or person assigned such duties under a county charter.

(12) "County auditor" shall be as defined in chapter 36.22 RCW or the office or person assigned such duties under a county charter.

(13) "County road engineer" shall be as defined in chapter 36.40 RCW or the office or person assigned such duties under a county charter.

(14) "Planning commission" means that body as defined in chapter 36.70, 35.63, or 35A.63 RCW as designated by the legislative body to perform a planning function or that body assigned such duties and responsibilities under a city or county charter.

(15) "County commissioner" shall be as defined in chapter 36.32 RCW or the body assigned such duties under a county charter. [2002 c 262 § 1; 1995 c 32 § 2; 1983 c 121 §

1. Prior: 1981 c 293 § 2; 1981 c 292 § 1; 1969 ex.s. c 271 § 2.]

Severability—1981 c 293: See note following RCW 58.17.010.

Camping resort contracts—Nonapplicability of certain laws to—Resort not subdivision except under city, county powers: RCW 19.105.510.

58.17.030 Subdivisions to comply with chapter, local regulations. Every subdivision shall comply with the provisions of this chapter. Every short subdivision as defined in this chapter shall comply with the provisions of any local regulation adopted pursuant to RCW 58.17.060. [1974 ex.s. c 134 § 1; 1969 ex.s. c 271 § 3.]

58.17.033 Proposed division of land—Consideration of application for preliminary plat or short plat approval—Requirements defined by local ordinance. (1) A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.

(2) The requirements for a fully completed application shall be defined by local ordinance.

(3) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW. [1987 c 104 § 2.]

58.17.035 Alternative method of land division—Binding site plans. A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval.

The binding site plan, after approval, and/or when specific lots are administratively approved, shall be filed with the county auditor with a record of survey. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. The number of lots, tracts, parcels, sites, or divisions shall not exceed the number of lots allowed by the local zoning ordinances.

All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest

of any lot, parcel, or tract created pursuant to the binding site plan.

Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan or without binding site plan approval, shall be considered a violation of chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in chapter 58.17 RCW. [1987 c 354 § 2.]

58.17.040 Chapter inapplicable, when. The provisions of this chapter shall not apply to:

(1) Cemeteries and other burial plots while used for that purpose;

(2) Divisions of land into lots or tracts each of which is one-one hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: PROVIDED, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

(3) Divisions made by testamentary provisions, or the laws of descent;

(4) Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;

(7) Divisions of land into lots or tracts if: (a) Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land; (b) the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (c) a city, town, or county has approved the binding site plan for all such land; (d) such approved binding site plan is recorded in the county or counties in which such land is located; and (e) the binding site plan contains thereon the following statement: "All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such

other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein." The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to have been approved if the site plan was approved by a city, town, or county: (i) In connection with the final approval of a subdivision plat or planned unit development with respect to all of such land; or (ii) in connection with the issuance of building permits or final certificates of occupancy with respect to all of such land; or (iii) if not approved pursuant to (i) and (ii) of this subsection (7)(e), then pursuant to such other procedures as such city, town, or county may have established for the approval of a binding site plan;

(8) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. "Personal wireless services" means any federally licensed personal wireless service. "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures; and

(9) A division of land into lots or tracts of less than three acres that is recorded in accordance with chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities. For purposes of this subsection, "electric utility facilities" means unstaffed facilities, except for the presence of security personnel, that are used for or in connection with or to facilitate the transmission, distribution, sale, or furnishing of electricity including, but not limited to, electric power substations. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of cities, towns, counties, and municipal corporations. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility's existing and new customers. New customers are defined as electric service locations not already in existence as of the date that electric utility facilities subject to the provisions of this subsection are planned and constructed. [2004 c 239 § 1; 2002 c 44 § 1; 1992 c 220 § 27; 1989 c 43 § 4-123. Prior: 1987 c 354 § 1; 1987 c 108 § 1; 1983 c 121 § 2; prior: 1981 c 293 § 3; 1981 c 292 § 2; 1974 ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

Severability—Effective date—1989 c 43: See RCW 64.34.920 and 64.34.930.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.050 Assessors plat—Compliance. An assessors plat made in accordance with RCW 58.18.010 need not comply with any of the requirements of this chapter except RCW 58.17.240 and 58.17.250. [1969 ex.s. c 271 § 5.]

58.17.060 Short plats and short subdivisions—Summary approval—Regulations—Requirements. (1) The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions or alteration or vacation thereof. When an alteration or vacation involves a public dedication, the alteration or vacation shall be processed as provided in RCW 58.17.212 or 58.17.215. Such regulations shall be adopted by ordinance and shall provide that a short plat and short subdivision may be approved only if written findings that are appropriate, as provided in RCW 58.17.110, are made by the administrative personnel, and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat, or alteration or vacation thereof, for record in the office of the county auditor: PROVIDED, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat, except that when the short plat contains fewer than four parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to a total of four lots within the original short plat boundaries: PROVIDED FURTHER, That such regulations are not required to contain a penalty clause as provided in RCW 36.32.120 and may provide for wholly injunctive relief.

An ordinance requiring a survey shall require that the survey be completed and filed with the application for approval of the short subdivision.

(2) Cities, towns, and counties shall include in their short plat regulations and procedures pursuant to subsection (1) of this section provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school. [1990 1st ex.s. c 17 § 51; 1989 c 330 § 2; 1987 c 354 § 5; 1987 c 92 § 1; 1974 ex.s. c 134 § 3; 1969 ex.s. c 271 § 6.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

58.17.065 Short plats and short subdivisions—Filing. Each short plat and short subdivision granted pursuant to local regulations after July 1, 1974, shall be filed with the county auditor and shall not be deemed "approved" until so filed. [1974 ex.s. c 134 § 12.]

58.17.070 Preliminary plat of subdivisions and dedications—Submission for approval—Procedure. A preliminary plat of proposed subdivisions and dedications of land shall be submitted for approval to the legislative body of the city, town, or county within which the plat is situated.

Unless an applicant for preliminary plat approval requests otherwise, a preliminary plat shall be processed simultaneously with applications for rezones, variances, planned unit developments, site plan approvals, and similar quasi-judicial or administrative actions to the extent that procedural requirements applicable to these actions permit simultaneous processing. [1981 c 293 § 4; 1969 ex.s. c 271 § 7.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.080 Filing of preliminary plat—Notice. Notice of the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities. Any notice required by this chapter shall include the hour and location of the hearing and a description of the property to be platted. Notice of the filing of a preliminary plat of a proposed subdivision located in a city or town and adjoining the municipal boundaries thereof shall be given to appropriate county officials. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway or within two miles of the boundary of a state or municipal airport shall be given to the secretary of transportation. In the case of notification to the secretary of transportation, the secretary shall respond to the notifying authority within fifteen days of such notice as to the effect that the proposed subdivision will have on the state highway or the state or municipal airport. [1982 c 23 § 1; 1969 ex.s. c 271 § 8.]

58.17.090 Notice of public hearing. (1) Upon receipt of an application for preliminary plat approval the administrative officer charged by ordinance with responsibility for administration of regulations pertaining to platting and subdivisions shall provide public notice and set a date for a public hearing. Except as provided in RCW 36.70B.110, at a minimum, notice of the hearing shall be given in the following manner:

(a) Notice shall be published not less than ten days prior to the hearing in a newspaper of general circulation within the county and a newspaper of general circulation in the area where the real property which is proposed to be subdivided is located; and

(b) Special notice of the hearing shall be given to adjacent landowners by any other reasonable method local authorities deem necessary. Adjacent landowners are the owners of real property, as shown by the records of the county assessor, located within three hundred feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, notice under this subsection (1)(b) shall be given to owners of real property located within three hundred feet of any portion of the boundaries of such adjacently located parcels of real property owned by the owner of the real property proposed to be subdivided.

(2) All hearings shall be public. All hearing notices shall include a description of the location of the proposed subdivision. The description may be in the form of either a vicinity location sketch or a written description other than a legal description. [1995 c 347 § 426; 1981 c 293 § 5; 1974 ex.s. c 134 § 4; 1969 ex.s. c 271 § 9.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.092 Public notice—Identification of affected property. Any notice made under chapter 58.17 or 36.70B RCW that identifies affected property may identify this

affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1995 c 347 § 427; 1988 c 168 § 12.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

58.17.095 Ordinance may authorize administrative review of preliminary plat without public hearing. A county, city, or town may adopt an ordinance providing for the administrative review of a preliminary plat without a public hearing by adopting an ordinance providing for such administrative review. The ordinance may specify a threshold number of lots in a subdivision above which a public hearing must be held, and may specify other factors which necessitate the holding of a public hearing. The administrative review process shall include the following minimum conditions:

(1) The notice requirements of RCW 58.17.090 shall be followed, except that the publication shall be made within ten days of the filing of the application. Additionally, at least ten days after the filing of the application notice both shall be: (a) Posted on or around the land proposed to be subdivided in at least five conspicuous places designed to attract public awareness of the proposal; and (b) mailed to the owner of each lot or parcel of property located within at least three hundred feet of the site. The applicant shall provide the county, city, or town with a list of such property owners and their addresses. The notice shall include notification that no public hearing will be held on the application, except as provided by this section. The notice shall set out the procedures and time limitations for persons to require a public hearing and make comments.

(2) Any person shall have a period of twenty days from the date of the notice to comment upon the proposed preliminary plat. All comments received shall be provided to the applicant. The applicant has seven days from receipt of the comments to respond thereto.

(3) A public hearing on the proposed subdivision shall be held if any person files a request for a hearing with the county, city, or town within twenty-one days of the publishing of such notice. If such a hearing is requested, notice requirements for the public hearing shall be in conformance with RCW 58.17.090, and the ninety-day period for approval or disapproval of the proposed subdivision provided for in RCW 58.17.140 shall commence with the date of the filing of the request for a public hearing. Any hearing ordered under this subsection shall be conducted by the planning commission or hearings officer as required by county or city ordinance.

(4) On its own initiative within twenty-one days of the filing of the request for approval of the subdivision, the governing body, or a designated employee or official, of the county, city, or town, shall be authorized to cause a public hearing to be held on the proposed subdivision within ninety days of the filing of the request for the subdivision.

(5) If the public hearing is waived as provided in this section, the planning commission or planning agency shall complete the review of the proposed preliminary plat and transmit its recommendation to the legislative body as provided in RCW 58.17.100. [1986 c 233 § 1.]

Applicability—1986 c 233: "This act does not affect the provisions of RCW 82.02.020." [1986 c 233 § 3.]

58.17.100 Review of preliminary plats by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval. If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all preliminary plats and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. Reports of the planning commission or agency shall be advisory only: PROVIDED, That the legislative body of the city, town or county may, by ordinance, assign to such commission or agency, or any department official or group of officials, such administrative functions, powers and duties as may be appropriate, including the holding of hearings, and recommendations for approval or disapproval of preliminary plats of proposed subdivisions.

Such recommendation shall be submitted to the legislative body not later than fourteen days following action by the hearing body. Upon receipt of the recommendation on any preliminary plat the legislative body shall at its next public meeting set the date for the public meeting where it shall consider the recommendations of the hearing body and may adopt or reject the recommendations of such hearing body based on the record established at the public hearing. If, after considering the matter at a public meeting, the legislative body deems a change in the planning commission's or planning agency's recommendation approving or disapproving any preliminary plat is necessary, the legislative body shall adopt its own recommendations and approve or disapprove the preliminary plat.

Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

A record of all public meetings and public hearings shall be kept by the appropriate city, town or county authority and shall be open to public inspection.

Sole authority to approve final plats, and to adopt or amend platting ordinances shall reside in the legislative bodies. [1995 c 347 § 428; 1981 c 293 § 6; 1969 ex.s. c 271 § 10.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages. (1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including

sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

(3) If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city, town, or county legislative body must adopt the designated name. [1995 c 32 § 3; 1990 1st ex.s. c 17 § 52; 1989 c 330 § 3; 1974 ex.s. c 134 § 5; 1969 ex.s. c 271 § 11.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

58.17.120 Disapproval due to flood, inundation or swamp conditions—Improvements—Approval conditions. The city, town, or county legislative body shall consider the physical characteristics of a proposed subdivision site and may disapprove a proposed plat because of flood, inundation, or swamp conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat.

No plat shall be approved by any city, town, or county legislative authority covering any land situated in a flood control zone as provided in chapter 86.16 RCW without the prior written approval of the department of ecology of the state of Washington. [1974 ex.s. c 134 § 6; 1969 ex.s. c 271 § 12.]

58.17.130 Bond in lieu of actual construction of improvements prior to approval of final plat—Bond or security to assure successful operation of improvements. Local regulations shall provide that in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the city, town, or county legis-

lative body may accept a bond, in an amount and with surety and conditions satisfactory to it, or other secure method, providing for and securing to the municipality the actual construction and installation of such improvements within a period specified by the city, town, or county legislative body and expressed in the bonds. In addition, local regulations may provide for methods of security, including the posting of a bond securing to the municipality the successful operation of improvements for an appropriate period of time up to two years after final approval. The municipality is hereby granted the power to enforce bonds authorized under this section by all appropriate legal and equitable remedies. Such local regulations may provide that the improvements such as structures, sewers, and water systems shall be designed and certified by or under the supervision of a registered civil engineer prior to the acceptance of such improvements. [1974 ex.s. c 134 § 7; 1969 ex.s. c 271 § 13.]

58.17.140 Time limitation for approval or disapproval of plats—Extensions. Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within five years of the date of preliminary plat approval. Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements. [1995 c 68 § 1; 1986 c 233 § 2; 1983 c 121 § 3; 1981 c 293 § 7; 1974 ex.s. c 134 § 8; 1969 ex.s. c 271 § 14.]

Applicability—1986 c 233: See note following RCW 58.17.095.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.150 Recommendations of certain agencies to accompany plats submitted for final approval. Each preliminary plat submitted for final approval of the legislative body shall be accompanied by the following agencies' recommendations for approval or disapproval:

- (1) Local health department or other agency furnishing sewage disposal and supplying water as to the adequacy of the proposed means of sewage disposal and water supply;
- (2) Local planning agency or commission, charged with the responsibility of reviewing plats and subdivisions, as to compliance with all terms of the preliminary approval of the proposed plat subdivision or dedication;
- (3) City, town or county engineer.

(2008 Ed.)

Except as provided in RCW 58.17.140, an agency or person issuing a recommendation for subsequent approval under subsections (1) and (3) of this section shall not modify the terms of its recommendations without the consent of the applicant. [1983 c 121 § 4; 1981 c 293 § 8; 1969 ex.s. c 271 § 15.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.155 Short subdivision adjacent to state highway—Notice to department of transportation. Whenever a city, town, or county receives an application for the approval of a short plat of a short subdivision that is located adjacent to the right-of-way of a state highway, the responsible administrator shall give written notice of the application, including a legal description of the short subdivision and a location map, to the department of transportation. The department shall, within fourteen days after receiving the notice, submit to the responsible administrator who furnished the notice a statement with any information that the department deems to be relevant about the effect of the proposed short subdivision upon the legal access to the state highway, the traffic carrying capacity of the state highway and the safety of the users of the state highway. [1984 c 47 § 1.]

58.17.160 Requirements for each plat or replat filed for record. Each and every plat, or replat, of any property filed for record shall:

- (1) Contain a statement of approval from the city, town or county licensed road engineer or by a licensed engineer acting on behalf of the city, town or county as to the layout of streets, alleys and other rights-of-way, design of bridges, sewage and water systems, and other structures;
- (2) Be accompanied by a complete survey of the section or sections in which the plat or replat is located made to surveying standards adopted by the division of engineering services of the department of natural resources pursuant to RCW 58.24.040.
- (3) Be acknowledged by the person filing the plat before the auditor of the county in which the land is located, or any other officer who is authorized by law to take acknowledgment of deeds, and a certificate of said acknowledgment shall be enclosed or annexed to such plat and recorded therewith.
- (4) Contain a certification from the proper officer or officers in charge of tax collections that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied or discharged.

No engineer who is connected in any way with the subdividing and platting of the land for which subdivision approval is sought, shall examine and approve such plats on behalf of any city, town or county. [1985 c 99 § 1; 1969 ex.s. c 271 § 16.]

58.17.165 Certificate giving description and statement of owners must accompany final plat—Dedication, certificate requirements if plat contains—Waiver. Every final plat or short plat of a subdivision or short subdivision filed for record must contain a certificate giving a full and correct description of the lands divided as they appear on the plat or short plat, including a statement that the subdivision or

short subdivision has been made with the free consent and in accordance with the desires of the owner or owners.

If the plat or short plat is subject to a dedication, the certificate or a separate written instrument shall contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat or short plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the lands subdivided and recorded as part of the final plat.

Every plat and short plat containing a dedication filed for record must be accompanied by a title report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication.

An offer of dedication may include a waiver of right of direct access to any street from any property, and if the dedication is accepted, any such waiver is effective. Such waiver may be required by local authorities as a condition of approval. Roads not dedicated to the public must be clearly marked on the face of the plat. Any dedication, donation or grant as shown on the face of the plat shall be considered to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees for his, her or their use for the purpose intended by the donors or grantors as aforesaid. [1981 c 293 § 9; 1969 ex.s. c 271 § 30.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies. When the legislative body of the city, town or county finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of five years after final plat approval unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision. [1981 c 293 § 10; 1969 ex.s. c 271 § 17.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.180 Review of decision. Any decision approving or disapproving any plat shall be reviewable under chapter

36.70C RCW. [1995 c 347 § 717; 1983 c 121 § 5; 1969 ex.s. c 271 § 18.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

58.17.190 Approval of plat required before filing—Procedure when unapproved plat filed. The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name of and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove from their files or records the unapproved plat, or dedication of record. [1969 ex.s. c 271 § 19.]

58.17.195 Approval of plat or short plat—Written finding of conformity with applicable land use controls. No plat or short plat may be approved unless the city, town, or county makes a formal written finding of fact that the proposed subdivision or proposed short subdivision is in conformity with any applicable zoning ordinance or other land use controls which may exist. [1981 c 293 § 14.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.200 Injunctive action to restrain subdivision, sale, transfer of land where final plat not filed. Whenever any parcel of land is divided into five or more lots, tracts, or parcels of land and any person, firm or corporation or any agent of any of them sells or transfers, or offers or advertises for sale or transfer, any such lot, tract, or parcel without having a final plat of such subdivision filed for record, the prosecuting attorney shall commence an action to restrain and enjoin further subdivisions or sales, or transfers, or offers of sale or transfer and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person, firm, corporation or agent selling or transferring the property. [1969 ex.s. c 271 § 20.]

58.17.205 Agreements to transfer land conditioned on final plat approval—Authorized. If performance of an offer or agreement to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary plat approval is expressly conditioned on the recording of the final plat containing the lot, tract, or parcel under this chapter, the offer or agreement is not subject to RCW 58.17.200 or 58.17.300 and does not violate any provision of this chapter. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final plat is recorded. [1981 c 293 § 12.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.210 Building, septic tank or other development permits not to be issued for land divided in violation of chapter or regulations—Exceptions—Damages—Rescission by purchaser. No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local

regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers' or transferees' property shall comply with provisions of this chapter and each purchaser or transferee may recover his damages from any person, firm, corporation, or agent selling or transferring land in violation of this chapter or local regulations adopted pursuant thereto, including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of this chapter as well as cost of investigation, suit, and reasonable attorneys' fees occasioned thereby. Such purchaser or transferee may as an alternative to conforming his property to these requirements, rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby. [1974 ex.s. c 134 § 10; 1969 ex.s. c 271 § 21.]

58.17.212 Vacation of subdivision—Procedure.

Whenever any person is interested in the vacation of any subdivision or portion thereof, or any area designated or dedicated for public use, that person shall file an application for vacation with the legislative authority of the city, town, or county in which the subdivision is located. The application shall set forth the reasons for vacation and shall contain signatures of all parties having an ownership interest in that portion of the subdivision subject to vacation. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for vacation would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the vacation of the subdivision or portion thereof.

When the vacation application is specifically for a county road or city or town street, the procedures for road vacation or street vacation in chapter 36.87 or 35.79 RCW shall be utilized for the road or street vacation. When the application is for the vacation of the plat together with the roads and/or streets, the procedure for vacation in this section shall be used, but vacations of streets may not be made that are prohibited under *RCW 35.79.030, and vacations of roads may not be made that are prohibited under RCW 36.87.130.

The legislative authority of the city, town, or county shall give notice as provided in RCW 58.17.080 and 58.17.090 and shall conduct a public hearing on the application for a vacation and may approve or deny the application for vacation of the subdivision after determining the public use and interest to be served by the vacation of the subdivision. If any portion of the land contained in the subdivision was dedicated to the public for public use or benefit, such land, if not deeded to the city, town, or county, shall be deeded to the city, town, or county unless the legislative authority shall set forth findings that the public use would not be served in retaining title to those lands.

Title to the vacated property shall vest with the rightful owner as shown in the county records. If the vacated land is land that was dedicated to the public, for public use other than a road or street, and the legislative authority has found that

retaining title to the land is not in the public interest, title thereto shall vest with the person or persons owning the property on each side thereof, as determined by the legislative authority. When the road or street that is to be vacated was contained wholly within the subdivision and is part of the boundary of the subdivision, title to the vacated road or street shall vest with the owner or owners of property contained within the vacated subdivision.

This section shall not be construed as applying to the vacation of any plat of state-granted tide or shore lands. [1987 c 354 § 3.]

***Reviser's note:** After amendment by 1987 c 228 § 1, RCW 35.79.030 no longer prohibited vacations of streets. Limitations on vacations of streets abutting bodies of water are now found in RCW 35.79.035.

58.17.215 Alteration of subdivision—Procedure.

When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

Upon receipt of an application for alteration, the legislative body shall provide notice of the application to all owners of property within the subdivision, and as provided for in RCW 58.17.080 and 58.17.090. The notice shall either establish a date for a public hearing or provide that a hearing may be requested by a person receiving notice within fourteen days of receipt of the notice.

The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

After approval of the alteration, the legislative body shall order the applicant to produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.

This section shall not be construed as applying to the alteration or replatting of any plat of state-granted tide or shore lands. [1987 c 354 § 4.]

58.17.217 Alteration or vacation of subdivision—Conduct of hearing. Any hearing required by RCW 58.17.212, 58.17.215, or 58.17.060 may be administered by a

hearings examiner as provided in RCW 58.17.330. [1987 c 354 § 7.]

58.17.218 Alteration of subdivision—Easements by dedication. The alteration of a subdivision is subject to RCW 64.04.175. [1991 c 132 § 2.]

58.17.220 Violation of court order or injunction—Penalty. Any person who violates any court order or injunction issued pursuant to this chapter shall be subject to a fine of not more than five thousand dollars or imprisonment for not more than ninety days or both. [1969 ex.s. c 271 § 22.]

58.17.225 Easement over public open space—May be exempt from RCW 58.17.215—Hearing—Notice. The granting of an easement for ingress and egress or utilities over public property that is held as open space pursuant to a subdivision or plat, where the open space is already used as a utility right-of-way or corridor, where other access is not feasible, and where the granting of the easement will not impair public access or authorize construction of physical barriers of any type, may be authorized and exempted from the requirements of RCW 58.17.215 by the county, city, or town legislative authority following a public hearing with notice to the property owners in the affected plat. [1995 c 32 § 1.]

58.17.230 Assurance of discontinuance of violations. In the enforcement of this chapter, the prosecuting attorney may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter from any person engaging in, or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violation occurs. A violation of such assurance shall constitute prima facie proof of a violation of this chapter. [1969 ex.s. c 271 § 23.]

58.17.240 Permanent control monuments. Except for subdivisions excluded under the provisions of RCW 58.17.040, as now or hereafter amended, permanent control monuments shall be established at each and every controlling corner on the boundaries of the parcel of land being subdivided. The local authority shall determine the number and location of permanent control monuments within the plat, if any. [1974 ex.s. c 134 § 11; 1969 ex.s. c 271 § 24.]

58.17.250 Survey of subdivision and preparation of plat. The survey of the proposed subdivision and preparation of the plat shall be made by or under the supervision of a registered land surveyor who shall certify on the plat that it is a true and correct representation of the lands actually surveyed. [1969 ex.s. c 271 § 26.]

58.17.255 Survey discrepancy—Disclosure. Whenever a survey of a proposed subdivision or short subdivision reveals a discrepancy, the discrepancy shall be noted on the face of the final plat or short plat. Any discrepancy shall be disclosed in a title report prepared by a title insurer and issued after the filing of the final plat or short plat. As used in this section, "discrepancy" means: (1) A boundary hiatus; (2) an

overlapping boundary; or (3) a physical appurtenance, which indicates encroachment, lines of possession, or conflict of title. [1987 c 354 § 6.]

58.17.260 Joint committee—Members—Recommendations for surveys, monumentation and plat drawings. In order that there be a degree of uniformity of survey monumentation throughout the cities, towns and counties of the state of Washington, there is hereby created a joint committee composed of six members to be appointed as follows: The Washington state association of counties shall appoint two county road engineers; the association of Washington cities shall appoint two city engineers; the land surveyors association of Washington shall appoint one member; and the consulting engineers association of Washington shall appoint one member. The joint committee is directed to cooperate with the department of natural resources to establish recommendations pertaining to requirements of survey, monumentation and plat drawings for subdivisions and dedications throughout the state of Washington. The department of natural resources shall publish such recommendation. [1971 ex.s. c 85 § 9; 1969 ex.s. c 271 § 27.]

58.17.275 Proposals to adopt, amend, or repeal local ordinances—Advance notice. All cities, towns, and counties shall establish procedures to provide reasonable advance notice of proposals to adopt, amend, or repeal local ordinances adopted in accordance with this chapter. These procedures shall include but not be limited to advance notice to individuals or organizations which have submitted requests for notice. Reasonable fees may be charged to defray the costs of providing notice. [1981 c 293 § 13.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.280 Naming and numbering of short subdivisions, subdivisions, streets, lots and blocks. Any city, town or county shall, by ordinance, regulate the procedure whereby short subdivisions, subdivisions, streets, lots and blocks are named and numbered. A lot numbering system and a house address system, however, shall be provided by the municipality for short subdivisions and subdivisions and must be clearly shown on the short plat or final plat at the time of approval. [1993 c 486 § 1; 1969 ex.s. c 271 § 29.]

58.17.290 Copy of plat as evidence. A copy of any plat recorded in the manner provided in this chapter and certified by the county auditor of the county in which the same is recorded to be a true copy of such record and the whole thereof, shall be received in evidence in all the courts of this state, with like effect as the original. [1969 ex.s. c 271 § 31.]

58.17.300 Violations—Penalties. Any person, firm, corporation, or association or any agent of any person, firm, corporation, or association who violates any provision of this chapter or any local regulations adopted pursuant thereto relating to the sale, offer for sale, lease, or transfer of any lot, tract or parcel of land, shall be guilty of a gross misdemeanor and each sale, offer for sale, lease or transfer of each separate lot, tract, or parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto, shall

be deemed a separate and distinct offense. [1969 ex.s. c 271 § 32.]

58.17.310 Approval of plat within irrigation district without provision for irrigation prohibited. In addition to any other requirements imposed by the provisions of this chapter, the legislative authority of any city, town, or county shall not approve a short plat or final plat, as defined in RCW 58.17.020, for any subdivision, short subdivision, lot, tract, parcel, or site which lies in whole or in part in an irrigation district organized pursuant to chapter 87.03 RCW unless there has been provided an irrigation water right-of-way for each parcel of land in such district. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site lies within land within the district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution, bylaw, or rule of general applicability as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county. Rights-of-way shall be evidenced by the respective plats submitted for final approval to the appropriate legislative authority. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site to be platted is wholly or partially within an irrigation district of two hundred thousand acres or more and has been previously platted by the United States bureau of reclamation as a farm unit in the district, the legislative authority shall not approve for such land a short plat or final plat as defined in RCW 58.17.020 without the approval of the irrigation district and the administrator or manager of the project of the bureau of reclamation, or its successor agency, within which that district lies. Compliance with the requirements of this section together with all other applicable provisions of this chapter shall be a prerequisite, within the expressed purpose of this chapter, to any sale, lease, or development of land in this state. [1990 c 194 § 1; 1986 c 39 § 1; 1985 c 160 § 1; 1973 c 150 § 2.]

58.17.320 Compliance with chapter and local regulations—Enforcement. Whenever land within a subdivision granted final approval is used in a manner or for a purpose which violates any provision of this chapter, any provision of the local subdivision regulations, or any term or condition of plat approval prescribed for the plat by the local government, then the prosecuting attorney, or the attorney general if the prosecuting attorney shall fail to act, may commence an action to restrain and enjoin such use and compel compliance with the provisions of this chapter or the local regulations, or with such terms or conditions. The costs of such action may be taxed against the violator. [1974 ex.s. c 134 § 13.]

58.17.330 Hearing examiner system—Adoption authorized—Procedures—Decisions. (1) As an alternative to those provisions of this chapter requiring a planning commission to hear and issue recommendations for plat approval, the county or city legislative body may adopt a hearing examiner system and shall specify by ordinance the legal effect of the decisions made by the examiner. The legal effect of such decisions shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative body;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or

(c) The decision may be given the effect of a final decision of the legislative body.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

(2) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Each final decision of a hearing examiner, unless a longer period is mutually agreed to by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 429; 1994 c 257 § 6; 1977 ex.s. c 213 § 4.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1994 c 257: See note following RCW 36.70A.270.

Severability—1977 ex.s. c 213: See note following RCW 35.63.130.

58.17.900 Validation of existing ordinances and resolutions. All ordinances and resolutions enacted at a time prior to the passage of this chapter by the legislative bodies of cities, towns, and counties and which are in substantial compliance with the provisions of this chapter, shall be construed as valid and may be further amended to include new provisions and standards as are authorized in general law. [1969 ex.s. c 271 § 33.]

58.17.910 Severability—1969 ex.s. c 271. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 271 § 35.]

58.17.920 Effective date and application of 1974 ex.s. c 134. (1) The provisions of *this 1974 amendatory act shall become effective July 1, 1974.

(2) The provisions of *this 1974 amendatory act shall not apply to any plat which has been granted preliminary approval prior to July 1, 1974, but shall apply to any proposed plat granted preliminary approval on or after July 1, 1974. [1974 ex.s. c 134 § 14.]

*Reviser's note: For codification of "this 1974 amendatory act" [1974 ex.s. c 134], see Codification Tables, Volume 0.

Chapter 58.18 RCW ASSESSOR'S PLATS

Sections

58.18.010 Assessor's plat—Requisites, filing, index, etc.—When official plat.

58.18.010 Assessor's plat—Requisites, filing, index, etc.—When official plat. In any county where an assessor has and maintains an adequate set of maps drawn from surveys at a scale of not less than two hundred feet to the inch, the assessor may with the permission of the county commissioners, file an assessor's plat of the area, which when filed shall become the official plat for all legal purposes, provided:

(1) The plat is filed in the offices of the county auditor and the county assessor, together with a list of the existing legal descriptions and a list of the new legal descriptions as assigned by the county assessor;

(2) The recorded plat is drawn in such a manner that a ready reference can be made to the legal description in existence prior to the time of the filing of the assessor's plat and in conformance with existing statutes;

(3) The first year the tax roll and tax statement shall contain the prior legal description and the new legal description as assigned and shown on the assessor's plat with a notation that this legal description shall be used for all purposes;

(4) The county assessor shall maintain an index for reference to the prior and the existing legal descriptions of the parcels contained in the assessor's plats;

(5) Each dedicated plat after June 7, 1961, shall be submitted to the county assessor of the county wherein the plat is located, for the sole purpose of assignment of parcel, tract, block and or lot numbers and the county auditor shall not accept any such plat for filing unless the said plat carries a signed affidavit from the assessor to this effect, and a statement to the effect that the name of the plat shall be number in the county of [1961 c 262 § 1.]

The legislature further finds and declares that delivery to prospective purchasers of a complete and accurate public offering statement is necessary in order to adequately protect both the economic and physical welfare of the citizens of this state. It is the purpose of this chapter to provide for the reasonable regulation of the sale and offering for sale of any interest in significant land developments within or without the state of Washington, so that the prospective purchasers of such interests might be provided with full, complete, and accurate information of all pertinent circumstances affecting their purchase. [1992 c 191 § 1; 1973 1st ex.s. c 12 § 1.]

58.19.020 Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Affiliate of a developer" means any person who controls, is controlled by, or is under common control with a developer.

(a) A person controls a developer if the person: (i) Is a general partner, officer, director, or employer of the developer; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the developer; (iii) controls in any manner the election of a majority of the directors of the developer; or (iv) has contributed more than twenty percent of the capital of the developer.

(b) A person is controlled by a developer if the developer: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one of [or] more other persons, or through one or more subsidiaries, owns, controls, holds with the power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Blanket encumbrance" shall mean a trust deed, mortgage, mechanic's lien, or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land to be developed or affecting more than one lot or parcel of developed land, or an agreement affecting more than one such lot or parcel by which the developer holds said development under option, contract, sale, or trust agreement. The term shall not include taxes and assessments levied by a public authority.

(3) "Common promotional plan" means an offering of related developed lands in a common promotional plan of disposition. Elements relevant to whether the related developed lands are being offered as part of a common promotional plan include but are not limited to: Whether purchasers of interests in the offered land will share in the use of common amenities, or other rights or privileges; whether the offered lands are known, designated, or advertised as a common unit or by a common name; whether a common broker or sales personnel, common sales office or facilities, or common promotional methods are utilized; and whether cross-referrals of prospective purchasers between sales operations is utilized.

Chapter 58.19 RCW

LAND DEVELOPMENT ACT

Sections

58.19.010 Purpose.
58.19.020 Definitions.
58.19.030 Exemptions from chapter.
58.19.045 Public offering statement—Developer's duties—Purchaser's rights.
58.19.055 Public offering statement—Contents.
58.19.120 Report of changes required—Amendments.
58.19.130 Public offering statement form—Type and style restriction.
58.19.140 Public offering statement—Promotional use, distribution restriction—Holding out that state or employees, etc., approve development prohibited.
58.19.180 Unlawful to sell lots or parcels subject to blanket encumbrance which does not provide purchaser can obtain clear title—Alternatives.
58.19.185 Requiring purchaser to pay additional sum to construct, complete or maintain development.
58.19.190 Advertising—Materially false, misleading, or deceptive statements prohibited.
58.19.265 Violations—Remedies—Attorneys' fees.
58.19.270 Violations deemed unfair practice subject to chapter 19.86 RCW.
58.19.280 Jurisdiction of superior courts.
58.19.300 Hazardous conditions—Notice.
58.19.920 Liberal construction.
58.19.940 Short title.
58.19.950 Severability—1973 1st ex.s. c 12.
58.19.951 Severability—1992 c 191.

Camping resort contracts—Nonapplicability of certain laws to: RCW 19.105.510.

Exemption of timeshares from chapter: RCW 64.36.290.

58.19.010 Purpose. The legislature finds and declares that the sale and offering for sale of land or of interests in associations which provide for the use or occupancy of land touches and affects a great number of the citizens of this state and that full and complete disclosure to prospective purchasers of pertinent information concerning land developments, including any encumbrances or liens attached to the land and the physical characteristics of the development is essential.

(4) "Developer" means any owner of a development who offers it for disposition, or the principal agent of an inactive owner.

(5) "Development" or "developed lands" means land which is divided or is proposed to be divided for the purpose of disposition into twenty-six or more lots, parcels, or units (excluding interests in camping resorts regulated under chapter 19.105 RCW and interests in condominiums regulated under chapter 64.34 RCW) or any other land whether contiguous or not, if twenty-six or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

(6) "Disposition" includes any sale, lease, assignment, or exchange of any interest in any real property which is a part of or included within a development, and also includes the offering of property as a prize or gift when a monetary charge or consideration for whatever purpose is required in conjunction therewith, and any other transaction concerning a development if undertaken for gain or profit.

(7) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage, deed of trust, or real estate contract, or a deed in lieu thereof.

(8) "Improvements" include all existing, advertised, and governmentally required facilities such as streets, water, electricity, natural gas, telephone lines, drainage control systems, and sewage disposal systems.

(9) "Offer" includes every inducement, solicitation, or media advertisement which has as a principal aim to encourage a person to acquire an interest in land.

(10) "Owners association" means any profit or nonprofit corporation, unincorporated association, or other organization or legal entity, a membership or other interest in which is appurtenant to or based upon owing an interest in a development.

(11) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(12) "Physical hazard" means a physical condition which poses, or may very likely pose, a material risk of either: Material damage to the development and improvements thereon; or material endangerment to the safety and health of persons using the development and improvements thereon.

(13) "Purchaser" means a person who acquires or attempts to acquire or succeeds to any interest in land.

(14) "Related developed lands" means two or more developments which are owned by the same developer or an affiliate or affiliates of that developer and which are physically located within the same five-mile radius area.

(15) "Residential buildings" shall mean premises that are actually intended or used primarily for residential or recreational purposes by the purchasers. [1992 c 191 § 2; 1979 c 158 § 208; 1973 1st ex.s. c 12 § 2.]

58.19.030 Exemptions from chapter. (1) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to land and offers or dispositions:

(a) By a purchaser of developed lands for his or her own account in a single or isolated transaction;

(b) If fewer than ten separate lots, parcels, units, or interests in developed lands are offered by a person in a period of twelve months;

(c) If each lot offered in the development is five acres or more;

(d) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two years from date of disposition;

(e) To any person who acquires such lot, parcel, unit or interest therein for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease or other disposition of such lots to persons engaged in such business or businesses;

(f) Any lot, parcel, unit or interest if the development is located within an area incorporated prior to January 1, 1974;

(g) Pursuant to court order; or

(h) As cemetery lots or interests.

(2) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to:

(a) Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust of real estate;

(b) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(c) A development as to which the director has waived the provisions of this chapter;

(d) Offers or dispositions of securities currently registered with the department of financial institutions;

(e) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the department of financial institutions. [1994 c 92 § 504; 1979 c 158 § 209; 1973 1st ex.s. c 12 § 3.]

58.19.045 Public offering statement—Developer's duties—Purchaser's rights. (1) A developer shall prepare a public offering statement conforming to the requirements of RCW 58.19.055 unless the development or the transaction is exempt under RCW 58.19.030.

(2) Any agent, attorney, or other person assisting the developer in preparing the public offering statement may rely upon information provided by the developer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The developer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the developer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(3) Unless the development or the transaction is exempt under RCW 58.19.030, a developer shall provide a purchaser of a lot, parcel, unit, or interest with a copy of the public offering statement and all material amendments thereto before conveyance of that lot, parcel, unit, or interest. Unless

a purchaser is given the public offering statement more than two days before execution of a contract for the purchase of a lot, parcel, unit, or interest, the purchaser, before conveyance, shall have the right to cancel the contract within two days after first receiving the public offering statement and, if necessary to have two days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than two days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles. The two-day period shall not include Saturdays, Sundays, or legal holidays.

(4) If a purchaser elects to cancel a contract pursuant to subsection (3) of this section, the purchaser may do so by hand-delivering notice thereof to the developer or by mailing notice thereof by prepaid United States mail to the developer for service of process. If cancellation is by mailing notice, the date of the postmark on the mail shall be the official date of cancellation. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded within thirty days from the date of cancellation.

(5) If a person required to deliver a public offering statement pursuant to subsection (1) of this section fails to provide a purchaser to whom a lot, parcel, unit, or interest is conveyed with that public offering statement and all material amendments thereto as required by subsection (3) of this section, the purchaser is entitled to receive from that person an amount equal to the actual damages suffered by the purchaser as a result of the public offering statement not being delivered. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the lot, parcel, unit, or interest had the undisclosed information been evident to the purchaser before the closing of the purchase.

(6) A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the developer or developer's agent identified in the public offering statement. [1992 c 191 § 4.]

58.19.055 Public offering statement—Contents. (1) A public offering statement shall contain the following information:

- (a) The name, and the address or approximate location, of the development;
- (b) The name and address of the developer;
- (c) The name and address of the management company, if any, for the development;
- (d) The relationship of the management company to the developer, if any;
- (e) The nature of the interest being offered for sale;
- (f) A brief description of the permitted uses and use restrictions pertaining to the development and the purchaser's interest therein;
- (g) The number of existing lots, parcels, units, or interests in the development and either the maximum number that may be added to the development or the fact that such maximum number has not yet been determined;

(h) A list of the principal common amenities in the development which materially affect the value of the development and those that will or may be added to the development;

(i) The identification of any real property not in the development, the owner of which has access to any of the development, and a description of the terms of such access;

(j) The identification of any real property not in the development to which owners in the development have access and a description of the terms of such access;

(k) The status of construction of improvements in the development, including either the estimated dates of completion if not completed or the fact that such estimated completion dates have not yet been determined; and the estimated costs, if any, to be paid by the purchaser;

(l) The estimated current owners' association expense, if any, for which a purchaser would be liable;

(m) An estimate of any payment with respect to any owners' association expense for which the purchaser would be liable at closing;

(n) The estimated current amount and purpose of any fees not included in any owners' association assessments and charged by the developer or any owners' association for the use of any of the development or improvements thereto;

(o) Any assessments which have been agreed to or are known to the developer and which, if not paid, may constitute a lien against any portion of the development in favor of any governmental agency;

(p) The identification of any parts of the development which any purchaser will have the responsibility for maintaining;

(q) A brief description of any blanket encumbrance which is subject to the provisions of RCW 58.19.180;

(r) A list of any physical hazards known to the developer which particularly affect the development or the immediate vicinity in which the development is located and which are not readily ascertainable by the purchaser;

(s) A brief description of any construction warranties to be provided to the purchaser;

(t) Any building code violation citations received by the developer in connection with the development which have not been corrected;

(u) A statement of any unsatisfied judgments or pending suits against any owners' association involved in the development and a statement of the status of any pending suits material to the development of which the developer has actual knowledge;

(v) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 58.19.045(3), including applicable time frames and procedures;

(w) A list of the documents which the prospective purchaser is entitled to receive from the developer before the rescission period commences;

(x) A notice which states:

"A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the developer or by any person identified in the public offering statement as the declarant's agent";

(y) A notice which states:

"This public offering statement is only a summary of some of the significant aspects of purchasing an interest in this development and any documents which may govern or affect the development may be complex, may contain other important information, and create binding legal obligations. You should consider seeking assistance of legal counsel"; and

(z) Any other information and cross-references which the developer believes will be helpful in describing the development to the recipients of the public offering statement, all of which may be included or not included at the option of the developer.

(2) The public offering statement shall include copies of each of the following documents: Any declaration of covenants, conditions, restrictions, and reservations affecting the development; any survey, plat, or subdivision map; the articles of incorporation of any owners' association; the bylaws of any owners' association; the rules and regulations, if any, of any owners' association; current or proposed budget for any owners' association; and the balance sheet of any owners' association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not yet been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of an interest in the development, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(v), (x), and (y) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size. [1992 c 191 § 5.]

58.19.120 Report of changes required—Amendments. The developer shall immediately amend the public offering statement to include any material changes affecting the development. No change in the substance of the promotional plan or plan of disposition or completion of the development may be made without first making an appropriate amendment of the public offering statement. A public offering statement is not current unless it incorporates all amendments. [1992 c 191 § 6; 1973 1st ex.s. c 12 § 12.]

58.19.130 Public offering statement form—Type and style restriction. No portion of the public offering statement form may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the director so requires. [1973 1st ex.s. c 12 § 13.]

58.19.140 Public offering statement—Promotional use, distribution restriction—Holding out that state or employees, etc., approve development prohibited. The public offering statement shall not be used for any promotional purposes. It may not be distributed to prospective purchasers before registration of the development and may be distributed afterwards only when it is used in its entirety. No

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person may advertise or represent that the state of Washington or the director, the department, or any employee thereof approves or recommends the development or disposition thereof. [1973 1st ex.s. c 12 § 14.]

58.19.180 Unlawful to sell lots or parcels subject to blanket encumbrance which does not provide purchaser can obtain clear title—Alternatives. It shall be unlawful for the developer to make a sale of lots or parcels within a development which is subject to a blanket encumbrance which does not contain, within its terms or by supplementary agreement, a provision which shall unconditionally provide that the purchaser of a lot or parcel encumbered thereby can obtain the legal title, or other interest contracted for, free and clear of the lien of such blanket encumbrance upon compliance with the terms and conditions of the purchase agreement, unless the developer shall elect and comply with one of the following alternative conditions:

(1) The developer shall deposit earnest moneys and all subsequent payments on the obligation in a neutral escrow depository, or real estate trust account regulated under *RCW 18.85.310, until such time as all payments on the obligation have been made and clear title is delivered, or any of the following occurs:

(a) A proper release is obtained from such blanket encumbrance;

(b) Either the developer or the purchaser defaults under the sales contract and there is a forfeiture of the interest of the purchaser or there is a determination as to the disposition of such moneys, as the case may be; or

(c) The developer orders a return of such moneys to such purchaser.

(2) The title to the development is held in trust under an agreement of trust until the proper release of such blanket encumbrance is obtained.

(3) The purchaser shall receive title insurance from a licensed title insurance company against such blanket encumbrance. [1992 c 191 § 7; 1973 1st ex.s. c 12 § 18.]

*Reviser's note: RCW 18.85.310 was recodified as RCW 18.85.285 pursuant to 2008 c 23 § 49, effective July 1, 2010.

58.19.185 Requiring purchaser to pay additional sum to construct, complete or maintain development. It shall be unlawful for the developer to sell a lot or parcel within a development if the terms of the sale require that the purchaser pay any sum in addition to the purchase price for constructing, completing, or maintaining improvements to the development unless the sums are to be paid directly to:

(1) A governmental agency;

(2) A person who is not affiliated with the developer, in trust, and on terms acceptable to the director; or

(3) An association comprised solely of persons who have purchased lots in the development, or their assignees.

The terms which require the payment of any additional sum shall be set forth in the public offering statement. [1977 ex.s. c 252 § 1.]

58.19.190 Advertising—Materially false, misleading, or deceptive statements prohibited. No person shall publish in this state any advertisement concerning a development

subject to the requirements of this chapter which contains any statements that are materially false, misleading, or deceptive. [1992 c 191 § 8; 1973 1st ex.s. c 12 § 19.]

58.19.265 Violations—Remedies—Attorneys' fees. If a developer, or any other person subject to this chapter, fails to comply with any provision of this chapter, any person or class of persons adversely affected by the failure to comply may seek appropriate relief through an action for damages or an injunctive court order. The court, in an appropriate case, may award attorneys' fees. [1992 c 191 § 9.]

58.19.270 Violations deemed unfair practice subject to chapter 19.86 RCW. (1) The commission by any person of an act or practice prohibited by this chapter is hereby declared to be a matter affecting the public interest for the purpose of applying chapter 19.86 RCW and is not reasonable in relation to the development and preservation of business. A violation of this chapter constitutes an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of the attorney general bringing an action in the name of the state under the consumer protection act, pursuant to RCW 19.86.080.

(2) Evidence concerning violations of this chapter may be referred to the attorney general, who may, in his or her discretion, with or without such a reference, in addition to any other action the attorney general might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter. This chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, and the powers and duties of the attorney general as such powers and duties appear in chapters 9.04 and 19.86 RCW shall apply against all persons subject to this chapter.

(3) Only the attorney general can bring an action under the consumer protection act, chapter 19.86 RCW, pursuant to this section. [1992 c 191 § 10; 1973 1st ex.s. c 12 § 27.]

58.19.280 Jurisdiction of superior courts. Dispositions of an interest in a development are subject to this chapter, and the superior courts of this state have jurisdiction in claims or causes of action arising under this chapter, if:

- (1) The interest in a development offered for disposition is located in this state;
- (2) The developer maintains an office in this state; or
- (3) Any offer or disposition of an interest in a development is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed. [1973 1st ex.s. c 12 § 28.]

58.19.300 Hazardous conditions—Notice. If, before disposition of all or any portion of a development which is covered by this chapter, a condition constituting a physical hazard is discovered on or around the immediate vicinity of the development, the developer or government agency discovering such condition shall notify the purchasers of the affected lands either by transmitting notice through the appropriate county assessor's office or such other steps as

might reasonably give actual notice to the purchasers. [1992 c 191 § 11; 1973 1st ex.s. c 12 § 30.]

58.19.920 Liberal construction. The provisions of this chapter shall be construed liberally so as to give effect to the purposes stated in RCW 58.19.010. [1973 1st ex.s. c 12 § 33.]

58.19.940 Short title. This chapter may be cited as the land development act. [1992 c 191 § 12; 1973 1st ex.s. c 12 § 35.]

58.19.950 Severability—1973 1st ex.s. c 12. If any provision of this 1973 act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this 1973 act are severable. [1973 1st ex.s. c 12 § 36.]

58.19.951 Severability—1992 c 191. If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 191 § 14.]

Chapter 58.20 RCW

WASHINGTON COORDINATE SYSTEM

Sections

58.20.110	Definitions.
58.20.120	System designation—Permitted uses.
58.20.130	Plane coordinates adopted—Zones.
58.20.140	Designation of system—Zones.
58.20.150	Designation of coordinates—"N" and "E."
58.20.160	Tract in both zones—Description.
58.20.170	Zones—Technical definitions.
58.20.180	Recording coordinates—Control stations.
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58.20.200	Term—Limited use.
58.20.210	United States survey prevails—Conflict.
58.20.220	Real estate transactions—Exemption.
58.20.901	Severability—1989 c 54.

58.20.110 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 58.20.110 through 58.20.220 and 58.20.901:

- (1) "Committee" means the interagency federal geodetic control committee or its successor;
- (2) "GRS 80" means the geodetic reference system of 1980 as adopted in 1979 by the international union of geodesy and geophysics defined on an equipotential ellipsoid;
- (3) "National geodetic survey" means the national ocean service's national geodetic survey of the national oceanic and atmospheric administration, United States department of commerce, or its successor;
- (4) "Washington coordinate system of 1927" means the system of plane coordinates in effect under this chapter until July 1, 1990, which is based on the North American datum of 1927 as determined by the national geodetic survey of the United States department of commerce;

(5) "Washington coordinate system of 1983" means the system of plane coordinates under this chapter based on the North American datum of 1983 as determined by the national geodetic survey of the United States department of commerce. [1989 c 54 § 9.]

58.20.120 System designation—Permitted uses. Until July 1, 1990, the Washington coordinate system of 1927, or its successor, the Washington coordinate system of 1983, may be used in Washington for expressing positions or locations of points on the surface of the earth. On and after that date, the Washington coordinate system of 1983 shall be the designated coordinate system in Washington. The Washington coordinate system of 1927 may be used only for purposes of reference after June 30, 1990. [1989 c 54 § 10.]

58.20.130 Plane coordinates adopted—Zones. The system of plane coordinates which has been established by the national geodetic survey for defining and stating the positions or locations of points on the surface of the earth within the state of Washington is designated as the "Washington coordinate system of 1983."

For the purposes of this system the state is divided into a "north zone" and a "south zone."

The area now included in the following counties shall constitute the north zone: Chelan, Clallam, Douglas, Ferry, Island, Jefferson, King, Kitsap, Lincoln, Okanogan, Pend Oreille, San Juan, Skagit, Snohomish, Spokane, Stevens, Whatcom, and that part of Grant lying north of parallel 47° 30' north latitude.

The area now included in the following counties shall constitute the south zone: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, that part of Grant lying south of parallel 47° 30' north latitude, Grays Harbor, Kittitas, Klickitat, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Walla Walla, Whitman and Yakima. [1989 c 54 § 11.]

58.20.140 Designation of system—Zones. As established for use in the north zone, the Washington coordinate system of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1983, north zone."

As established for use in the south zone, the Washington coordinate system of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1983, south zone." [1989 c 54 § 12.]

58.20.150 Designation of coordinates—"N" and "E." "N" and "E" shall be used in labeling coordinates of a point on the earth's surface and in expressing the position or location of such point relative to the origin of the appropriate zone of this system, expressed in meters and decimals of a meter. These coordinates shall be made to depend upon and conform to the coordinates, on the Washington coordinate system of 1983, of the horizontal control stations of the national geodetic survey within the state of Washington, as those coordinates have been determined, accepted, or adjusted by the survey. [1989 c 54 § 13.]

58.20.160 Tract in both zones—Description. When any tract of land to be defined by a single description extends from one into the other of the coordinate zones under RCW 58.20.130, the positions of all points on its boundaries may be referred to either of the zones, the zone which is used being specifically named in the description. [1989 c 54 § 14.]

58.20.170 Zones—Technical definitions. For purposes of more precisely defining the Washington coordinate system of 1983, the following definition by the national geodetic survey is adopted:

The Washington coordinate system of 1983, north zone, is a Lambert conformal conic projection of the GRS 80 spheroid, having standard parallels at north latitudes 47° 30' and 48° 44', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 50' west of Greenwich and the parallel 47° 00' north latitude. This origin is given the coordinates: E = 500,000 meters and N = 0 meters.

The Washington coordinate system of 1983, south zone, is a Lambert conformal conic projection of the GRS 80 spheroid, having standard parallels at north latitudes 45° 50' and 47° 20', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 30' west of Greenwich and the parallel 45° 20' north latitude. This origin is given the coordinates: E = 500,000 meters and N = 0 meters. [1989 c 54 § 15.]

58.20.180 Recording coordinates—Control stations. Coordinates based on the Washington coordinate system of 1983, purporting to define the position of a point on a land boundary, may be presented to be recorded in any public land records or deed records if the survey method used for the determination of these coordinates is established in conformity with standards and specifications prescribed by the interagency federal geodetic control committee, or its successor. These surveys shall be connected to monumented control stations that are adjusted to and published in the national network of geodetic control by the national geodetic survey and such connected horizontal control stations shall be described in the land or deed record. Standards and specifications of the committee in force on the date of the survey shall apply. In all instances where reference has been made to such coordinates in land surveys or deeds, the scale and sea level factors shall be stated for the survey lines used in computing ground distances and areas.

The position of the Washington coordinate system of 1983 shall be marked on the ground by horizontal geodetic control stations which have been established in conformity with the survey standards adopted by the committee and whose geodetic positions have been rigorously adjusted on the North American datum of 1983, and whose coordinates have been computed and published on the system defined in RCW 58.20.110 through 58.20.220 and 58.20.901. Any such control station may be used to establish a survey connection with the Washington coordinate system of 1983. [1989 c 54 § 16.]

58.20.190 Conversion of coordinates—Metric. Any conversion of coordinates between the meter and the United

States survey foot shall be based upon the length of the meter being equal to exactly 39.37 inches. [1989 c 54 § 17.]

58.20.200 Term—Limited use. The use of the term "Washington coordinate system of 1983" on any map, report of survey, or other document, shall be limited to coordinates based on the Washington coordinate system of 1983 as defined in this chapter. [1989 c 54 § 18.]

58.20.210 United States survey prevails—Conflict. Whenever coordinates based on the Washington coordinate system of 1983 are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates. [1989 c 54 § 19.]

58.20.220 Real estate transactions—Exemption. Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Washington coordinate system of 1927 or 1983. [1989 c 54 § 20.]

58.20.901 Severability—1989 c 54. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 54 § 21.]

Chapter 58.22 RCW

STATE BASE MAPPING SYSTEM

Sections

58.22.010	Legislative intent.
58.22.020	Establishment and maintenance—Standards.
58.22.030	United States geological survey quadrangle map separates—Acquisition by state agencies.
58.22.040	United States geological survey quadrangle map separates—State depository.
58.22.050	Availability of map separates—Powers and duties of department.

Surveys and maps account established for purposes of chapter 58.22 RCW: RCW 58.24.060.

58.22.010 Legislative intent. It is the intent of the legislature to establish a coordinated system of state base maps to assist all levels of government to more effectively provide the information to meet their responsibilities for resource planning and management.

It is further the legislature's intent to eliminate duplication, to insure compatibility, and to create coordination through a uniform base which all agencies will use.

It is in the interest of all citizens in the state of Washington that a state base mapping system be established to make essential base maps available at cost to all users, both public and private. [1973 1st ex.s. c 159 § 1.]

58.22.020 Establishment and maintenance—Standards. The department of natural resources shall establish and maintain a state base mapping system. The standards for the state base mapping system shall be:

(1) A series of fifteen minute United States geological survey quadrangle map separates at a scale of one to 48,000 (one inch equals 4,000 feet) covering the entire state;

(2) A series of seven and one-half minute United States geological survey quadrangle map separates at a scale of one to 24,000 (one inch equals 2,000 feet) for urban areas; including but not limited to those identified as urban by the state department of transportation for the United States department of transportation.

All features and symbols added to the quadrangle separates shall meet as nearly as is practical national map accuracy standards and specifications as defined by the United States geological survey for their fifteen minute and seven and one-half minute quadrangle map separates.

Each quadrangle shall be revised by the department of natural resources as necessary to reflect current conditions. [1984 c 7 § 367; 1973 1st ex.s. c 159 § 2.]

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

58.22.030 United States geological survey quadrangle map separates—Acquisition by state agencies. Any state agency purchasing or acquiring United States geological survey quadrangle map separates shall do so through the department of natural resources. [1973 1st ex.s. c 159 § 3.]

58.22.040 United States geological survey quadrangle map separates—State depository. The department of natural resources shall be the primary depository of all United States geological survey quadrangle map separates for state agencies: PROVIDED, That any state agency may maintain duplicate copies. [1973 1st ex.s. c 159 § 4.]

58.22.050 Availability of map separates—Powers and duties of department. (1) All United States geological survey quadrangle map separates shall be available at cost to all state agencies, local agencies, the federal government, and any private individual or company through duplication and purchase.

The department shall coordinate all requests for the use of United States geological survey quadrangle map separates and shall provide advice on how to best use the system.

(2) The department shall maintain a catalogue showing all United States geological survey quadrangle map separates available. The department shall also catalogue information describing additional separates or products created by users. Copies of maps made for any state or local agency shall be available to any other state or local agency. [1973 1st ex.s. c 159 § 5.]

Chapter 58.24 RCW

STATE AGENCY FOR SURVEYS AND MAPS—FEES

Sections

58.24.010	Declaration of necessity.
58.24.020	Official agency designated—Advisory board.
58.24.030	Official agency designated—Powers—Cooperate and advise—Purposes.

- 58.24.040 Official agency designated—Powers—Standards, maps, records, report, temporary removal of boundary marks or monuments.
- 58.24.050 Employees—Licensed engineers or surveyors.
- 58.24.060 Surveys and maps account—Purposes.
- 58.24.070 Fees for filing and recording surveys, plats, or maps—Deposit and use of fees.

Cemetery property—Surveys and maps, plats, etc.: Chapter 68.24 RCW.

Counties—Land surveys, record of surveys: RCW 36.32.370, 36.32.380.

Geological survey: Chapter 43.27A RCW.

Irrigation districts—Map of district: RCW 87.03.775.

Public lands—Maps and plats—Record and index—Public inspection: RCW 79.02.210.

Reclamation districts—Surveys, etc.: Chapter 89.30 RCW.

Regulation of public groundwaters—Designating or modifying boundaries of areas—Notice of hearing—Findings—Order: RCW 90.44.130.

Restoration of United States survey markers: RCW 47.36.010.

State highways and toll bridges

copy of map, plans, etc.—Fee: RCW 47.28.060.

maps, plans, etc.—Filing: RCW 47.28.040.

58.24.010 Declaration of necessity. It is the responsibility of the state to provide a means for the identification and preservation of survey points for the description of common land boundaries in the interest of the people of the state. There is a necessity for the adoption and maintenance of a system of permanent reference as to boundary monuments. The department of natural resources shall be the recognized agency for the establishment of this system. [1987 c 466 § 4; 1982 c 165 § 1; 1951 c 224 § 2.]

Severability—1951 c 224: "If any provision of this act shall be declared invalid, such invalidity shall not affect any other portion of this act which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable." [1951 c 224 § 7.]

58.24.020 Official agency designated—Advisory board. The department of natural resources is designated as the official agency for surveys and maps. The commissioner of public lands shall appoint an advisory board of five members, the majority of whom shall be registered professional engineers or land surveyors, who shall serve at the pleasure of the commissioner. Members of the board shall serve without salary but are to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while actively engaged in the discharge of their duties. [1987 c 466 § 5; 1982 c 165 § 2; 1975-'76 2nd ex.s. c 34 § 152; 1951 c 224 § 3.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Severability—1951 c 224: See note following RCW 58.24.010.

Department of natural resources to exercise powers and duties of commissioner of public lands: RCW 43.30.411.

58.24.030 Official agency designated—Powers—Cooperate and advise—Purposes. The commissioner of public lands, the department of natural resources, and the advisory board are authorized to cooperate and advise with various departments and subdivisions of the state, counties, municipalities, and registered engineers or land surveyors of the state for the following purposes:

(1) The recovery of section corners or other land boundary marks;

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(2) The monumentation of accepted section corners, and other boundary and reference marks; said monumentation shall be adequately connected to adjusted United States coast and geodetic survey triangulation stations and the coordinates of the monuments computed to conform with the Washington coordinate system in accordance with the provisions of chapter 58.20 RCW, as derived from chapter 168, Laws of 1945;

(3) For facilitation and encouragement of the use of the Washington state coordinate system; and

(4) For promotion of the use of the level net as established by the United States coast and geodetic survey. [1987 c 466 § 6; 1982 c 165 § 3; 1951 c 224 § 4.]

Severability—1951 c 224: See note following RCW 58.24.010.

58.24.040 Official agency designated—Powers—Standards, maps, records, report, temporary removal of boundary marks or monuments. The agency designated by RCW 58.24.020 is further authorized to:

(1) Set up standards of accuracy and methods of procedure;

(2) Compile and publish maps and records from surveys performed under the provisions of this chapter, and to maintain suitable indexes of surveys to prevent duplication of effort and to cooperate with all agencies of local, state, and federal government to this end;

(3) Compile and maintain records of all surveys performed under the provisions of this chapter, and assemble and maintain records of all reliable survey monuments and bench marks within the state;

(4) Collect and preserve information obtained from surveys locating and establishing land monuments and land boundaries;

(5) Supervise the sale and distribution of cadastral and geodetic survey data, and such related survey maps and publications as may come into the possession of the department of natural resources. Revenue derived from the sale thereof shall be deposited in the surveys and maps account in the general fund;

(6) Supervise the sale and distribution of maps, map data, photographs, and such publications as may come into the possession of the department of natural resources.

(7) Submit, as part of the biennial report of the commissioner of public lands, a report of the accomplishments of the agency;

(8) Permit the temporary removal or destruction of any section corner or any other land boundary mark or monument by any person, corporation, association, department, or subdivision of the state, county, or municipality as may be necessary or desirable to accommodate construction, mining, and other development of any land: PROVIDED, That such section corner or other land boundary mark or monument shall be referenced to the Washington Coordinate System by a registered professional engineer or land surveyor prior to such removal or destruction, and shall be replaced or a suitable reference monument established by a registered professional engineer or land surveyor within a reasonable time after completion of such construction, mining, or other development: AND PROVIDED FURTHER, That the department of natural resources shall adopt and promulgate reasonable rules and regulations under which the agency shall authorize

such temporary removal or destruction and require the replacement of such section corner or other land boundary marks or monuments. [1987 c 466 § 7; 1982 c 165 § 4; 1969 ex.s. c 271 § 25; 1951 c 224 § 6.]

Severability—1969 ex.s. c 271: See RCW 58.17.910.

Severability—1951 c 224: See note following RCW 58.24.010.

58.24.050 Employees—Licensed engineers or surveyors. All employees who are in responsible charge of work under the provisions of this chapter shall be licensed professional engineers or land surveyors. [1982 c 165 § 5; 1951 c 224 § 5.]

Severability—1951 c 224: See note following RCW 58.24.010.

58.24.060 Surveys and maps account—Purposes. There is created in the state treasury the surveys and maps account which shall be a separate account consisting of funds received or collected under chapters 58.22 and 58.24 RCW, moneys appropriated to it by law. This account shall be used exclusively by the department of natural resources for carrying out the purposes and provisions of chapters 58.22 and 58.24 RCW. Appropriations from the account shall be expended for no other purposes. [1991 sp.s. c 13 § 14; 1987 c 466 § 8; 1985 c 57 § 65; 1983 c 272 § 1; 1982 c 165 § 6.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

58.24.070 Fees for filing and recording surveys, plats, or maps—Deposit and use of fees. A fee set by the board of natural resources shall be charged by each county auditor, in addition to any other fees required by law, as a condition precedent to the filing and recording of any surveys, subdivision plats, short plats, and condominium surveys, plats, or maps. Such funds shall be forwarded monthly to the state treasurer to be deposited in the surveys and maps account in the general fund. The fees shall be verified in the same manner as other fees collected by the county auditor. Fees collected under this section shall be expended by the department only for the activities prescribed in this chapter. [1987 c 466 § 9; 1983 c 272 § 2; 1982 c 165 § 7.]

Condominium surveys and maps: RCW 64.32.100.

Plats and subdivisions: Chapter 58.17 RCW.

Chapter 58.28 RCW

TOWNSITES ON UNITED STATES LAND— ACQUISITION OF LAND

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INCORPORATED TOWNS ON UNITED STATES LAND

58.28.010 Councils' duties when townsites on United States land. It is the duty of the city or town council of any city or town in this state situate upon public lands of the United States or lands, the legal and equitable title to which is in the United States of America, to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes and proceedings, at a regular meeting, to authorize and direct the mayor and clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this chapter and the intentions of the act of congress of the United States entitled "An

act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, including section sixteen of an act of congress entitled "An act to repeal timber culture laws and for other purposes," approved March 3, 1891, and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said acts of congress, and file in the proper United States land office a proper application in writing describing the tracts of land on which such city or town is situate, and make proof and payment for such tracts of land in the manner required by law. [1909 c 231 § 1; RRS § 11485. Prior: 1888 c 124 pp 216-220.]

58.28.020 Councils' duties when townsites on United States land—Survey and plat. Said council must cause a survey to be made by some competent person, of the lands which the inhabitants of said city or town may be entitled to claim under the said act of congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes and alleys, public squares, churches, school lots, cemeteries, commons and levees as the same exist and have been heretofore dedicated in any manner to public use, and by measurement the precise boundaries and area of each, and every lot or parcel of land and premises claimed by any person, corporations or associations within said city or townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor or occupants and claimants, and in case of any disputed claim as to lots, lands, premises or boundaries the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely. [1909 c 231 § 2; RRS § 11486. Prior: 1888 c 124 pp 216-220.]

58.28.030 Councils' duties when townsites on United States land—Plats—Filing. A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein the city or town is situated, one must be deposited in the proper United States land office, and one with the city or town clerk. These plats shall be considered public records, and each must be accompanied with a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file a copy of said field notes in his office. The said surveyor must number the blocks as divided by the roads, highways and streets opened and generally used, and for which a public necessity exists at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats. Said survey and plat thereof shall conform as near as may be to the existing rights, interests and claims of the occupants thereof, but no lot in the central or business portion of such

city or town shall exceed in area four thousand, two hundred square feet, and no suburban lot in such city or town shall exceed two acres in area. [1909 c 231 § 3; RRS § 11487. Prior: 1888 c 124 pp 216-220.]

58.28.040 Councils' duties when townsites on United States land—Survey, notice of—Bids for—Franchises continued. Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage and at the least expense to the holders, claimants and occupants thereof; and the council is hereby authorized and directed to receive bids for such surveying, and to let the same by contract to the lowest competent bidder: PROVIDED, That the possessors, owners and claimants of water works, electric light, telegraph, telephone, pipe or power lines, sewers and like or similar property located in such roads, streets, alleys and other public places in such cities and towns shall be maintained and protected in the same, as the same shall exist at the time of the entry in the United States land office of the land embracing such city or town, and the right to continue to use such property for the purposes for which said property was intended, is hereby acknowledged and confirmed. [1909 c 231 § 4; RRS § 11488. Prior: 1888 c 124 pp 216-220.]

58.28.050 Contents of plat. Such plat must show as follows:

- (1) All streets, alleys, avenues, roads and highways, and the width thereof.
- (2) All parks, squares and all other grounds reserved for public uses, with the boundaries and dimensions thereof.
- (3) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.
- (4) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.
- (5) The location of all stone or iron monuments set to establish street lines.
- (6) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.
- (7) The location of all section corners, quarter section or meander corners of sections within the limits of said plat.
- (8) In case no such section or quarter section or meander corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot. [1909 c 231 § 5; RRS § 11489. Prior: 1888 c 124 pp 216-220.]

58.28.060 Monuments—Location, placement requirements. Such surveyor must mark all corners of blocks or lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as

near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be at least six inches by six inches by six inches, and be placed in the ground to the depth of one foot. [1909 c 231 § 6; RRS § 11490. Prior: 1888 c 124 pp 216-220.]

58.28.070 Monuments—Markings—Surveyor's certificate on plat. If a stone is used as a monument, it must have a cross cut in the top at the point of intersection of the center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this chapter, stating the date of survey, and verify the same by his oath. [1909 c 231 § 7; RRS § 11491. Prior: 1888 c 124 pp 216-220.]

58.28.080 Plats filed—Auditor's fee. All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats and the field notes accompanying the same shall be the sum of ten dollars. [1909 c 231 § 8; RRS § 11492. Prior: 1888 c 124 pp 216-220.]

58.28.090 Assessments. Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half acre in area shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must be received by the clerk and

be paid by him into the city or town treasury. [1909 c 231 § 9; RRS § 11493. Prior: 1888 c 124 pp 216-220.]

58.28.100 Notice of possession filed—Assessment and fee—Certificate—Council record. Every person, company, corporation or association claimant of any city or town lot or parcel of land within the limits of such city or townsite, must present to the council, by filing the same with the clerk thereof, within three months after the patent (or certified copy thereof) from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person or by duly authorized agent, attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons, to the best of his knowledge and belief, and stating who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said city or townsite as will fully exhibit the particular lot or parcel of land so claimed, and every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall certify to be due for the assessment mentioned in RCW 58.28.090, together with the further sum of four dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this chapter, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lands claimed. [1909 c 231 § 10; RRS § 11494. Prior: 1888 c 124 pp 216-220.]

58.28.110 Deficiency assessment—When payable. If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such city or town, and declare the same upon the basis set down in RCW 58.28.090, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinafter [hereinbefore] mentioned, or at the time when the deed of conveyance hereinbefore [hereinafter] provided for, is issued. [1909 c 231 § 11; RRS § 11495. Prior: 1888 c 124 pp 216-220.]

58.28.120 Deed to claimants—Actions contesting title, limitations on. At the expiration of six months after the time of filing of such patent, or a certified copy thereof in the office of the county auditor, if there has been no adverse claim filed in the meantime, the council must execute and deliver to such claimant, his or her, its or their heirs, executors, administrators, grantees, successors or assigns a good

and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by the mayor or other presiding officer of the council, and attested by the corporate seal of such city or town. No conveyance of any such lands made as in this chapter provided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands and their right to the legal title thereto against such grantee, his, her, its or their heirs, successors or assigns, to which they may deem themselves entitled either in law or equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their legal representatives or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situated; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon the possessory claim or title to real estate, when such action is barred by law at the time of the passage of this chapter. [1909 c 231 § 12; RRS § 11496. Prior: 1888 c 124 pp 216-220.]

58.28.130 Entries on mineral lands—Rights of claimants. Townsite entries may be made by incorporated towns or cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: PROVIDED, That no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant. [1909 c 231 § 13; RRS § 11497. Prior: 1888 c 124 pp 216-220.]

58.28.140 Conflicting claims—Procedure. In all cases of adverse claims or disputes arising out of conflicting claims to lands or concerning boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed or denied in accordance with the facts; but in all other cases of adverse claims, the party out of possession shall commence his action in a court of competent jurisdiction within six months after the time of filing of the patent from the United States (or a certified copy thereof), in the office of the county auditor. In case such action be com-

menced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any deed to the land in dispute until the final decision in such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant to establish that he, she or it was an occupant of the ground in controversy within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office, or is the successor in interest of such occupant. [1909 c 231 § 14; RRS § 11498. Prior: 1888 c 124 pp 216-220.]

Proof of right—Costs upon failure of both conflicting parties: RCW 58.28.360.

58.28.150 Notice of filing patent—Abandonment of claim. The said council must give public notice by advertising for four weeks in a newspaper published in said city or town, or, if there be no newspaper published in said city or town, then by publication in some newspaper having general circulation in such city or town, and not less than five written or printed notices must be posted in public places within the limits of such city or townsite; such notice must state that patent for said townsite (or certified copy thereof) has been filed in the county auditor's office. If any person, company, association or any other claimant of lands in such city or town fails, neglects or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this chapter, within three months after filing of such patent, or a certified copy thereof, in the office of the county auditor, shall be deemed to have abandoned the same and to have forfeited all right, title and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots shall be sold as unoccupied lands, and the proceeds thereof placed in the special fund in this chapter mentioned. [1909 c 231 § 15; RRS § 11499. Prior: 1888 c 124 pp 216-220.]

58.28.160 Sale of unoccupied lots—Notice—Minimum price. All lots in such city or townsite which were unoccupied at the time of the entry of said townsite in the United States land office shall be sold by the corporate authorities of such city or town, or under their direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale or sales shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted for at least thirty days prior to the date of said sale, and by publishing a like notice for four consecutive weeks prior to such sale in a newspaper

published in such city or town, or, if no such newspaper be published in such city or town, then in some newspaper having general circulation in such city or town, and deeds shall be given therefor to the several purchasers: PROVIDED, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided in RCW 58.28.090, and all moneys arising from such sale, after deducting the costs and expenses of such sale or sales, shall be placed in the treasury of such city or town. [1909 c 231 § 16; RRS § 11500. Prior: 1888 c 124 pp 216-220.]

58.28.170 Lands for school and municipal purposes—Funds. All school lots or parcels of land, reserved or occupied for school purposes, must be conveyed to the school district in which such city or town is situated, without cost or charge of any kind whatever. All lots or parcels of land reserved or occupied for municipal purposes must be conveyed to such city or town without cost or charge of any kind whatever. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter are a charge against the city or town on behalf of which the work was done, and such expenses necessarily incurred, either before or after the incorporation thereof, shall be paid out of the treasury of such city or town upon the order of the council thereof; and all moneys paid for lands or to defray the expenses of carrying into effect the provisions of this chapter shall be paid into the city or town treasury by the officer or officers receiving the same, and shall constitute a special fund, from which shall be paid all expenses, and the surplus, if any there be, shall be expended under the direction of the city or town council for public improvements in such city or town. [1909 c 231 § 17; RRS § 11501. Prior: 1888 c 124 pp 216-220.]

58.28.180 Effect of informalities—Certificate or deed as prima facie evidence. No mere informality, failure or omission on the part of any of the persons or officers named in this chapter invalidates the acts of such person or officer; but every certificate or deed granted to any person pursuant to the provisions of this chapter is prima facie evidence that all preliminary proceedings in relation thereto have been correctly taken and performed, and that the recitals therein are true and correct. [1909 c 231 § 18; RRS § 11502. Prior: 1888 c 124 pp 216-220.]

58.28.190 Corporate authorities to act promptly. Such corporate authorities shall promptly execute and perform all duties imposed upon them by the provisions of this chapter. [1909 c 231 § 19; RRS § 11503. Prior: 1888 c 124 pp 216-220.]

58.28.200 Proof requisite to delivery of deed. No deed to any lot or parcel of land in such townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, successors in interest or assigns of

such occupant of any lot, as such, may receive such deed. [1909 c 231 § 20; RRS § 11504. Prior: 1888 c 124 pp 216-220.]

58.28.201 Title to vacated lots by occupancy and improvements. See RCW 58.28.510.

58.28.202 Controversies, by whom settled—Review. See RCW 58.28.520.

58.28.203 Platted lands declared dedicated to public use. See RCW 58.28.440.

58.28.204 Appeals—Procedure. See RCW 58.28.490.

UNINCORPORATED TOWNS ON UNITED STATES LAND

58.28.210 Unincorporated towns on United States land—Superior court judge to file claim. It is the duty of the judge of the superior court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situate upon lands the legal and equitable title to which is in the United States of America, or situate upon public lands of the United States within the county wherein such superior court is held, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and valid regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect the intentions of this chapter, and the intention of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, and to file in the proper United States land office a proper application in writing, describing the tracts of land on which such unincorporated town is situated, and all lands entitled to be embraced in such government townsite entry, and make proof and payment for such tracts of land in the manner required by law. [1909 c 231 § 21; RRS § 11505. Prior: 1888 c 124 pp 216-220.]

58.28.220 Petition to superior court judge—Contents—Procedure. The judge of the superior court of any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any such unincorporated town, whose names appear upon the assessment roll for the year preceding such application in the county wherein such unincorporated town is situated—which petition shall set forth the existence, name and locality of such town, whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands an accurate description according to the government survey of the legal subdivisions sought to be entered as a government townsite must be stated; the estimated number of its inhabitants; the approximate number of separate lots or parcels of land within such townsite, and the amount of land to which they are enti-

tled under such acts of congress—must estimate the cost of entering such land, and of the survey, platting and recording of the same, and must endorse such estimate upon such petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said judge may cause an enumeration of the inhabitants of such town to be made by some competent person, exhibiting therein the names of all persons residing in said proposed townsite and the names of occupants of lots, lands, or premises within such townsite, alphabetically arranged, verified by his oath, and cause such enumeration to be presented to such judge. [1909 c 231 § 22; RRS § 11506. Prior: 1888 c 124 pp 216-220.]

58.28.230 Survey and plat—Boundaries—Monuments. Such judge must thereupon cause a survey to be made by some competent person, of the lands which the inhabitants of said town may be entitled to claim under said acts of congress, located according to the legal subdivisions of the sections according to the government survey thereof, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated, in any manner to public use, and by measurement the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor, occupant or claimant; and in case of any disputed claim as to lots, lands, premises or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely; said surveyor shall survey, lay out and plat all of said lands, whether occupied or not, into lots, blocks, streets and alleys. [1909 c 231 § 23; RRS § 11507. Prior: 1888 c 124 pp 216-220.]

58.28.240 Plats—Filing. The plat thereof must be made in triplicate on a scale of not less than eighty feet to an inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein such unincorporated town is situated, one must be deposited in the proper United States land office, and one with such judge. These plats shall constitute public records, and must each be accompanied by a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file such copy of said field notes in his office. The said surveyor must number and survey the blocks as divided by the roads, and streets opened and generally used and for which a public necessity exists, at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said unincorporated town as herein provided, which said numbers must be a sufficient description of any parcel of land represented on said plats. Said survey and plat thereof shall conform as nearly as may be to the existing rights, interest, and claims of the occupants thereof, but no lot in the center or

business portion of said unincorporated town shall exceed in area four thousand two hundred feet, and no suburban lot in such unincorporated town shall exceed two acres in area. [1909 c 231 § 24; RRS § 11508. Prior: 1888 c 124 pp 216-220.]

58.28.250 Survey, notice of—Bids for—Franchises continued. Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in said town, if one there be. The survey of said townsite must be made to the best advantage and at the least expense to the holders, claimants, possessors and occupants thereof. The said judge is hereby authorized and directed to receive bids for such surveying, platting and furnishing copies of the field notes, and to let the same by contract to the lowest competent bidder: PROVIDED, That the possessors, owners, or claimants of water works, electric light, telegraph, telephone, pipe or power lines, sewers, irrigating ditches, drainage ditches, and like or similar property located in such townsites or in the roads, streets, alleys or highways therein or in other public places in such townsite, shall be maintained and protected in the same as the same shall exist at the time of the entry in the United States land office of the land embraced in such government townsite, and the right to continue to use such property, for the purposes for which said property was intended, is hereby acknowledged and confirmed. [1909 c 231 § 25; RRS § 11509. Prior: 1888 c 124 pp 216-220.]

58.28.260 Contents of plat. Such plat must show as follows:

- (1) All streets, alleys, avenues, roads and highways, and the width thereof.
- (2) All parks, squares and all other ground reserved for public uses, with the boundaries and dimensions thereof.
- (3) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.
- (4) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.
- (5) The location of all stone or iron monuments set to establish street lines.
- (6) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.
- (7) The location of all section corners, or legal subdivision corners of sections within the limits of said plat.
- (8) In case no such section or subdivision corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot. [1909 c 231 § 26; RRS § 11510. Prior: 1888 c 124 pp 216-220.]

58.28.270 Monuments—Location, placement requirements. Such surveyor must mark all corners of blocks or lots shown on the plat by substantial stakes or monuments, and

must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be at least six inches by six inches by six inches, and be placed in the ground to the depth of one foot. [1909 c 231 § 27; RRS § 11511. Prior: 1888 c 124 pp 216-220.]

58.28.280 Monuments—Markings—Surveyor's certificate on plat. If a stone is used as a monument it must have a cross cut in the top at the point of intersection of center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this chapter, stating the date of survey, and verify the same by his oath. [1909 c 231 § 28; RRS § 11512. Prior: 1888 c 124 pp 216-220.]

58.28.290 Plats filed—Auditor's fee. All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats, and the field notes accompanying the same shall be the sum of ten dollars. [1909 c 231 § 29; RRS § 11513. Prior: 1888 c 124 pp 216-220.]

58.28.300 Assessments—Disposition—Employment of attorney authorized. Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and five [fifty] cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes, each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but

the whole of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said townsite lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expenses of their location, entry and purchase, and cost and expenses attendant upon the making of such survey, plats, publishing and recording, including a reasonable attorney's fee for legal services necessarily performed, and the persons or occupants in such townsite procuring said townsite entry to be made, may employ an attorney to assist them in so doing and to assist such judge in the execution of his trust, and he shall be allowed by such judge out of said fund a reasonable compensation for his services. [1909 c 231 § 30; RRS § 11514. Prior: 1888 c 124 pp 216-200.]

58.28.310 Notice of possession filed—Assessment and fee—Certificate—Judge's record. Every person, company, corporation, or association, claimant of any town lot or parcel of land, within the limits of such townsite, must present to such judge within three months after the patent (or a certified copy thereof), from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person, or by duly authorized agent or attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons or claimants, to the best of his knowledge and belief, and in which must be stated who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said townsite as will fully exhibit the particular lots or parcels of land so claimed; and every such claimant, at the time of presenting and filing such affidavit with said judge, must pay to such judge such sum of money as said judge shall certify to be due for the assessment mentioned in RCW 58.28.300, together with the further sum of four dollars, to be appropriated to the payment of cost and expenses incurred in carrying out the provisions of this chapter, and the said judge must thereupon give to such claimant a certificate, signed by him and attested by the seal of the superior court, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. Such judge must procure a bound book for each unincorporated government townsite in his county wherein he must make proper entries of the substantial matters contained in such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of the lot or lands claimed. [1909 c 231 § 31; RRS § 11515. Prior: 1888 c 124 pp 216-220.]

58.28.320 Deficiency assessment—When payable. If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses, prove to be insufficient to cover and defray all the necessary expenses, the said judge must estimate the deficiency and assess such defi-

ciency pro rata upon all the lots and parcels of land in such government townsite, and declare the same upon the basis set down in RCW 58.28.300; which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for, is issued. [1909 c 231 § 32; RRS § 11516. Prior: 1888 c 124 pp 216-220.]

58.28.330 Deed to claimants—Actions contesting title, limitations on. At the expiration of six months after the time of filing such patent, or certified copy thereof, in the office of the county auditor, if there has been no adverse claim filed in the meantime, said judge must execute and deliver to such claimant or to his, her, its or their heirs, executor, administrator, grantee, successor or assigns a good and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by such judge as trustee, and attested by the seal of the superior court. No conveyance of any such lands made as in this chapter provided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands, and their right to the legal title thereto, against such grantee, his, her, its or their heirs, executors, administrators, successors or assigns, to which they may deem themselves entitled, either in law or in equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their heirs, executors, administrators, successors or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situated; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the taking effect of this chapter. [1909 c 231 § 33; RRS § 11517. Prior: 1888 c 124 pp 216-220.]

58.28.340 Entries on mineral lands—Rights of claimants. Townsite entries may be made by such judge on mineral lands of the United States, but no title shall be acquired by such judge to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing laws. When mineral veins are possessed within the limits of an unincorporated town, and such possession is recognized by local authority, or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such townsite to such judge, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: PROVIDED, That no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant. [1909 c 231 § 34; RRS § 11518. Prior: 1888 c 124 pp 216-220.]

(2008 Ed.)

58.28.350 Conflicting claims—Procedure. In all cases of adverse claims or disputes arising out of conflicting claims to land or concerning boundary lines, the adverse claimants may submit the decision thereof to said judge by an agreement in writing specifying particularly the subject matter in dispute and may agree that his decision shall be final. The said judge must hear the proofs, and shall execute a deed or deny the execution of a deed in accordance with the facts; but in all other cases of adverse claims the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the patent (or a certified copy thereof) from the United States, in the office of the county auditor. In case such action be commenced within the time herein limited, the plaintiff must serve notice of his pends upon such judge, who must thereupon stay all proceedings in the matter of granting or executing any deed to the land in dispute until the final decision in such suit; upon presentation of a certified copy of the final judgment in such action, such judge must execute and deliver a deed of the premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. [1909 c 231 § 35; RRS § 11519. Prior: 1888 c 124 pp 216-220.]

58.28.360 Proof of right—Costs upon failure of both conflicting parties. If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant or claimants to establish that he, she, it or they, was or were, an occupant of the ground in controversy within the meaning of said acts of congress at the time of the entry of said townsite in the United States land office, or is or are the successor, or successors in interest of such occupant. [1909 c 231 § 36; RRS § 11520. Prior: 1888 c 124 pp 216-220.]

Conflicting claims—Procedure: RCW 58.28.140.

58.28.370 Notice of filing patent. Said judge must promptly give public notice by advertising for four weeks in any newspaper published in such town, or if there be no newspaper published in such town, then by publication in some newspaper having general circulation in such town, and not less than five written or printed notices must be posted in public places within the limits of such townsite; such notice must state that the patent for said townsite (or a certified copy thereof) has been filed in the county auditor's office. [1909 c 231 § 37; RRS § 11521. Prior: 1888 c 124 pp 216-220.]

58.28.380 Abandonment of claim. If any person, company, association, or any other claimant of lands in such townsite fails, neglects or refuses to make application to said judge for a deed of conveyance to said land so claimed, and pay the sums of money specified in this chapter, within three months after the filing of such patent, or a certified copy

thereof, in the office of the county auditor, shall be deemed to have abandoned the claim to such land and to have forfeited all right, title, claim and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots may be sold by such trustee as unoccupied lands, and the proceeds thereof placed in the fund heretofore mentioned in this chapter. [1909 c 231 § 38; RRS § 11522. Prior: 1888 c 124 pp 216-220.]

58.28.390 Sale of unoccupied lots—Notice—Minimum price. All lots in such townsite which were unoccupied within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office shall be sold by such judge or under his direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale, or sales, shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted at least thirty days prior to the date of any such sale, and by publishing a like notice for four consecutive weeks prior to any such sale in a newspaper published in such town, or if no newspaper be published in such town, then in some newspaper having general circulation in such town. And deed shall be given therefor to the several purchasers: PROVIDED, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided for in RCW 58.28.300, and all moneys arising from such sale or sales after deducting the cost and expenses of such sale or sales shall be placed in the fund hereinbefore mentioned. [1909 c 231 § 39; RRS § 11523. Prior: 1888 c 124 pp 216-220.]

58.28.400 Lands for school and public purposes—Expenses as charge against fund. All school lots or parcels of land reserved or occupied for school purposes, must be conveyed to the school district in which such town is situated without cost or charge of any kind whatever. All lots or parcels of land reserved or occupied for public purposes must be set apart and dedicated to such public purposes without cost or charge of any kind whatever. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter or said acts of congress are a charge against the fund herein provided for. [1909 c 231 § 40; RRS § 11524. Prior: 1888 c 124 pp 216-220.]

58.28.410 Disposition of excess money—Special fund. Any sum of money remaining in said fund after defraying all necessary expenses of location, entry, surveying, platting, advertising, filing and recording, reimbursement of moneys loaned or advanced and paying the cost and expenses herein authorized and provided for must be deposited in the county treasury by such judge to the credit of a special fund of each particular town, and kept separate by the county treasurer to be paid out by him only upon the written order of such judge in payment for making public improvements, or for public purposes, in such town. [1909 c 231 § 41; RRS § 11525. Prior: 1888 c 124 pp 216-220.]

58.28.420 Effect of informalities—Certificate or deed as prima facie evidence. No mere informality, failure, or omission on the part of any persons or officers named in this chapter invalidates the acts of such person or officers; but every certificate or deed granted to any person pursuant to the provisions of this chapter is prima facie evidence that all preliminary proceedings in relation thereto have been taken and performed and that the recitals therein are true and correct. [1909 c 231 § 42; RRS § 11526. Prior: 1888 c 124 pp 216-220.]

58.28.430 Proof requisite to delivery of deed. No deed to any lot in such unincorporated town or unincorporated government townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath, showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, executors, administrators, successors in interest or assigns of such occupant of any lot, as such, may receive such deed. [1909 c 231 § 43; RRS § 11527. Prior: 1888 c 124 pp 216-220.]

58.28.440 Platted lands declared dedicated to public use. All streets, roads, lanes and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked and platted, on the map of any townsite, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county auditor, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becomes incorporated, the same becomes the property of such town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city. [1909 c 231 § 44; RRS § 11528. Prior: 1888 c 124 pp 216-220.]

58.28.450 Clerk's duties when judge trustee. All clerical work under this chapter where a judge of the superior court is trustee must be performed by the clerk of the superior court. [1909 c 231 § 45; RRS § 11529. Prior: 1888 c 124 pp 216-220.]

58.28.460 Accounting and depositing money—Promptness. Such judge when fulfilling the duties imposed upon him by said acts of congress, and by this chapter, must keep a correct account of all moneys received and paid out by him. He must deposit all surplus money with the treasurer of the proper county, and he must promptly settle up all the affairs relating to his trust pertaining to such town. [1909 c 231 § 46; RRS § 11530. Prior: 1888 c 124 pp 216-220.]

58.28.470 Records filed with county clerk. Whenever the affairs pertaining to such trust shall be finally settled and disposed of by such judge, he shall deposit all books and papers relating thereto in the office of the county clerk of the proper county to be thereafter kept in the custody of such county clerk as public records, and the county clerk's fee, for

the use of his county therefor, shall be the sum of ten dollars. [1909 c 231 § 47; RRS § 11531. Prior: 1888 c 124 pp 216-220.]

58.28.480 Judge, a trustee for purposes herein. Every such judge when fulfilling the duties imposed upon him by said acts of congress, and by this chapter, shall be deemed and held to be acting as a trustee for the purposes of fulfilling the purposes of said acts and not as a superior court, and such judge shall be deemed to be disqualified to sit as judge of such superior court in any action or proceeding wherein is involved the execution of such trust or rights involved therein. [1909 c 231 § 48; RRS § 11532. Prior: 1888 c 124 pp 216-220.]

58.28.490 Appellate review—Procedure. Appellate review of the judgment or orders of the superior court in all cases arising under this chapter or said acts of congress may be sought as in other civil cases. [1988 c 202 § 54; 1971 c 81 § 127; 1909 c 231 § 49; RRS § 11533. Prior: 1888 c 124 pp 216-220.]

Severability—1988 c 202: See note following RCW 2.24.050.

58.28.500 Succession of trust. The successors in office of such superior court judge shall be his successors as trustee of such trust. [1909 c 231 § 51; RRS § 11534. Prior: 1888 c 124 pp 216-220.]

58.28.510 Title to vacated lots by occupancy and improvements. The judge of the superior court of any county is hereby declared to be the successor as trustee of any territorial probate judge in such county who was trustee under any such acts of congress, and may as such succeeding trustee perform any unperformed duties of his predecessor in office as such trustee, agreeably to the provisions of this chapter as nearly as may be. And when entry was made by any such probate judge under any of said acts of congress and subsequent to such entry, the city or town situated upon such townsite entry has been incorporated according to law, and the corporate authorities thereof have or have attempted to vacate any common, plaza, public square, public park or the like, in such government townsite, and where thereafter, any person, or corporation, has placed permanent improvements on such land so vacated or attempted to be vacated, exceeding in value the sum of five thousand dollars, with the knowledge, consent, or acquiescence of the corporate authorities of such city or town and with the general consent and approval of the inhabitants of said city or town and such improvements have been made for more than five years and such person or corporation making such improvements has been in the open, notorious and peaceable possession of such lands and premises for a period of more than five years, such superior court judge, as trustee, of such government townsite, and successor as trustee to such judge of probate, trustee of such government townsite, shall have the power and authority to make and deliver to such person or corporation, or to his or its heirs, executors, administrators, successors or assigns, a deed for such lands and premises, conveying a fee simple title to such lands and premises upon such terms and for such price as he shall deem just and reasonable under all the facts and sur-

rounding circumstances of the case, and the consideration paid for such deed, one dollar or more, shall be placed in the city or town treasury of such city or town, in the general fund. [1909 c 231 § 52; RRS § 11535. Prior: 1888 c 124 pp 216-220.]

58.28.520 Controversies, by whom settled—Review. Except as hereinbefore specially provided, the city or town council in incorporated cities and towns, and the judge of the superior court, as trustee, in cases of unincorporated government townsites, are hereby expressly given power and jurisdiction to hear and determine all questions arising under this chapter and under said acts of congress and the right to ascertain who were the occupants of lots in such government townsites at the time of the entry thereof in the United States land office, and to determine from sworn testimony who are and who are not entitled to deeds of conveyance to specific lots in such government townsite, subject to review by courts of competent jurisdiction. [1909 c 231 § 53; RRS § 11536. Prior: 1888 c 124 pp 216-220.]

Title 59

LANDLORD AND TENANT

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- 59.08 Default in rent of forty dollars or less.**
- 59.12 Forcible entry and forcible and unlawful detainer.**
- 59.16 Unlawful entry and detainer.**
- 59.18 Residential Landlord-Tenant Act.**
- 59.20 Manufactured/Mobile Home Landlord-Tenant Act.**
- 59.21 Mobile home relocation assistance.**
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- 59.30 Manufactured/mobile home communities—Dispute resolution and registration.**

Acknowledgments: Chapter 64.08 RCW.
Action to recover real property, jury trial: RCW 4.40.060.
Adverse possession: Chapter 7.28 RCW.
Boundaries and plats: Title 58 RCW.
County property, sales, leases, etc.: Chapter 36.34 RCW.
Ejectment and quieting title: Chapter 7.28 RCW.
Executions, sale of short term leasehold absolute: RCW 6.21.080.
Gambling on leased premises, action to recover: RCW 4.24.080 and 4.24.090.
Housing authorities law: Chapter 35.82 RCW.
Landlord's lien
for rent: Chapter 60.72 RCW.
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Mortgages and trust receipts: Title 61 RCW.
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Chapter 59.04 RCW TENANCIES

Sections

- 59.04.010 Tenancies from year to year abolished except under written contract.
- 59.04.020 Tenancy from month to month—Termination.

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- 59.04.030 Tenancy for specified time—Termination.
- 59.04.040 Ten-day notice to pay rent or quit premises.
- 59.04.050 Tenancy by sufferance—Termination.
- 59.04.900 Chapter inapplicable to rental agreements under landlord-tenant act.

59.04.010 Tenancies from year to year abolished except under written contract. Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals. [Code 1881 § 2053; 1867 p 101 § 1; RRS § 10619.]

59.04.020 Tenancy from month to month—Termination. When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of thirty days or more, preceding the end of any of said months or periods, given by either party to the other. [Code 1881 § 2054; 1867 p 101 § 2; RRS § 10619. Prior: 1866 p 78 § 1.]

Unlawful detainer, notice requirement: RCW 59.12.030(2).

59.04.030 Tenancy for specified time—Termination. In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time. [Code 1881 § 2055; 1867 p 101 § 3; RRS § 10620.]

59.04.040 Ten-day notice to pay rent or quit premises. When a tenant fails to pay rent when the same is due, and the landlord notifies him to pay said rent or quit the premises within ten days, unless the rent is paid within said ten days, the tenancy shall be forfeited at the end of said ten days. [Code 1881 § 2056; 1867 p 101 § 4; no RRS.]

59.04.050 Tenancy by sufferance—Termination. Whenever any person obtains possession of premises without the consent of the owner or other person having the right to give said possession, he shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he occupied the premises, and shall forthwith on demand surrender his said possession to the owner or person who had the right of possession before said entry, and all his right to possession of said premises shall terminate immediately upon said demand. [Code 1881 § 2057; 1867 p 101 § 5; RRS § 10621.]

59.04.900 Chapter inapplicable to rental agreements under landlord-tenant act. This chapter does not apply to

any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 45.]

Chapter 59.08 RCW

DEFAULT IN RENT OF FORTY DOLLARS OR LESS

Sections

59.08.010	Summons and complaint as notice—Acceptance of rent after default.
59.08.020	Venue.
59.08.030	Complaint.
59.08.040	Order for hearing—Notice.
59.08.050	Continuance.
59.08.060	Hearing—Writ of restitution.
59.08.070	Recall of writ—Bond.
59.08.080	Complaint as notice to quit.
59.08.090	Sheriff's fee.
59.08.100	Indemnity bond not required—Liability for damages.
59.08.900	Chapter inapplicable to rental agreements under landlord-tenant act.

59.08.010 Summons and complaint as notice—Acceptance of rent after default. In cases of default in the payment of rent for real property where the stipulated rent or rental value does not exceed forty dollars per month, no notice to quit or pay rent, other than filing and serving a summons and complaint, as hereinafter provided, shall be required to render the holding of such tenant thereafter unlawful. If the landlord shall, after such default in the payment of rent, accept payment thereof, such acceptance of payment shall operate to reinstate the right of the tenant to possession for the full period fixed by the terms of any agreement relating to the right of possession. [1941 c 188 § 1; Rem. Supp. 1941 § 814-1.]

59.08.020 Venue. The superior court of the county in which the real property or some part thereof is situated shall have jurisdiction of proceedings for the recovery of possession of said real property alleged to be wrongfully detained. [1941 c 188 § 2; Rem. Supp. 1941 § 814-2.]

59.08.030 Complaint. Such proceedings shall be commenced by the filing of a complaint executed under oath by the owner or landlord or his authorized agent. It shall be sufficient to state in such complaint a description of the property with reasonable certainty, that the defendant is in possession thereof and wrongfully holds the same by reason of failure to pay the agreed rental due, or the monthly rental value of the premises. [1941 c 188 § 3; Rem. Supp. 1941 § 814-3.]

59.08.040 Order for hearing—Notice. Upon the filing of such complaint it may be presented to the judge, and by order he shall forthwith fix a place and time for the trial of said cause, not more than ten days after the date of making the order. A copy of the complaint, together with a copy of the summons specifying the time and place for trial, shall be served on the defendant not less than five days prior to the time fixed for hearing in the manner provided for the service of notice to quit in RCW 59.12.040. [1941 c 188 § 4; Rem. Supp. 1941 § 814-4.]

59.08.050 Continuance. No continuance shall be granted for a longer period than two days unless the defen-

dant applying therefor shall give good and sufficient security, to be approved by the court, conditioned upon the payment of rent accrued and to accrue, if judgment be rendered against the defendant. [1941 c 188 § 5; Rem. Supp. 1941 § 814-5.]

59.08.060 Hearing—Writ of restitution. At the time and place fixed for the hearing, the court shall proceed to examine the parties orally to ascertain the merits of the complaint, and if it shall appear that there is no reasonable doubt of the right of the plaintiff to be restored to the possession of said property, the court shall enter an order directing the issuance of a writ of restitution, which shall thereupon be served by the sheriff upon the defendant. After the expiration of three days from date of service, if the defendant has not surrendered possession or filed a bond as hereinafter provided, the writ shall be executed by the sheriff. If it appears to the court that there is reasonable doubt of the right of the plaintiff to be restored to the possession of said property, the court shall enter an order requiring the parties to proceed on the complaint filed in the usual form of action. [1941 c 188 § 6; Rem. Supp. 1941 § 814-6.]

59.08.070 Recall of writ—Bond. If the defendant feels aggrieved at an order of restitution, he may within three days after the entry of the order file a bond to be approved by the court in double the amount of the rent found to be due, plus two hundred dollars, conditioned for the payment and performance of any judgment rendered against him, and the court shall thereupon enter an order for the parties to proceed in the usual form of action, and recall the writ of restitution. [1941 c 188 § 7; Rem. Supp. 1941 § 814-7.]

59.08.080 Complaint as notice to quit. The filing and service of a complaint under this chapter shall be equivalent to the notice required to pay rent or surrender possession under RCW 59.12.030. [1941 c 188 § 8; Rem. Supp. 1941 § 814-8.]

59.08.090 Sheriff's fee. The sheriff's fee shall be the same as in other civil actions. [1961 c 304 § 7; 1941 c 188 § 9; Rem. Supp. 1941 § 814-9.]

County clerk's fees: RCW 36.18.020.

Sheriff's fees: RCW 36.18.040.

59.08.100 Indemnity bond not required—Liability for damages. The plaintiff shall not be required to give bond to the defendant or the sheriff for the issuance or execution of the writ of restitution, and the sheriff shall not be liable for damages to the defendant for the execution of the writ of restitution hereunder, but any such damage to which the defendant may be entitled shall be recoverable against the plaintiff only. [1941 c 188 § 10; Rem. Supp. 1941 § 814-10.]

59.08.900 Chapter inapplicable to rental agreements under landlord-tenant act. This chapter does not apply to any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 46.]

Chapter 59.12 RCW
FORCIBLE ENTRY AND FORCIBLE AND UNLAWFUL DETAINER

Sections

59.12.010 Forcible entry defined.
 59.12.020 Forcible detainer defined.
 59.12.030 Unlawful detainer defined.
 59.12.035 Holding over on agricultural land, effect of.
 59.12.040 Service of notice—Proof of service.
 59.12.050 Jurisdiction of proceedings.
 59.12.060 Parties defendant.
 59.12.070 Complaint—Summons.
 59.12.080 Summons—Contents—Service.
 59.12.090 Writ of restitution—Bond.
 59.12.091 Writ of restitution under landlord-tenant act—RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 inapplicable.
 59.12.100 Service of writ—Bond to stay writ.
 59.12.110 Modification of bond.
 59.12.120 Judgment by default.
 59.12.121 Pleading by defendant.
 59.12.130 Jury—Actions given preference.
 59.12.140 Proof in forcible entry and detainer.
 59.12.150 Amendment to conform to proof.
 59.12.160 Amendments.
 59.12.170 Judgment—Execution.
 59.12.180 Rules of practice.
 59.12.190 Relief against forfeiture.
 59.12.200 Appellate review—Stay bond.
 59.12.210 Effect of stay bond.
 59.12.220 Writ of restitution suspended pending appeal.
 59.12.230 Forcible entry and detainer—Penalty.

Joint tenancies: Chapter 64.28 RCW.

Tenant's violation of duty under landlord-tenant act grounds for unlawful detainer action: RCW 59.18.180.

59.12.010 Forcible entry defined. Every person is guilty of a forcible entry who either—(1) By breaking open windows, doors or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstance of terror, enters upon or into any real property; or—(2) Who, after entering peaceably upon real property, turns out by force, threats or menacing conduct the party in actual possession. [1891 c 96 § 1; RRS § 810. Prior: 1890 p 73 § 1.]

59.12.020 Forcible detainer defined. Every person is guilty of a forcible detainer who either—(1) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or—(2) Who in the nighttime, or during the absence of the occupant of any real property, enters thereon, and who, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to such former occupant. The occupant of real property within the meaning of this subdivision is one who for the five days next preceding such unlawful entry was in the peaceable and undisturbed possession of such real property. [1891 c 96 § 2; RRS § 811. Prior: 1890 p 73 § 2.]

59.12.030 Unlawful detainer defined. A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or

oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period;

(3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplished with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he or she continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplished with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him or her of three days' notice to quit;

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW; or

(7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW 59.18.130. [1998 c 276 § 6; 1983 c 264 § 1; 1953 c 106 § 1. Prior: 1905 c 86 § 1; 1891 c 96 § 3; 1890 p 73 § 3; RRS § 812.]

Termination of month to month tenancy: RCW 59.04.020, 59.18.200.

Unlawful detainer defined: RCW 59.16.010.

59.12.035 Holding over on agricultural land, effect of. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any

demand or notice to quit by his landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of his landlord or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year. [1891 c 96 § 4; RRS § 813. Formerly RCW 59.04.060.]

59.12.040 Service of notice—Proof of service. Any notice provided for in this chapter shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a subtenant may be made in the same manner: PROVIDED, That in cases where the tenant or unlawful occupant, shall be conducting a hotel, inn, lodging house, boarding house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders or persons renting such rooms shall not be considered as subtenants within the meaning of this chapter, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to recover possession of said premises. Service of any notice provided for in this chapter may be had upon a corporation by delivering a copy thereof to any officer, agent or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent or person can be found upon such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place where said premises are situated. Proof of any service under this section may be made by the affidavit of the person making the same in like manner and with like effect as the proof of service of summons in civil actions. When a copy of notice is sent through the mail, as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail in the county in which the property is situated properly addressed with postage prepaid: PROVIDED, HOWEVER, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. RCW 59.18.375 may also apply to notice given under this chapter. [1983 c 264 § 2; 1911 c 26 § 1; 1905 c 86 § 2; 1891 c 96 § 5; RRS § 814. Prior: 1890 p 75 § 4.]

59.12.050 Jurisdiction of proceedings. The superior court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter. [1891 c 96 § 6; RRS § 815. Prior: 1890 p 75 § 5.]

Venue and jurisdiction, generally: RCW 2.08.010 and chapter 4.12 RCW.

59.12.060 Parties defendant. No person other than the tenant of the premises, and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in any proceeding under this chapter, nor shall any proceeding abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him. In case a person has become a subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter the premises under the tenant, after the commencement of the action hereunder, shall be bound by the judgment the same as if they had been made parties to the action. [1891 c 96 § 7; RRS § 816. Prior: 1890 p 75 § 6.]

59.12.070 Complaint—Summons. The plaintiff in his or her complaint, which shall be in writing, must set forth the facts on which he or she seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force or violence, which may have accompanied the forcible entry or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises, or both; in case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. A summons must be issued as in other cases, returnable at a day designated therein, which shall not be less than seven nor more than thirty days from the date of service, except in cases where the publication of summons is necessary, in which case the court or judge thereof may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed. [2005 c 130 § 1; 1927 c 123 § 1; 1891 c 96 § 8; RRS § 817. Prior: 1890 p 75 § 7.]

59.12.080 Summons—Contents—Service. The summons must state the names of the parties to the proceeding, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him. The summons must be directed to the defendant, and in case of summons by publication, be served at least five days before the return day designated therein. The summons must be served and returned in the same manner as summons in other actions is served and returned. [1927 c 123 § 2; 1891 c 96 § 9; RRS § 818. Prior: 1890 p 76 § 8.]

Summons, generally: RCW 4.28.080 through 4.28.110.

59.12.090 Writ of restitution—Bond. The plaintiff at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, may apply to the judge of the court in which the action is pending for a writ of restitution restoring to the plaintiff the property in the complaint described, and the judge shall order a writ of restitution to issue. The writ shall be issued by the clerk of the superior court in which the action is pending, and be returnable in twenty days after its date; but before any writ shall issue prior to judgment the plaintiff shall execute to the defendant and file in court a bond in such sum as the court or judge may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. [1927 c 123 § 3; 1891 c 96 § 10; RRS § 819. Prior: 1890 p 77 § 9.]

59.12.091 Writ of restitution under landlord-tenant act—RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 inapplicable. See RCW 59.18.420.

59.12.100 Service of writ—Bond to stay writ. The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, nor until after the defendant has been served with summons in the action as hereinabove provided, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises. [1927 c 123 § 4; 1905 c 86 § 3; 1891 c 96 § 11; RRS § 820. Prior: 1890 p 77 § 10.]

59.12.110 Modification of bond. The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the court or any judge thereof for an order raising or lowering the amount of any bond in this chapter provided for. Either party may, upon like notice, apply to the court or any judge thereof for an order requiring additional or other surety or sureties upon any such bond. Upon the hearing or any application made under the provisions of this section evidence may be given. The judge after hearing any such

application shall make such an order as shall be just in the premises. The bondspersons may be required to be present at such hearing if so required in the notice thereof, and shall answer under oath all questions that may be asked them touching their qualifications as bondspersons, and in the event the bondspersons shall fail or refuse to appear at such hearing and so answer such questions the bond shall be stricken. In the event the court shall order a new or additional bond to be furnished by defendant, and the same shall not be given within twenty-four hours, the court shall order the sheriff to forthwith execute the writ. In the event the defendant shall file a second or additional bond and it shall also be found insufficient after hearing, as above provided, the right to retain the premises by bond shall be lost and the sheriff shall forthwith put the plaintiff in possession of the premises. [2007 c 218 § 77; 1905 c 86 § 4; 1891 c 96 § 12; RRS § 821. Prior: 1890 p 78 § 11.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

59.12.120 Judgment by default. If on the date appointed in the summons the defendant does not appear or answer, the court shall render judgment in favor of the plaintiff as prayed for in the complaint. [1989 c 342 § 2; 1891 c 96 § 13; RRS § 822. FORMER PART OF SECTION: 1891 c 96 § 14 now codified as RCW 59.12.121.]

Severability—Effective date—1989 c 342: See RCW 59.18.910 and 59.18.911.

59.12.121 Pleading by defendant. On or before the day fixed for his appearance the defendant may appear and answer or demur. [1891 c 96 § 14; RRS § 823. Formerly RCW 59.12.120, part.]

59.12.130 Jury—Actions given preference. Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending; and in all cases actions under this chapter shall take precedence of all other civil actions. [1891 c 96 § 15; RRS § 824. Prior: 1890 p 79 § 15.]

59.12.140 Proof in forcible entry and detainer. On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to a forcible entry complained of, that he was peaceably in the actual possession at the time of the forcible entry; or, in addition to a forcible detainer complained of, that he was entitled to the possession at the time of the forcible detainer. [1891 c 96 § 16; RRS § 825. Prior: 1890 p 79 § 16.]

59.12.150 Amendment to conform to proof. When upon the trial of any proceeding under this chapter it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, in respect of the premises described in the complaint, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made without any imposition of terms. No continuance shall be permitted on account

of such amendment unless the defendant shows to the satisfaction of the court good cause therefor. [1891 c 96 § 17; RRS § 826. Prior: 1890 p 79 § 17.]

59.12.160 Amendments. Amendments may be allowed by the court at any time before final judgment, upon such terms as to the court may appear just, in the same cases and manner and to the same extent as in civil actions. [1891 c 96 § 19; RRS § 828. Prior: 1890 p 80 § 20.]

59.12.170 Judgment—Execution. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his estate; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. [1891 c 96 § 18; RRS § 827. Prior: 1890 p 80 § 18.]

59.12.180 Rules of practice. Except as otherwise provided in this chapter, the provisions of the laws of this state with reference to practice in civil actions are applicable to, and constitute the rules of practice in the proceedings mentioned in this chapter; and the provisions of such laws relative to new trials and appeals, except so far as they are inconsistent with the provisions of this chapter, shall be held to apply to the proceedings mentioned in this chapter. [1891 c 96 § 20; RRS § 829. Prior: 1890 p 80 § 21.]

59.12.190 Relief against forfeiture. The court may relieve a tenant against a forfeiture of a lease and restore him to his former estate, as in other cases provided by law, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the court, as pro-

vided in this chapter. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions of covenants stipulated, so far as the same is practicable, be first made. [1891 c 96 § 21; RRS § 830. Prior: 1890 p 80 § 22.]

59.12.200 Appellate review—Stay bond. A party aggrieved by the judgment may seek appellate review of the judgment as in other civil actions: PROVIDED, That if the defendant appealing desires a stay of proceedings pending review, the defendant shall execute and file a bond, with two or more sufficient sureties to be approved by the judge, conditioned to abide the order of the court, and to pay all rents and other damages justly accruing to the plaintiff during the pendency of the proceeding. [1988 c 202 § 55; 1971 c 81 § 128; 1891 c 96 § 22; RRS § 831. Prior: 1890 p 80 § 23.]

Severability—1988 c 202: See note following RCW 2.24.050.

59.12.210 Effect of stay bond. When the defendant shall appeal, and shall file a bond as provided in RCW 59.12.200, all further proceedings in the case shall be stayed until the determination of said appeal and the same has been remanded to the superior court for further proceedings therein. [1891 c 96 § 23; RRS § 832. Prior: 1890 p 80 § 24.]

59.12.220 Writ of restitution suspended pending appeal. If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution the said officer shall forthwith cease all further proceedings by virtue of such writ; and if such writ has been completely executed the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined. [1891 c 96 § 24; RRS § 833. Prior: 1890 p 81 § 25.]

59.12.230 Forcible entry and detainer—Penalty. Every person who shall unlawfully use, or encourage or assist another in unlawfully using, any force or violence in entering upon or detaining any lands or other possessions of another; and every person who, having removed or been removed therefrom pursuant to the order or direction of any court, tribunal or officer, shall afterwards return to settle or reside unlawfully upon, or take possession of, such lands or possessions, shall be guilty of a misdemeanor. [1909 c 249 § 306; RRS § 2558. Prior: Code 1881 § 858; 1873 p 195 § 66; 1854 p 86 § 60.]

Chapter 59.16 RCW

UNLAWFUL ENTRY AND DETAINER

Sections

59.16.010	Unlawful detainer defined.
59.16.020	Pleadings, requirements.
59.16.030	Issues—Trial.
59.16.040	Parties defendant—Trial of separate issues.

59.16.010 Unlawful detainer defined. That any person who shall, without the permission of the owner and without having any color of title thereto, enter upon the lands of another, and shall refuse to remove therefrom after three days' notice, shall be deemed guilty of unlawful detainer and may be removed from such lands. [1891 c 115 § 1; RRS § 834.]

Unlawful detainer defined: RCW 59.12.030.

59.16.020 Pleadings, requirements. The complaint in all cases under the provisions of this chapter shall be upon oath, and then [there] shall be embodied therein or amended thereto an abstract of the plaintiff's title, and the defendant shall, in his answer, state whether he makes any claim of title to the lands described in the complaint, and if he makes no claim to the legal title but does claim a right to the possession of such lands, he shall state upon what grounds he claims a right to such possession. [1891 c 115 § 2; RRS § 835.]

59.16.030 Issues—Trial. It shall not be necessary for the plaintiff, in proceedings under this chapter, to allege or prove that the said lands were, at any time, actually occupied prior to the defendant's entry thereupon, but it shall be sufficient to allege that he is the legal owner and entitled to the immediate possession thereof: PROVIDED, That if the defendant shall, by his answer, deny such ownership and shall state facts showing that he has a lawful claim to the possession thereof, the cause shall thereupon be entered for trial upon the docket of the court in all respects as if the action were brought under the provisions of *chapter XLVI of the code of eighteen hundred and eighty-one. [1891 c 115 § 3; RRS § 836.]

***Reviser's note:** "chapter XLVI of the code of eighteen hundred and eighty-one" is codified as RCW 7.28.010, 7.28.110 through 7.28.150, and 7.28.190 through 7.28.270.

59.16.040 Parties defendant—Trial of separate issues. All persons in actual possession of any portion of the several subdivisions of any section of land, according to the government surveys thereof, may be made defendants in one action: PROVIDED, That they may, in their discretion, make separate answers to the complaint, and if separate issues are joined thereupon, the same shall nevertheless be tried as one action, but the verdict, if tried by jury, shall find separately upon the issues so joined, and judgment shall be rendered according thereto. [1891 c 115 § 4; RRS § 837.]

Chapter 59.18 RCW

RESIDENTIAL LANDLORD-TENANT ACT

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Reviser's note: This chapter was revised pursuant to *Washington Ass'n. of Apartment Ass'ns., Inc. vs. Evans*, 88 Wn. 2d 563 (1977), which declared invalid the fourteen item and section vetoes to 1973 Engrossed Substitute Senate Bill No. 2226 (1973 1st ex.s. c 207).

Filing fees for unlawful detainer actions: RCW 36.18.012.

Smoke detection devices in dwelling units required: RCW 43.44.110.

59.18.010 Short title. RCW 59.18.010 through 59.18.420 and 59.18.900 shall be known and may be cited as the "Residential Landlord-Tenant Act of 1973", and shall constitute a new chapter in Title 59 RCW. [1973 1st ex.s. c 207 § 1.]

59.18.020 Rights and remedies—Obligation of good faith imposed. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [1973 1st ex.s. c 207 § 2.]

59.18.030 Definitions. As used in this chapter:

- (1) "Distressed home" has the same meaning as in RCW 61.34.020.
- (2) "Distressed home conveyance" has the same meaning as in RCW 61.34.020.
- (3) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.
- (4) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.

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

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

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

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

(i) The mortgagee;

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

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

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

(v) An attorney-at-law;

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

(vii) Any other party to a distressed property conveyance.

(6) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.

(7) "Mortgage" is used in the general sense and includes all instruments, including deeds of trust, that are used to secure an obligation by an interest in real property.

(8) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(9) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

(10) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

(11) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

(12) A "single family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

(13) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(14) "Reasonable attorney's fees", where authorized in this chapter, means an amount to be determined including the

following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

(15) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(16) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose. [2008 c 278 § 12; 1998 c 276 § 1; 1973 1st ex.s. c 207 § 3.]

59.18.040 Living arrangements exempted from chapter. The following living arrangements are not intended to be governed by the provisions of this chapter, unless established primarily to avoid its application, in which event the provisions of this chapter shall control:

(1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, religious, educational, recreational, or similar services, including but not limited to correctional facilities, licensed nursing homes, monasteries and convents, and hospitals;

(2) Occupancy under a bona fide earnest money agreement to purchase or contract of sale of the dwelling unit or the property of which it is a part, where the tenant is, or stands in the place of, the purchaser;

(3) Residence in a hotel, motel, or other transient lodging whose operation is defined in RCW 19.48.010;

(4) Rental agreements entered into pursuant to the provisions of chapter 47.12 RCW where occupancy is by an owner-condemnee and where such agreement does not violate the public policy of this state of ensuring decent, safe, and sanitary housing and is so certified by the consumer protection division of the attorney general's office;

(5) Rental agreements for the use of any single family residence which are incidental to leases or rentals entered into in connection with a lease of land to be used primarily for agricultural purposes;

(6) Rental agreements providing housing for seasonal agricultural employees while provided in conjunction with such employment;

(7) Rental agreements with the state of Washington, department of natural resources, on public lands governed by Title 79 RCW;

(8) Occupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises. [1989 c 342 § 3; 1973 1st ex.s. c 207 § 4.]

59.18.050 Jurisdiction of district and superior courts.

The district or superior courts of this state may exercise jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter within the respective jurisdictions of the district or superior

courts as provided in Article IV, section 6 of the Constitution of the state of Washington. [1973 1st ex.s. c 207 § 5.]

59.18.055 Notice—Alternative procedure—Court's jurisdiction limited—Application to chapter 59.20 RCW.

(1) When the plaintiff, after the exercise of due diligence, is unable to personally serve the summons on the defendant, the court may authorize the alternative means of service described herein. Upon filing of an affidavit from the person or persons attempting service describing those attempts, and the filing of an affidavit from the plaintiff, plaintiff's agent, or plaintiff's attorney stating the belief that the defendant cannot be found, the court may enter an order authorizing service of the summons as follows:

(a) The summons and complaint shall be posted in a conspicuous place on the premises unlawfully held, not less than nine days from the return date stated in the summons; and

(b) Copies of the summons and complaint shall be deposited in the mail, postage prepaid, by both regular mail and certified mail directed to the defendant's or defendants' last known address not less than nine days from the return date stated in the summons.

When service on the defendant or defendants is accomplished by this alternative procedure, the court's jurisdiction is limited to restoring possession of the premises to the plaintiff and no money judgment may be entered against the defendant or defendants until such time as jurisdiction over the defendant or defendants is obtained.

(2) This section shall apply to this chapter and chapter 59.20 RCW. [1997 c 86 § 1; 1989 c 342 § 14.]

59.18.060 Landlord—Duties. The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weather-tight condition;

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11)(a) Provide a written notice to all tenants disclosing fire safety and protection information. The landlord or his or her authorized agent must provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in *RCW 48.48.140. The notice shall inform the tenant of the tenant's responsibility to maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of *RCW 48.48.140(3). The notice must be signed by the landlord or the landlord's authorized agent and tenant with copies provided to both parties. Further, except with respect to a single-family residence, the written notice must also disclose the following:

(i) Whether the smoke detection device is hard-wired or battery operated;

(ii) Whether the building has a fire sprinkler system;

(iii) Whether the building has a fire alarm system;

(iv) Whether the building has a smoking policy, and what that policy is;

(v) Whether the building has an emergency notification plan for the occupants and, if so, provide a copy to the occupants;

(vi) Whether the building has an emergency relocation plan for the occupants and, if so, provide a copy to the occupants; and

(vii) Whether the building has an emergency evacuation plan for the occupants and, if so, provide a copy to the occupants.

(b) The information required under this subsection may be provided to a tenant in a multifamily residential building either as a written notice or as a checklist that discloses whether the building has fire safety and protection devices and systems. The checklist shall include a diagram showing the emergency evacuation routes for the occupants.

(c) The written notice or checklist must be provided to new tenants at the time the lease or rental agreement is signed, and must be provided to current tenants as soon as possible, but not later than January 1, 2004;

(12) Provide tenants with information provided or approved by the department of health about the health hazards associated with exposure to indoor mold. Information may be provided in written format individually to each tenant, or may be posted in a visible, public location at the dwelling unit property. The information must detail how tenants can control mold growth in their dwelling units to minimize the health risks associated with indoor mold. Landlords may

obtain the information from the department's web site or, if requested by the landlord, the department must mail the information to the landlord in a printed format. When developing or changing the information, the department of health must include representatives of landlords in the development process. The information must be provided by the landlord to new tenants at the time the lease or rental agreement is signed, and must be provided to current tenants no later than January 1, 2006, or must be posted in a visible, public location at the dwelling unit property beginning July 24, 2005;

(13) The landlord and his or her agents and employees are immune from civil liability for failure to comply with subsection (12) of this section except where the landlord and his or her agents and employees knowingly and intentionally do not comply with subsection (12) of this section; and

(14) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent;

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section. [2005 c 465 § 2; 2002 c 259 § 1; 1991 c 154 § 2; 1973 1st ex.s. c 207 § 6.]

***Reviser's note:** RCW 48.48.140 was recodified as RCW 43.44.110 pursuant to 2006 c 25 § 13.

Finding—2005 c 465: "The legislature finds that residents of the state face preventable exposures to mold in their homes, apartments, and schools. Exposure to mold, and the toxins they produce, have been found to have adverse health effects, including loss of memory and impairment of the ability to think coherently and function in a job, and may cause fatigue, nausea, and headaches.

As steps can be taken by landlords and tenants to minimize exposure to indoor mold, and as the reduction of exposure to mold in buildings could reduce the rising number of mold-related claims submitted to insurance companies and increase the availability of coverage, the legislature supports providing tenants and landlords with information designed to minimize the public's exposure to mold." [2005 c 465 § 1.]

59.18.063 Landlord—Provide written receipt upon request. A landlord shall provide, upon the request of a tenant, a written receipt for any payments made by the tenant. [1997 c 84 § 1.]

59.18.070 Landlord—Failure to perform duties—Notice from tenant—Contents—Time limits for landlord's remedial action. If at any time during the tenancy the

landlord fails to carry out the duties required by RCW 59.18.060 or by the rental agreement, the tenant may, in addition to pursuit of remedies otherwise provided him by law, deliver written notice to the person designated in *RCW 59.18.060(11), or to the person who collects the rent, which notice shall specify the premises involved, the name of the owner, if known, and the nature of the defective condition. The landlord shall commence remedial action after receipt of such notice by the tenant as soon as possible but not later than the following time periods, except where circumstances are beyond the landlord's control:

(1) Not more than twenty-four hours, where the defective condition deprives the tenant of hot or cold water, heat, or electricity, or is imminently hazardous to life;

(2) Not more than seventy-two hours, where the defective condition deprives the tenant of the use of a refrigerator, range and oven, or a major plumbing fixture supplied by the landlord; and

(3) Not more than ten days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed promptly. If completion is delayed due to circumstances beyond the landlord's control, including the unavailability of financing, the landlord shall remedy the defective condition as soon as possible. [1989 c 342 § 4; 1973 1st ex.s. c 207 § 7.]

***Reviser's note:** RCW 59.18.060 was amended by 1991 c 154 § 2, changing subsection (11) to subsection (12). RCW 59.18.060 was subsequently amended by 2005 c 465 § 2, changing subsection (12) to subsection (14).

59.18.075 Seizure of illegal drugs—Notification of landlord. (1) Any law enforcement agency which seizes a legend drug pursuant to a violation of chapter 69.41 RCW, a controlled substance pursuant to a violation of chapter 69.50 RCW, or an imitation controlled substance pursuant to a violation of chapter 69.52 RCW, shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure of the illegal drugs or substances.

(2) Any law enforcement agency which arrests a tenant for threatening another tenant with a firearm or other deadly weapon, or for some other unlawful use of a firearm or other deadly weapon on the rental premises, or for physically assaulting another person on the rental premises, shall make a reasonable attempt to discover the identity of the landlord and notify the landlord about the arrest in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency. [1992 c 38 § 4; 1988 c 150 § 11.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.080 Payment of rent condition to exercising remedies—Exceptions. The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of

the remedies accorded him under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing. [1973 1st ex.s. c 207 § 8.]

59.18.085 Rental of condemned or unlawful dwelling—Tenant's remedies—Relocation assistance—Penalties. (1) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling is condemned or unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord shall not enter into a rental agreement for the dwelling unit until the conditions are corrected.

(2) If a landlord knowingly violates subsection (1) of this section, the tenant shall recover either three months' periodic rent or up to treble the actual damages sustained as a result of the violation, whichever is greater, costs of suit, or arbitration and reasonable attorneys' fees. If the tenant elects to terminate the tenancy as a result of the conditions leading to the posting, or if the appropriate governmental agency requires that the tenant vacate the premises, the tenant also shall recover:

(a) The entire amount of any deposit prepaid by the tenant; and

(b) All prepaid rent.

(3)(a) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling will be condemned or will be unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord, who knew or should have known of the existence of these conditions, shall be required to pay relocation assistance to the displaced tenants except that:

(i) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and directly results from conditions caused by a tenant's or any third party's illegal conduct without the landlord's prior knowledge;

(ii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and results from conditions arising from a natural disaster such as, but not exclusively, an earthquake, tsunami, wind storm, or hurricane; and

(iii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which a condemnation affects one or more dwelling units and the tenant's displacement is a direct result of the acquisition of the property by eminent domain.

(b) Relocation assistance provided to displaced tenants under this subsection shall be the greater amount of two thousand dollars per dwelling unit or three times the monthly rent. In addition to relocation assistance, the landlord shall be required to pay to the displaced tenants the entire amount of any deposit prepaid by the tenant and all prepaid rent.

(c) The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent to displaced tenants within seven days of the governmental agency sending notice of the condemnation, eviction, or displacement order to the landlord. The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent either by making individual payments by certified check to displaced tenants or by providing a certified check to the governmental agency ordering condemnation, eviction, or displacement, for distribution to the displaced tenants. If the landlord fails to complete payment of relocation assistance within the period required under this subsection, the city, town, county, or municipal corporation may advance the cost of the relocation assistance payments to the displaced tenants.

(d) During the period from the date that a governmental agency responsible for the enforcement of a building, housing, or other appropriate code first notifies the landlord of conditions that violate applicable codes, statutes, ordinances, or regulations to the time that relocation assistance payments are paid to eligible tenants, or the conditions leading to the notification are corrected, the landlord may not:

(i) Evict, harass, or intimidate tenants into vacating their units for the purpose of avoiding or diminishing application of this section;

(ii) Reduce services to any tenant; or

(iii) Materially increase or change the obligations of any tenant, including but not limited to any rent increase.

(e) Displaced tenants shall be entitled to recover any relocation assistance, prepaid deposits, and prepaid rent required by (b) of this subsection. In addition, displaced tenants shall be entitled to recover any actual damages sustained by them as a result of the condemnation, eviction, or displacement that exceed the amount of relocation assistance that is payable. In any action brought by displaced tenants to recover any payments or damages required or authorized by this subsection (3)(e) or (c) of this subsection that are not paid by the landlord or advanced by the city, town, county, or municipal corporation, the displaced tenants shall also be entitled to recover their costs of suit or arbitration and reasonable attorneys' fees.

(f) If, after sixty days from the date that the city, town, county, or municipal corporation first advanced relocation assistance funds to the displaced tenants, a landlord has failed to repay the amount of relocation assistance advanced by the city, town, county, or municipal corporation under (c) of this subsection, then the city, town, county, or municipal corporation shall assess civil penalties in the amount of fifty dollars per day for each tenant to whom the city, town, county, or municipal corporation has advanced a relocation assistance payment.

(g) In addition to the penalties set forth in (f) of this subsection, interest will accrue on the amount of relocation assistance paid by the city, town, county, or municipal corporation for which the property owner has not reimbursed the city, town, county, or municipal corporation. The rate of interest shall be the maximum legal rate of interest permitted under RCW 19.52.020, commencing thirty days after the date that the city first advanced relocation assistance funds to the displaced tenants.

(h) If the city, town, county, or municipal corporation must initiate legal action in order to recover the amount of

relocation assistance payments that it has advanced to low-income tenants, including any interest and penalties under (f) and (g) of this subsection, the city, town, county, or municipal corporation shall be entitled to attorneys' fees and costs arising from its legal action.

(4) The government agency that has notified the landlord that a dwelling will be condemned or will be unlawful to occupy shall notify the displaced tenants that they may be entitled to relocation assistance under this section.

(5) No payment received by a displaced tenant under this section may be considered as income for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of any tax imposed under Title 82 RCW, and the payments shall not be deducted from any amount to which any recipient would otherwise be entitled under Title 74 RCW. [2005 c 364 § 2; 1989 c 342 § 13.]

Purpose—2005 c 364: "The people of the state of Washington deserve decent, safe, and sanitary housing. Certain tenants in the state of Washington have remained in rental housing that does not meet the state's minimum standards for health and safety because they cannot afford to pay the costs of relocation in advance of occupying new, safe, and habitable housing. In egregious cases, authorities have been forced to condemn property when landlords have failed to remedy building code or health code violations after repeated notice, and, as a result, families with limited financial resources have been displaced and left with nowhere to go.

The purpose of this act is to establish a process by which displaced tenants would receive funds for relocation from landlords who fail to provide safe and sanitary housing after due notice of building code or health code violations. It is also the purpose of this act to provide enforcement mechanisms to cities, towns, counties, or municipal corporations including the ability to advance relocation funds to tenants who are displaced as a result of a landlord's failure to remedy building code or health code violations and later to collect the full amounts of these relocation funds, along with interest and penalties, from landlords." [2005 c 364 § 1.]

Construction—2005 c 364: "The powers and authority conferred by this act are in addition and supplemental to powers or authority conferred by any other law or authority, and nothing contained herein shall be construed to preempt any local ordinance requiring relocation assistance to tenants displaced by a landlord's failure to remedy building code or health code violations." [2005 c 364 § 4.]

59.18.090 Landlord's failure to remedy defective condition—Tenant's choice of actions. If, after receipt of written notice, and expiration of the applicable period of time, as provided in RCW 59.18.070, the landlord fails to remedy the defective condition within a reasonable time the tenant may:

(1) Terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement, in which case he shall be discharged from payment of rent for any period following the quitting date, and shall be entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280;

(2) Bring an action in an appropriate court, or at arbitration if so agreed, for any remedy provided under this chapter or otherwise provided by law; or

(3) Pursue other remedies available under this chapter. [1973 1st ex.s. c 207 § 9.]

59.18.100 Landlord's failure to carry out duties—Repairs effected by tenant—Procedure—Deduction of cost from rent—Limitations. (1) If at any time during the

tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.18.060, and notice of the defect is given to the landlord pursuant to RCW 59.18.070, the tenant may submit to the landlord or his designated agent by certified mail or in person a good faith estimate by the tenant of the cost to perform the repairs necessary to correct the defective condition if the repair is to be done by licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, the cost if the repair is to be done by responsible persons capable of performing such repairs. Such estimate may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.18.070: PROVIDED, That the remedy provided in this section shall not be available for a landlord's failure to carry out the duties in *RCW 59.18.060 (9), and (11): PROVIDED FURTHER, That if the tenant utilizes this section for repairs pursuant to RCW 59.18.060(6), the tenant shall promptly provide the landlord with a key to any new or replaced locks. The amount the tenant may deduct from the rent may vary from the estimate, but cannot exceed the one-month limit as described in subsection (2) of this section.

(2) If the landlord fails to commence remedial action of the defective condition within the applicable time period after receipt of notice and the estimate from the tenant, the tenant may contract with a licensed or registered person, or with a responsible person capable of performing the repair if no license or registration is required, to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or his designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's unit per repair: PROVIDED, That when the landlord must commence to remedy the defective condition within ten days as provided in RCW 59.18.070(3), the tenant cannot contract for repairs for ten days after notice or five days after the landlord receives the estimate, whichever is later: PROVIDED FURTHER, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing two month's rental of the tenant's unit.

(3) If the landlord fails to carry out the duties imposed by RCW 59.18.060 within the applicable time period, and if the cost of repair does not exceed one-half month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, and if the tenant has given notice under RCW 59.18.070, although no estimate shall be necessary under this subsection, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent: PROVIDED, That repairs under this subsection are limited to defects within the leased premises: PROVIDED FURTHER, That the cost per repair shall not exceed one-half month's rent of the unit and that the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one month's rent of the unit.

(4) The provisions of this section shall not:

(a) Create a relationship of employer and employee between landlord and tenant; or

(b) Create liability under the workers' compensation act; or

(c) Constitute the tenant as an agent of the landlord for the purposes of **RCW 60.04.010 and 60.04.040.

(5) Any repair work performed under the provisions of this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or regulation. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs himself in return for cash payment or a reasonable reduction in rent, the agreement thereof to be agreed upon between the parties, and such agreement does not alter the landlord's obligations under this chapter. [1989 c 342 § 5; 1987 c 185 § 35; 1973 1st ex.s. c 207 § 10.]

Reviser's note: *(1) RCW 59.18.060 was amended by 1991 c 154 § 2, changing subsection (11) to subsection (12). RCW 59.18.060 was subsequently amended by 2005 c 465 § 2, changing subsection (12) to subsection (14).

** (2) RCW 60.04.010 and 60.04.040 were repealed by 1991 c 281 § 31, effective April 1, 1992.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

59.18.110 Failure of landlord to carry out duties—Determination by court or arbitrator—Judgment against landlord for diminished rental value and repair costs—Enforcement of judgment—Reduction in rent under certain conditions. (1) If a court or an arbitrator determines that:

(a) A landlord has failed to carry out a duty or duties imposed by RCW 59.18.060; and

(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord in accordance with RCW 59.18.070 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the premises due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to RCW 59.18.100 for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to make or contract to make further corrective repairs: PROVIDED, That the court specifies a time period in which the landlord may make such repairs before the tenant may commence or contract for such repairs: PROVIDED FURTHER, That such repairs shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any one calendar year.

(2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the premises until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise. [1973 1st ex.s. c 207 § 11.]

59.18.115 Substandard and dangerous conditions—Notice to landlord—Government certification—Escrow account. (1) The legislature finds that some tenants live in residences that are substandard and dangerous to their health and safety and that the repair and deduct remedies of RCW 59.18.100 may not be adequate to remedy substandard and dangerous conditions. Therefore, an extraordinary remedy is necessary if the conditions substantially endanger or impair the health and safety of the tenant.

(2)(a) If a landlord fails to fulfill any substantial obligation imposed by RCW 59.18.060 that substantially endangers or impairs the health or safety of a tenant, including (i) structural members that are of insufficient size or strength to carry imposed loads with safety, (ii) exposure of the occupants to the weather, (iii) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (iv) lack of water, including hot water, (v) heating or ventilation systems that are not functional or are hazardous, (vi) defective, hazardous, or missing electrical wiring or electrical service, (vii) defective or inadequate exits that increase the risk of injury to occupants, and (viii) conditions that increase the risk of fire, the tenant shall give notice in writing to the landlord, specifying the conditions, acts, omissions, or violations. Such notice shall be sent to the landlord or to the person or place where rent is normally paid.

(b) If after receipt of the notice described in (a) of this subsection the landlord fails to remedy the condition or conditions within a reasonable amount of time under RCW 59.18.070, the tenant may request that the local government provide for an inspection of the premises with regard to the specific condition or conditions that exist as provided in (a) of this subsection. The local government shall have the appropriate government official, or may designate a public or disinterested private person or company capable of conducting the inspection and making the certification, conduct an inspection of the specific condition or conditions listed by the tenant, and shall not inspect nor be liable for any other condition or conditions of the premises. The purpose of this inspection is to verify, to the best of the inspector's ability, whether the tenant's listed condition or conditions exist and substantially endanger the tenant's health or safety under (a) of this subsection; the inspection is for the purposes of this private civil remedy, and therefore shall not be related to any other governmental function such as enforcement of any code, ordinance, or state law.

(c) The local government or its designee, after receiving the request from the tenant to conduct an inspection under this section, shall conduct the inspection and make any certification within a reasonable amount of time not more than five days from the date of receipt of the request. The local government or its designee may enter the premises at any reasonable time to do the inspection, provided that he or she first shall display proper credentials and request entry. The local government or its designee shall whenever practicable, taking into consideration the imminence of any threat to the tenant's health or safety, give the landlord at least twenty-four hours notice of the date and time of inspection and provide the landlord with an opportunity to be present at the time of the inspection. The landlord shall have no power or authority to prohibit entry for the inspection.

(d) The local government or its designee shall certify whether the condition or the conditions specified by the tenant do exist and do make the premises substantially unfit for human habitation or can be a substantial risk to the health and safety of the tenant as described in (a) of this subsection. The certification shall be provided to the tenant, and a copy shall be included by the tenant with the notice sent to the landlord under subsection (3) of this section. The certification may be appealed to the local board of appeals, but the appeal shall not delay or preclude the tenant from proceeding with the escrow under this section.

(e) The tenant shall not be entitled to deposit rent in escrow pursuant to this section unless the tenant first makes a good faith determination that he or she is unable to repair the conditions described in the certification issued pursuant to subsection (2)(d) of this section through use of the repair remedies authorized by RCW 59.18.100.

(f) If the local government or its designee certifies that the condition or conditions specified by the tenant exist, the tenant shall then either pay the periodic rent due to the landlord or deposit all periodic rent then called for in the rental agreement and all rent thereafter called for in the rental agreement into an escrow account maintained by a person authorized by law to set up and maintain escrow accounts, including escrow companies under chapter 18.44 RCW, financial institutions, or attorneys, or with the clerk of the court of the district or superior court where the property is located. These depositories are hereinafter referred to as "escrow." The tenant shall notify the landlord in writing of the deposit by mailing the notice postage prepaid by first-class mail or by delivering the notice to the landlord promptly but not more than twenty-four hours after the deposit.

(g) This section, when elected as a remedy by the tenant by sending the notice under subsection (3) of this section, shall be the exclusive remedy available to the tenant regarding defects described in the certification under subsection (2)(d) of this section: PROVIDED, That the tenant may simultaneously commence or pursue an action in an appropriate court, or at arbitration if so agreed, to determine past, present, or future diminution in rental value of the premises due to any defective conditions.

(3) The notice to the landlord of the rent escrow under this section shall be a sworn statement by the tenant in substantially the following form:

NOTICE TO LANDLORD OF RENT ESCROW

Name of tenant:
Name of landlord:
Name and address of escrow:
Date of deposit of rent into escrow:
Amount of rent deposited into escrow:
The following condition has been certified by a local building official to substantially endanger, impair, or affect the health or safety of a tenant:
That written notice of the conditions needing repair was provided to the landlord on . . . , and . . . days have elapsed and the repairs have not been made.

.....
(Sworn Signature)

(4) The escrow shall place all rent deposited in a separate rent escrow account in the name of the escrow in a bank or savings and loan association domiciled in this state. The escrow shall keep in a separate docket an account of each deposit, with the name and address of the tenant, and the name and address of the landlord and of the agent, if any.

(5)(a) A landlord who receives notice that the rent due has been deposited with an escrow pursuant to subsection (2) of this section may:

(i) Apply to the escrow for release of the funds after the local government certifies that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly repaired. The escrow shall release the funds to the landlord less any escrow costs for which the tenant is entitled to reimbursement pursuant to this section, immediately upon written receipt of the local government certification that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly completed.

(ii) File an action with the court and apply to the court for release of the rent on the grounds that the tenant did not comply with the notice requirement of subsection (2) or (3) of this section. Proceedings under this subsection shall be governed by the time, service, and filing requirements of RCW 59.18.370 regarding show cause hearings.

(iii) File an action with the court and apply to the court for release of the rent on the grounds that there was no violation of any obligation imposed upon the landlord or that the condition has been remedied.

(iv) This action may be filed in any court having jurisdiction, including small claims court. If the tenant has vacated the premises or if the landlord has failed to commence an action with the court for release of the funds within sixty days after rent is deposited in escrow, the tenant may file an action to determine how and when any rent deposited in escrow shall be released or disbursed. The landlord shall not commence an unlawful detainer action for nonpayment of rent by serving or filing a summons and complaint if the tenant initially pays the rent called for in the rental agreement that is due into escrow as provided for under this section on or before the date rent is due or on or before the expiration of a three-day notice to pay rent or vacate and continues to pay the rent into escrow as the rent becomes due or prior to the expiration of a three-day notice to pay rent or vacate; provided that the landlord shall not be barred from commencing an unlawful detainer action for nonpayment of rent if the amount of rent that is paid into escrow is less than the amount of rent agreed upon in the rental agreement between the parties.

(b) The tenant shall be named as a party to any action filed by the landlord under this section, and shall have the right to file an answer and counterclaim, although any counterclaim shall be dismissed without prejudice if the court or arbitrator determines that the tenant failed to follow the notice requirements contained in this section. Any counterclaim can only claim diminished rental value related to conditions specified by the tenant in the notice required under subsection (3) of this section. This limitation on the tenant's right to counterclaim shall not affect the tenant's right to bring his or her own separate action. A trial shall be held within sixty days of the date of filing of the landlord's or tenant's complaint.

(c) The tenant shall be entitled to reimbursement for any escrow costs or fees incurred for setting up or maintaining an escrow account pursuant to this section, unless the tenant did not comply with the notice requirements of subsection (2) or (3) of this section. Any escrow fees that are incurred for which the tenant is entitled to reimbursement shall be deducted from the rent deposited in escrow and remitted to the tenant at such time as any rent is released to the landlord. The prevailing party in any court action or arbitration brought under this section may also be awarded its costs and reasonable attorneys' fees.

(d) If a court determines a diminished rental value of the premises, the tenant may pay the rent due based on the diminished value of the premises into escrow until the landlord makes the necessary repairs.

(6)(a) If a landlord brings an action for the release of rent deposited, the court may, upon application of the landlord, release part of the rent on deposit for payment of the debt service on the premises, the insurance premiums for the premises, utility services, and repairs to the rental unit.

(b) In determining whether to release rent for the payments described in (a) of this subsection, the court shall consider the amount of rent the landlord receives from other rental units in the buildings of which the residential premises are a part, the cost of operating those units, and the costs which may be required to remedy the condition contained in the notice. The court shall also consider whether the expenses are due or have already been paid, whether the landlord has other financial resources, or whether the landlord or tenant will suffer irreparable damage. The court may request the landlord to provide additional security, such as a bond, prior to authorizing release of any of the funds in escrow. [1989 c 342 § 16.]

59.18.120 Defective condition—Unfeasible to remedy defect—Termination of tenancy. If a court or arbitrator determines a defective condition as described in RCW 59.18.060 to be so substantial that it is unfeasible for the landlord to remedy the defect within the time allotted by RCW 59.18.070, and that the tenant should not remain in the dwelling unit in its defective condition, the court or arbitrator may authorize the termination of the tenancy: PROVIDED, That the court or arbitrator shall set a reasonable time for the tenant to vacate the premises. [1973 1st ex.s. c 207 § 12.]

59.18.130 Duties of tenant. Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he or she occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his or her dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his or her family, invitee, licensee, or any person acting under his or her control to do so. Violations may be prosecuted under chapter 9A.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW;

(7) Maintain the smoke detection device in accordance with the manufacturer's recommendations, including the replacement of batteries where required for the proper operation of the smoke detection device, as required in *RCW 48.48.140(3);

(8) Not engage in any activity at the rental premises that is:

(a) Imminently hazardous to the physical safety of other persons on the premises; and

(b)(i) Entails physical assaults upon another person which result in an arrest; or

(ii) Entails the unlawful use of a firearm or other deadly weapon as defined in RCW 9A.04.110 which results in an arrest, including threatening another tenant or the landlord with a firearm or other deadly weapon under RCW 59.18.352. Nothing in this subsection (8) shall authorize the termination of tenancy and eviction of the victim of a physical assault or the victim of the use or threatened use of a firearm or other deadly weapon;

(9) Not engage in any gang-related activity at the premises, as defined in RCW 59.18.030, or allow another to engage in such activity at the premises, that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences. In determining whether a tenant is engaged in gang-related activity, a court should consider the totality of the circumstances, including factors such as whether there have been a significant number of complaints to the landlord about the tenant's activities at the property, damages done by the tenant to the property, including the property of other tenants or neighbors, harassment or threats made by the tenant to other tenants or neighbors that have been reported to law enforcement agencies, any police incident reports involving the tenant, and the tenant's criminal history; and

(10) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his or her obligations under this chapter: PROVIDED, That the tenant shall not be charged for normal cleaning if he or she has paid a nonrefundable cleaning fee. [1998 c 276 § 2;

1992 c 38 § 2; 1991 c 154 § 3; 1988 c 150 § 2; 1983 c 264 § 3; 1973 1st ex.s. c 207 § 13.]

*Reviser's note: RCW 48.48.140 was recodified as RCW 43.44.110 pursuant to 2006 c 25 § 13.

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

Legislative findings—1988 c 150: "The legislature finds that the illegal use, sale, and manufacture of drugs and other drug-related activities is a statewide problem. Innocent persons, especially children, who come into contact with illegal drug-related activity within their own neighborhoods are seriously and adversely affected. Rental property is damaged and devalued by drug activities. The legislature further finds that a rapid and efficient response is necessary to: (1) Lessen the occurrence of drug-related enterprises; (2) reduce the drug use and trafficking problems within this state; and (3) reduce the damage caused to persons and property by drug activity. The legislature finds that it is beneficial to rental property owners and to the public to permit landlords to quickly and efficiently evict persons who engage in drug-related activities at rented premises." [1988 c 150 § 1.]

Severability—1988 c 150: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 150 § 15.]

59.18.140 Reasonable obligations or restrictions—

Tenant's duty to conform. The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agreement, rent, or otherwise, concerning the use, occupation, and maintenance of his dwelling unit, appurtenances thereto, and the property of which the dwelling unit is a part if such obligations and restrictions are not in violation of any of the terms of this chapter and are not otherwise contrary to law, and if such obligations and restrictions are brought to the attention of the tenant at the time of his initial occupancy of the dwelling unit and thus become part of the rental agreement. Except for termination of tenancy, after thirty days written notice to each affected tenant, a new rule of tenancy including a change in the amount of rent may become effective upon completion of the term of the rental agreement or sooner upon mutual consent. [1989 c 342 § 6; 1973 1st ex.s. c 207 § 14.]

59.18.150 Landlord's right of entry—Purposes—

Searches by fire officials—Conditions. (1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) Upon written notice of intent to seek a search warrant, when a tenant or landlord denies a fire official the right to search a dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the dwelling unit sought to be searched that criminal fire code violations exist in the dwelling unit, a court of competent jurisdiction shall issue a warrant allowing a search of the dwelling unit.

Upon written notice of intent to seek a search warrant, when a landlord denies a fire official the right to search the common areas of the rental building other than the dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the common area sought to be searched that a criminal fire code vio-

lation exists in those areas, a court of competent jurisdiction shall issue a warrant allowing a search of the common areas in which the violation is alleged.

The superior court and courts of limited jurisdiction organized under Titles 3, 35, and 35A RCW have jurisdiction to issue such search warrants. Evidence obtained pursuant to any such search may be used in a civil or administrative enforcement action.

(3) As used in this section:

(a) "Common areas" means a common area or those areas that contain electrical, plumbing, and mechanical equipment and facilities used for the operation of the rental building.

(b) "Fire official" means any fire official authorized to enforce the state or local fire code.

(4) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

(5) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his or her intent to enter and shall enter only at reasonable times. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.

(6) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

(7) A landlord or tenant who continues to violate the rights of the tenant or landlord with respect to the duties imposed on the other as set forth in this section after being served with one written notification alleging in good faith violations of this section listing the date and time of the violation shall be liable for up to one hundred dollars for each violation after receipt of the notice. The prevailing landlord or tenant may recover costs of the suit or arbitration under this section, and may also recover reasonable attorneys' fees.

(8) Nothing in this section is intended to abrogate or modify in any way any common law right or privilege. [2002 c 263 § 1. Prior: 1989 c 342 § 7; 1989 c 12 § 18; 1973 1st ex.s. c 207 § 15.]

59.18.160 Landlord's remedies if tenant fails to remedy defective condition. If, after receipt of written notice, as provided in RCW 59.18.170, the tenant fails to remedy the defective condition within a reasonable time, the landlord may:

(1) Bring an action in an appropriate court, or at arbitration if so agreed for any remedy provided under this chapter or otherwise provided by law; or

(2) Pursue other remedies available under this chapter. [1973 1st ex.s. c 207 § 16.]

59.18.170 Landlord to give notice if tenant fails to carry out duties. If at any time during the tenancy the tenant fails to carry out the duties required by RCW 59.18.130 or 59.18.140, the landlord may, in addition to pursuit of reme-

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lies otherwise provided by law, give written notice to the tenant of said failure, which notice shall specify the nature of the failure. [1973 1st ex.s. c 207 § 17.]

59.18.180 Tenant's failure to comply with statutory duties—Landlord to give tenant written notice of non-compliance—Landlord's remedies. (1) If the tenant fails to comply with any portion of RCW 59.18.130 or 59.18.140, and such noncompliance can substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident that can be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance, or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. Any substantial noncompliance by the tenant of RCW 59.18.130 or 59.18.140 shall constitute a ground for commencing an action in unlawful detainer in accordance with the provisions of chapter 59.12 RCW, and a landlord may commence such action at any time after written notice pursuant to such chapter. The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter 59.12 RCW that the tenant is in substantial compliance with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: PROVIDED, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorney's fees.

(2) If drug-related activity is alleged to be a basis for termination of tenancy under RCW 59.18.130(6), 59.12.030(5), or 59.20.140(5), the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action.

(3) If activity on the premises that creates an imminent hazard to the physical safety of other persons on the premises as defined in RCW 59.18.130(8) is alleged to be the basis for termination of the tenancy, and the tenant is arrested as a result of this activity, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action against the tenant who was arrested for this activity.

(4) If gang-related activity, as prohibited under RCW 59.18.130(9), is alleged to be the basis for termination of the tenancy, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action in accordance with chapter 59.12 RCW, and a landlord may commence such an action at any time after written notice under chapter 59.12 RCW.

(5) A landlord may not be held liable in any cause of action for bringing an unlawful detainer action against a tenant for drug-related activity, for creating an imminent hazard

to the physical safety of others, or for engaging in gang-related activity that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences under this section, if the unlawful detainer action was brought in good faith. Nothing in this section shall affect a landlord's liability under RCW 59.18.380 to pay all damages sustained by the tenant should the writ of restitution be wrongfully sued out. [1998 c 276 § 3; 1992 c 38 § 3; 1988 c 150 § 7; 1973 1st ex.s. c 207 § 18.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.190 Notice to tenant to remedy nonconformance. Whenever the landlord learns of a breach of RCW 59.18.130 or has accepted performance by the tenant which is at variance with the terms of the rental agreement or rules enforceable after the commencement of the tenancy, he may immediately give notice to the tenant to remedy the nonconformance. Said notice shall expire after sixty days unless the landlord pursues any remedy under this chapter. [1973 1st ex.s. c 207 § 19.]

59.18.200 Tenancy from month to month or for rental period—Termination—Armed Forces exception—Exclusion of children—Conversion to condominium—Notice. (1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of the months or periods of tenancy, given by either party to the other.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependant, may terminate a rental agreement with less than twenty days' notice if the tenant receives reassignment or deployment orders that do not allow a twenty-day notice.

(2)(a) Whenever a landlord plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ninety days before termination of the tenancy to effectuate such change in policy. Such ninety-day notice shall be in lieu of the notice required by subsection (1) of this section. However, if after giving the ninety-day notice the change in policy is delayed, the notice requirements of subsection (1) of this section shall apply unless waived by the tenant.

(b) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership, the landlord shall provide a written notice to a tenant at least one hundred twenty days before termination of the tenancy, in compliance with RCW 64.34.440(1), to effectuate such change. The one hundred twenty-day notice is in lieu of the notice required in subsection (1) of this section. However, if after providing the one hundred twenty-day notice the change to a condominium form of ownership is delayed, the notice requirements in subsection (1) of this section apply unless

waived by the tenant. [2008 c 113 § 4; 2003 c 7 § 1; 1979 ex.s. c 70 § 1; 1973 1st ex.s. c 207 § 20.]

Application—Effective date—2008 c 113: See notes following RCW 64.34.440.

Effective date—2003 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 24, 2003]." [2003 c 7 § 4.]

Unlawful detainer, notice requirement: RCW 59.12.030(2).

59.18.210 Tenancies from year to year except under written contract. Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals. [1973 1st ex.s. c 207 § 21.]

59.18.220 Termination of tenancy for a specified time—Armed forces exception. (1) In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time.

(2) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a tenancy for a specified time if the tenant receives reassignment or deployment orders. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt. [2003 c 7 § 2; 1973 1st ex.s. c 207 § 22.]

Effective date—2003 c 7: See note following RCW 59.18.200.

59.18.230 Waiver of chapter provisions prohibited—Provisions prohibited from rental agreement—Distress for rent abolished—Detention of personal property for rent—Remedies. (1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorney's fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific written consent of the tenant to such incident of taking or detention, and who, after written demand by the tenant for the return of his personal property, refuses to return the same promptly shall be liable to the tenant for the value of the property retained, actual damages, and if the refusal is intentional, may also be liable for damages of up to one hundred dollars per day but not to exceed one thousand dollars, for each day or part of a day that the tenant is deprived of his property. The prevailing party may recover his costs of suit and a reasonable attorney's fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property. [1989 c 342 § 8; 1983 c 264 § 4; 1973 1st ex.s. c 207 § 23.]

59.18.240 Reprisals or retaliatory actions by landlord—Prohibited. So long as the tenant is in compliance with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

(1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant; or

(2) Assertions or enforcement by the tenant of his rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

- (a) Eviction of the tenant;
- (b) Increasing the rent required of the tenant;
- (c) Reduction of services to the tenant; and
- (d) Increasing the obligations of the tenant. [1983 c 264 § 9; 1973 1st ex.s. c 207 § 24.]

59.18.250 Reprisals or retaliatory actions by landlord—Presumptions—Rebuttal—Costs. Initiation by the landlord of any action listed in RCW 59.18.240 within ninety days after a good faith and lawful act by the tenant as enumerated in RCW 59.18.240, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: PROVIDED, That if at the time the

landlord gives notice of termination of tenancy pursuant to chapter 59.12 RCW the tenant is in arrears in rent or in breach of any other lease or rental obligation, there is a rebuttable presumption affecting the burden of proof that the landlord's action is neither a reprisal nor retaliatory action against the tenant: PROVIDED FURTHER, That if the court finds that the tenant made a complaint or report to a governmental authority within ninety days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: PROVIDED FURTHER, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter: PROVIDED FURTHER, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his claim he shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee: PROVIDED FURTHER, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them. [1983 c 264 § 10; 1973 1st ex.s. c 207 § 25.]

59.18.253 Deposit to secure occupancy by tenant—Landlord's duties—Violation. (1) It shall be unlawful for a landlord to require a fee from a prospective tenant for the privilege of being placed on a waiting list to be considered as a tenant for a dwelling unit.

(2) A landlord who charges a prospective tenant a fee or deposit to secure that the prospective tenant will move into a dwelling unit, after the dwelling unit has been offered to the prospective tenant, must provide the prospective tenant with a receipt for the fee or deposit, together with a written statement of the conditions, if any, under which the fee or deposit is refundable. If the prospective tenant does occupy the dwelling unit, then the landlord must credit the amount of the fee or deposit to the tenant's first month's rent or to the tenant's security deposit. If the prospective tenant does not occupy the dwelling unit, then the landlord may keep up to the full amount of any fee or deposit that was paid by the prospective tenant to secure the tenancy, so long as it is in accordance with the written statement of conditions furnished to the prospective tenant at the time the fee or deposit was charged. A fee charged to secure a tenancy under this subsection does not include any cost charged by a landlord to use a tenant screening service or obtain background information on a prospective tenant.

(3) In any action brought for a violation of this section a landlord may be liable for the amount of the fee or deposit charged. In addition, any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed one hundred dollars. The prevailing party may also

recover court costs and a reasonable attorneys' fee. [1991 c 194 § 2.]

Findings—1991 c 194: "The legislature finds that tenant application fees often have the effect of excluding low-income people from applying for housing because many low-income people cannot afford these fees in addition to the rent and other deposits which may be required. The legislature further finds that application fees are frequently not returned to unsuccessful applicants for housing, which creates a hardship on low-income people. The legislature therefore finds and declares that it is the policy of the state that certain tenant application fees should be prohibited and guidelines should be established for the imposition of other tenant application fees.

The legislature also finds that it is important to both landlords and tenants that consumer information concerning prospective tenants is accurate. Many tenants are unaware of their rights under federal fair credit reporting laws to dispute information that may be inaccurate. The legislature therefore finds and declares that it is the policy of the state for prospective tenants to be informed of their rights to dispute information they feel is inaccurate in order to help prevent denials of housing based upon incorrect information." [1991 c 194 § 1.]

59.18.257 Screening of tenants—Costs—Notice to tenant—Violation. (1) If a landlord uses a tenant screening service, then the landlord may only charge for the costs incurred for using the tenant screening service under this section. If a landlord conducts his or her own screening of tenants, then the landlord may charge his or her actual costs in obtaining the background information, but the amount may not exceed the customary costs charged by a screening service in the general area. The landlord's actual costs include costs incurred for long distance phone calls and for time spent calling landlords, employers, and financial institutions.

(2) A landlord may not charge a prospective tenant for the cost of obtaining background information under this section unless the landlord first notifies the prospective tenant in writing of what a tenant screening entails, the prospective tenant's rights to dispute the accuracy of information provided by the tenant screening service or provided by the entities listed on the tenant application who will be contacted for information concerning the tenant, and the name and address of the tenant screening service used by the landlord.

(3) Nothing in this section requires a landlord to disclose information to a prospective tenant that was obtained from a tenant screening service or from entities listed on the tenant application which is not required under the federal fair credit reporting act, 15 U.S.C. Sec. 1681 et seq.

(4) Any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed one hundred dollars. The prevailing party may also recover court costs and reasonable attorneys' fees. [1991 c 194 § 3.]

Findings—1991 c 194: See note following RCW 59.18.253.

59.18.260 Moneys paid as deposit or security for performance by tenant—Written rental agreement to specify terms and conditions for retention by landlord—Written checklist required. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a lease or rental agreement, the lease or rental agreement shall be in writing and shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the lease or rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the premises for which the tenant is responsible, the rental agreement shall be in writing and shall so specify. No deposit may

be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings, including, but not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances, is provided by the landlord to the tenant at the commencement of the tenancy. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement. No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises. [1983 c 264 § 6; 1973 1st ex.s. c 207 § 26.]

59.18.270 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims. All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a financial institution as defined by RCW 30.22.041 or licensed escrow agent located in Washington. Unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address, and location of the new depository. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled. [2004 c 136 § 1; 1975 1st ex.s. c 233 § 1; 1973 1st ex.s. c 207 § 27.]

59.18.280 Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention—Remedies for landlord's failure to make refund. Within fourteen days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW 59.18.310, within fourteen days after the landlord learns of the abandonment, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises. The landlord complies with this section if the required statement or payment, or both, are deposited in the United States mail properly addressed with first-class postage prepaid within the fourteen days.

The notice shall be delivered to the tenant personally or by mail to his last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he shall be liable to the tenant

for the full amount of the deposit. The landlord is also barred in any action brought by the tenant to recover the deposit from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the fourteen days or that the tenant abandoned the premises as defined in RCW 59.18.310. The court may in its discretion award up to two times the amount of the deposit for the intentional refusal of the landlord to give the statement or refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorney's fee.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorney's fees. [1989 c 342 § 9; 1983 c 264 § 7; 1973 1st ex.s. c 207 § 28.]

59.18.285 Nonrefundable fees not to be designated as deposit—Written rental agreement required. No moneys paid to the landlord which are nonrefundable may be designated as a deposit or as part of any deposit. If any moneys are paid to the landlord as a nonrefundable fee, the rental agreement shall be in writing and shall clearly specify that the fee is nonrefundable. [1983 c 264 § 5.]

59.18.290 Removal or exclusion of tenant from premises—Holding over or excluding landlord from premises after termination date. (1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.

(2) It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him, and the prevailing party may recover his costs of suit or arbitration and reasonable attorney's fees. [1973 1st ex.s. c 207 § 29.]

59.18.300 Termination of tenant's utility services—Tenant causing loss of landlord provided utility services. It shall be unlawful for a landlord to intentionally cause termination of any of his tenant's utility services, including water, heat, electricity, or gas, except for an interruption of utility services for a reasonable time in order to make necessary repairs. Any landlord who violates this section may be liable to such tenant for his actual damages sustained by him, and up to one hundred dollars for each day or part thereof the tenant is thereby deprived of any utility service, and the prevailing party may recover his costs of suit or arbitration and a reasonable attorney's fee. It shall be unlawful for a tenant to

intentionally cause the loss of utility services provided by the landlord, including water, heat, electricity or gas, excepting as resulting from the normal occupancy of the premises. [1973 1st ex.s. c 207 § 30.]

59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies—Sale of tenant's property by landlord. If the tenant defaults in the payment of rent and reasonably indicates by words or actions the intention not to resume tenancy, the tenant shall be liable for the following for such abandonment: PROVIDED, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

(a) The entire rent due for the remainder of the term; or

(b) All rent accrued during the period reasonably necessary to rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in re-renting the premises together with statutory court costs and reasonable attorney's fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in any reasonably secure place. A landlord shall make reasonable efforts to provide the tenant with a notice containing the name and address of the landlord and the place where the property is stored and informing the tenant that a sale or disposition of the property shall take place pursuant to this section, and the date of the sale or disposal, and further informing the tenant of the right under RCW 59.18.230 to have the property returned prior to its sale or disposal. The landlord's efforts at notice under this subsection shall be satisfied by the mailing by first-class mail, postage prepaid, of such notice to the tenant's last known address and to any other address provided in writing by the tenant or actually known to the landlord where the tenant might receive the notice. The landlord shall return the property to the tenant after the tenant has paid the actual or reasonable drayage and storage costs whichever is less if the tenant makes a written request for the return of the property before the landlord has sold or disposed of the property. After forty-five days from the date the notice of such sale or disposal is mailed or personally delivered to the tenant, the landlord may sell or dispose of such property, including personal papers, family pictures, and keepsakes. The landlord may apply any income derived therefrom against moneys due the landlord, including actual or reasonable costs whichever is less of drayage and storage of the property. If the property has a cumulative value of fifty dollars or less, the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keep-

sakes, after seven days from the date the notice of sale or disposal is mailed or personally delivered to the tenant: PROVIDED, That the landlord shall make reasonable efforts, as defined in this section, to notify the tenant. Any excess income derived from the sale of such property under this section shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord, including any interest paid on the income. [1991 c 220 § 1; 1989 c 342 § 10; 1983 c 264 § 8; 1973 1st ex.s. c 207 § 31.]

59.18.312 Writ of restitution—Storage and sale of tenant’s property—Use of proceeds from sale—Service by sheriff, form. (1) A landlord shall, upon the execution of a writ of restitution by the sheriff, enter and take possession of any property of the tenant found on the premises. The landlord may store the property in any reasonably secure place, including the premises, and sell or dispose of the property as provided under subsection (3) of this section. The landlord must store the property if the tenant serves a written request to do so on the landlord or the landlord’s representative by any of the methods described in RCW 59.18.365 no later than three days after service of the writ. A landlord may elect to store the property without such a request unless the tenant or the tenant’s representative objects to the storage of the property. If the tenant or the tenant’s representative objects to the storage of the property or the landlord elects not to store the property because the tenant has not served a written request on the landlord to do so, the property shall be deposited upon the nearest public property and may not be stored by the landlord. If the landlord knows that the tenant is a person with a disability as defined in RCW 49.60.040 (as amended by chapter 317, Laws of 2007) and the disability impairs or prevents the tenant or the tenant’s representative from making a written request for storage, it must be presumed that the tenant has requested the storage of the property as provided in this section unless the tenant objects in writing.

(2) Property stored under this section shall be returned to the tenant after the tenant has paid the actual or reasonable drayage and storage costs, whichever is less, or until it is sold or disposed of by the landlord in accordance with subsection (3) of this section.

(3) Prior to the sale of property stored pursuant to this section with a cumulative value of over one hundred dollars, the landlord shall notify the tenant of the pending sale. After thirty days from the date the notice of the sale is mailed or personally delivered to the tenant’s last known address, the landlord may sell the property, including personal papers, family pictures, and keepsakes, and dispose of any property not sold.

If the property that is being stored has a cumulative value of one hundred dollars or less, then the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes. Prior to the sale or disposal of property stored pursuant to this section with a cumulative value of one hundred dollars or less, the landlord shall notify the tenant of the pending sale or disposal. The notice shall either be mailed to the tenant’s last

known address or personally delivered to the tenant. After seven days from the date the notice is mailed or delivered to the tenant, the landlord may sell or dispose of the property.

The landlord may apply any income derived from the sale of the tenant’s property against moneys due the landlord for drayage and storage of the property. The amount of sale proceeds that the landlord may apply towards such costs may not exceed the actual or reasonable costs for drayage and storage of the property, whichever is less. Any excess income derived from the sale of such property shall be held by the landlord for the benefit of the tenant for a period of one year from the date of the sale. If no claim is made or action commenced by the tenant for the recovery of the excess income prior to the expiration of that period of time, then the balance shall be treated as abandoned property and deposited by the landlord with the department of revenue pursuant to chapter 63.29 RCW.

(4) Nothing in this section shall be construed as creating a right of distress for rent.

(5) When serving a tenant with a writ of restitution pursuant to RCW 59.12.100 and 59.18.410, the sheriff shall provide written notice to the tenant that: (a) Upon execution of the writ, the landlord must store the tenant’s property only if the tenant serves a written request on the landlord to do so no later than three days after service of the writ; (b) the notice to the landlord requesting storage may be served by personally delivering or mailing a copy of the request to the landlord at the address identified in, or by facsimile to the facsimile number listed on, the form described under subsection (6) of this section; (c) if the tenant has not made such a written request to the landlord, the landlord may elect to either store the tenant’s property or place the tenant’s property on the nearest public property unless the tenant objects; (d) if the property is stored, it may not be returned to the tenant unless the tenant pays the actual or reasonable costs of drayage and storage, whichever is less, within thirty days; (e) if the tenant or the tenant’s representative objects to storage of the property, it will not be stored but will be placed on the nearest public property; and (f) the landlord may sell or otherwise dispose of the property as provided in subsection (3) of this section if the landlord provides written notice to the tenant first.

(6) When serving a tenant with a writ of restitution under subsection (5) of this section, the sheriff shall also serve the tenant with a form provided by the landlord that can be used to request the landlord to store the tenant’s property, which must be substantially in the following form:

REQUEST FOR STORAGE OF PERSONAL PROPERTY
.....
Name of Plaintiff
.....
Name(s) of Tenant(s)

I/we hereby request the landlord to store our personal property. I/we understand that I/we am/are responsible for the actual or reasonable costs of moving and storing the property, whichever is less. If I/we fail to pay these costs, the landlord may sell or dispose of the property pursuant to and within the time frame permitted under RCW 59.18.312(3).

Any notice of sale required under RCW 59.18.312(3) must be sent to the tenants at the following address:

.....
.....

IF NO ADDRESS IS PROVIDED, NOTICE OF SALE WILL BE SENT TO THE LAST KNOWN ADDRESS OF THE TENANT(S)

Dated:

.....
Tenant-Print Name

.....
Tenant-Print Name

This notice may be delivered or mailed to the landlord or the landlord’s representative at the following address:

.....
.....

This notice may also be served by facsimile to the landlord or the landlord’s representative at:

.....
Facsimile Number

IMPORTANT

IF YOU WANT YOUR LANDLORD TO STORE YOUR PROPERTY, THIS WRITTEN REQUEST MUST BE RECEIVED BY THE LANDLORD NO LATER THAN THREE (3) DAYS AFTER THE SHERIFF SERVES THE WRIT OF RESTITUTION. YOU SHOULD RETAIN PROOF OF SERVICE. [2008 c 43 § 1; 1992 c 38 § 8.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

59.18.315 Mediation of disputes by independent third party. The landlord and tenant may agree in writing to submit any dispute arising under the provisions of this chapter or under the terms, conditions, or performance of the rental agreement, to mediation by an independent third party. The parties may agree to submit any dispute to mediation before exercising their right to arbitration under RCW 59.18.320. [1983 c 264 § 11.]

59.18.320 Arbitration—Authorized—Exceptions—Notice—Procedure. (1) The landlord and tenant may agree, in writing, except as provided in RCW 59.18.230(2)(e), to submit to arbitration, in conformity with the provisions of this section, any controversy arising under the provisions of this chapter, except the following:

(a) Controversies regarding the existence of defects covered in subsections (1) and (2) of RCW 59.18.070: PROVIDED, That this exception shall apply only before the implementation of any remedy by the tenant;

(b) Any situation where court action has been started by either landlord or tenant to enforce rights under this chapter;

(2008 Ed.)

when the court action substantially affects the controversy, including but not limited to:

(i) Court action pursuant to subsections (2) and (3) of RCW 59.18.090 and subsections (1) and (2) of RCW 59.18.160; and

(ii) Any unlawful detainer action filed by the landlord pursuant to chapter 59.12 RCW.

(2) The party initiating arbitration under subsection (1) of this section shall give reasonable notice to the other party or parties.

(3) Except as otherwise provided in this section, the arbitration process shall be administered by any arbitrator agreed upon by the parties at the time the dispute arises: PROVIDED, That the procedures shall comply with the requirements of chapter 7.04A RCW (relating to arbitration) and of this chapter. [2005 c 433 § 45; 1973 1st ex.s. c 207 § 32.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

59.18.330 Arbitration—Application—Hearings—Decisions. (1) Unless otherwise mutually agreed to, in the event a controversy arises under RCW 59.18.320 the landlord or tenant, or both, shall complete an application for arbitration and deliver it to the selected arbitrator.

(2) The arbitrator so designated shall schedule a hearing to be held no later than ten days following receipt of notice of the controversy, except as provided in RCW 59.18.350.

(3) The arbitrator shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties, who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings may be taken. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator shall have the power to administer oaths, to issue subpoenas, to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the arbitrator material to a just determination of the issues in dispute. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the arbitrator may invoke the jurisdiction of any superior court, and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof.

(4) Within five days after conclusion of the hearing, the arbitrator shall make a written decision upon the issues presented, a copy of which shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The determination of the dispute made by the arbitrator shall be final and binding upon both parties.

(5) If a defective condition exists which affects more than one dwelling unit in a similar manner, the arbitrator may consolidate the issues of fact common to those dwelling units in a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed according to the provisions of chapter 7.04A RCW. [2005 c 433 § 46; 1973 1st ex.s. c 207 § 33.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

59.18.340 Arbitration—Fee. The administrative fee for this arbitration procedure shall be established by agreement of the parties and the arbitrator and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties: PROVIDED, That upon either party signing an affidavit to the effect that he is unable to pay his share of the fee, that portion of the fee may be waived or deferred. [1983 c 264 § 12; 1973 1st ex.s. c 207 § 34.]

59.18.350 Arbitration—Completion of arbitration after giving notice. When a party gives notice pursuant to subsection (2) of RCW 59.18.320, he must, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice pursuant to RCW 59.18.320: PROVIDED, That in no event shall the arbitrator have less than ten days to complete the arbitration process. [1973 1st ex.s. c 207 § 35.]

59.18.352 Threatening behavior by tenant—Termination of agreement—Written notice—Financial obligations. If a tenant notifies the landlord that he or she, or another tenant who shares that particular dwelling unit has been threatened by another tenant, and:

- (1) The threat was made with a firearm or other deadly weapon as defined in RCW 9A.04.110; and
 - (2) The tenant who made the threat is arrested as a result of the threatening behavior; and
 - (3) The landlord fails to file an unlawful detainer action against the tenant who threatened another tenant within seven calendar days after receiving notice of the arrest from a law enforcement agency;
- then the tenant who was threatened may terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement.

A tenant who terminates a rental agreement under this section is discharged from payment of rent for any period following the quitting date, and is entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280.

Nothing in this section shall be construed to require a landlord to terminate a rental agreement or file an unlawful detainer action. [1992 c 38 § 5.]

Intent—1992 c 38: "The legislature recognizes that tenants have a number of duties under the residential landlord tenant act. These duties include the duty to pay rent and give sufficient notice before terminating the tenancy, the duty to pay drayage and storage costs under certain circumstances, and the duty to not create a nuisance or common waste. The legislature finds that tenants are sometimes threatened by other tenants with firearms or other deadly weapons. Some landlords refuse to evict those tenants who threaten the well-being of other tenants even after an arrest has been made for the threatening behavior. The legislature also finds that some tenants who hold protective orders are still subjected to threats and acts of domestic violence. These tenants with protective orders must sometimes move quickly so that the person being restrained does not know where they reside. Tenants who move out of dwelling units because they fear for their safety often forfeit their damage deposit and last month's rent because they did not provide the requisite notice to terminate the tenancy. Some tenants remain in unsafe situations because they cannot afford to lose the money

held as a deposit by the landlord. There is no current mechanism that authorizes the suspension of the tenant's duty to give the requisite notice before terminating a tenancy if they are endangered by others. There also is no current mechanism that imposes a duty on the tenant to pay drayage and storage costs when the landlord stores his or her property after an eviction. It is the intent of the legislature to provide a mechanism for tenants who are threatened to terminate their tenancies without suffering undue economic loss, to provide additional mechanisms to allow landlords to evict tenants who endanger others, and to establish a mechanism for tenants to pay drayage and storage costs under certain circumstances when the landlord stores the tenant's property after an eviction." [1992 c 38 § 1.]

Effective date—1992 c 38: "This act shall take effect June 1, 1992." [1992 c 38 § 11.]

59.18.354 Threatening behavior by landlord—Termination of agreement—Financial obligations. If a tenant is threatened by the landlord with a firearm or other deadly weapon as defined in RCW 9A.04.110, and the threat leads to an arrest of the landlord, then the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement. The tenant is discharged from payment of rent for any period following the quitting date, and is entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280. [1992 c 38 § 6.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

59.18.360 Exemptions. A landlord and tenant may agree, in writing, to exempt themselves from the provisions of RCW 59.18.060, 59.18.100, 59.18.110, 59.18.120, 59.18.130, and 59.18.190 if the following conditions have been met:

- (1) The agreement may not appear in a standard form lease or rental agreement;
- (2) There is no substantial inequality in the bargaining position of the two parties;
- (3) The exemption does not violate the public policy of this state in favor of the ensuring safe, and sanitary housing; and
- (4) Either the local county prosecutor's office or the consumer protection division of the attorney general's office or the attorney for the tenant has approved in writing the application for exemption as complying with subsections (1) through (3) of this section. [1973 1st ex.s. c 207 § 36.]

59.18.363 Unlawful detainer action—Distressed home, previously. In an unlawful detainer action involving property that was a distressed home:

- (1) The plaintiff shall disclose to the court whether the defendant previously held title to the property that was a distressed home, and explain how the plaintiff came to acquire title;
- (2) A defendant who previously held title to the property that was a distressed home shall not be required to escrow any money pending trial when a material question of fact exists as to whether the plaintiff acquired title from the defendant directly or indirectly through a distressed home conveyance;
- (3) There must be both an automatic stay of the action and a consolidation of the action with a pending or subsequent quiet title action when a defendant claims that the

plaintiff acquired title to the property through a distressed home conveyance. [2008 c 278 § 13.]

59.18.365 Unlawful detainer action—Summons—

Form. (1) The summons must contain the names of the parties to the proceeding, the attorney or attorneys if any, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him or her. The summons must contain a street address for service of the notice of appearance or answer and, if available, a facsimile number for the plaintiff or the plaintiff’s attorney, if represented. The summons must be served and returned in the same manner as a summons in other actions is served and returned.

(2) A defendant may serve a copy of an answer or notice of appearance by any of the following methods:

(a) By delivering a copy of the answer or notice of appearance to the person who signed the summons at the street address listed on the summons;

(b) By mailing a copy of the answer or notice of appearance addressed to the person who signed the summons to the street address listed on the summons;

(c) By facsimile to the facsimile number listed on the summons. Service by facsimile is complete upon successful transmission to the facsimile number listed upon the summons;

(d) As otherwise authorized by the superior court civil rules.

(3) The summons for unlawful detainer actions for tenancies covered by this chapter shall be substantially in the following form:

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

Plaintiff, } NO.
 } EVICTION SUMMONS
vs. } (Residential)
Defendant. }

THIS IS NOTICE OF A LAWSUIT TO EVICT YOU.
PLEASE READ IT CAREFULLY.
THE DEADLINE FOR YOUR WRITTEN RESPONSE IS:
5:00 p.m., on

TO: (Name)
. (Address)

This is notice of a lawsuit to evict you from the property which you are renting. Your landlord is asking the court to terminate your tenancy, direct the sheriff to remove you and your belongings from the property, enter a money judgment against you for unpaid rent and/or damages for your use of the property, and for court costs and attorneys’ fees.

If you want to defend yourself in this lawsuit, you must respond to the eviction complaint in writing on or before the deadline stated above. You must respond in writing even if no case number has been assigned by the court yet.

(2008 Ed.)

You can respond to the complaint in writing by delivering a copy of a notice of appearance or answer to your landlord’s attorney (or your landlord if there is no attorney) by personal delivery, mailing, or facsimile to the address or facsimile number stated below **TO BE RECEIVED NO LATER THAN THE DEADLINE STATED ABOVE**. Service by facsimile is complete upon successful transmission to the facsimile number, if any, listed in the summons.

The notice of appearance or answer must include the name of this case (plaintiff(s) and defendant(s)), your name, the street address where further legal papers may be sent, your telephone number (if any), and your signature.

If there is a number on the upper right side of the eviction summons and complaint, you must also file your original notice of appearance or answer with the court clerk by the deadline for your written response.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing the summons. Within fourteen days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

You may also be instructed in a separate order to appear for a court hearing on your eviction. If you receive an order to show cause you must personally appear at the hearing on the date indicated in the order to show cause **IN ADDITION** to delivering and filing your notice of appearance or answer by the deadline stated above.

IF YOU DO NOT RESPOND TO THE COMPLAINT IN WRITING BY THE DEADLINE STATED ABOVE YOU WILL LOSE BY DEFAULT. YOUR LANDLORD MAY PROCEED WITH THE LAWSUIT, EVEN IF YOU HAVE MOVED OUT OF THE PROPERTY.

The notice of appearance or answer must be delivered to:

.....
Name
.....
Street Address
.....
Telephone Number
.....
Facsimile Number (Required
if Available)

[2008 c 75 § 1; 2006 c 51 § 1; 2005 c 130 § 3; 1989 c 342 § 15.]

59.18.370 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Application—Order—Hearing. The plaintiff, at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, upon filing the complaint, may apply to the superior court in which the action is pending for an order directing the defendant to appear and show cause, if any he or she has, why a writ of restitution should not issue

restoring to the plaintiff possession of the property in the complaint described, and the judge shall by order fix a time and place for a hearing of the motion, which shall not be less than seven nor more than thirty days from the date of service of the order upon defendant. A copy of the order, together with a copy of the summons and complaint if not previously served upon the defendant, shall be served upon the defendant. The order shall notify the defendant that if he or she fails to appear and show cause at the time and place specified by the order the court may order the sheriff to restore possession of the property to the plaintiff and may grant such other relief as may be prayed for in the complaint and provided by this chapter. [2005 c 130 § 2; 1973 1st ex.s. c 207 § 38.]

59.18.375 Forcible entry or detainer or unlawful detainer actions—Payment of rent into court registry—Writ of restitution—Notice. (1) The procedures and remedies provided by this section are optional and in addition to other procedures and remedies provided by this chapter.

(2) In an action of forcible entry, detainer, or unlawful detainer, commenced under this chapter which is based upon nonpayment of rent as provided in RCW 59.12.030(3), the defendant shall pay into the court registry the amount alleged due in the notice described in this section and continue to pay into the court registry the monthly rent as it becomes due under the terms of the rental agreement while the action is pending. Such payment is not required if the defendant submits to the court a written statement signed and sworn under penalty of perjury that sets forth the reasons why the rent alleged due in the notice is not owed. In the written statement, the defendant may provide as a reason that the rent alleged due in the notice is not owed based upon a legal or equitable defense or set-off arising out of the tenancy.

(3) A defendant must comply with subsection (2) of this section on or before the deadline date specified in the notice, which must not precede the deadline for responding to the eviction summons and complaint for unlawful detainer. If the notice is served with the eviction summons and complaint, then the deadline for complying with the notice and the deadline for responding to the eviction summons and complaint must be the same date.

(4) Failure of the defendant to comply with this section shall be grounds for the immediate issuance of a writ of restitution without further notice to the defendant and without bond directing the sheriff to deliver possession of the premises to the plaintiff. Issuance of a writ of restitution under this section shall not affect the defendant's right to schedule a hearing on the merits. If the defendant fails to comply with this section and a writ of restitution is issued, the defendant may seek a hearing on the merits and an immediate stay of the writ of restitution. To obtain a stay of the writ of restitution, the defendant must make an offer of proof to the court that the plaintiff is not entitled to possession of the property based on a legal or equitable defense arising out of the tenancy. The court shall only grant the stay upon such prior notice as the court deems appropriate to the plaintiff's attorney, or to the plaintiff if there is no attorney. The court may grant the stay on such conditions as the court deems appropriate. The court may set a show cause hearing as soon as possible, but no later than seven days from the date the stay is sought or the date the defendant moves the court for a show cause hearing. If

the court concludes at the show cause hearing that the writ of restitution should not have been issued because of any legal or equitable defense to the eviction, then the writ of restitution must be quashed and the defendant must be restored to possession.

(5) The defendant shall deliver written notice that the rent has been paid into the court registry or deliver a copy of the sworn statement referred to in subsection (2) of this section to the plaintiff by any of the following methods:

(a) By delivering a copy of the payment notice or sworn statement to the person who signed the notice to the street address listed on the notice;

(b) By mailing a copy of the payment notice or sworn statement addressed to the person who signed the notice to the street address listed on the notice;

(c) By facsimile to the facsimile number listed on the notice. Service by facsimile is complete upon successful transmission to the facsimile number listed upon the notice; or

(d) As otherwise authorized by the superior court civil rules.

(6) Before applying to the court for a writ of restitution under this section, the plaintiff must check with the clerk of the court to determine if the defendant has complied with subsection (2) of this section.

(7) If the plaintiff intends to use the procedures in this section, the plaintiff must first file the summons and complaint with the superior court of the appropriate county and deliver notice to the defendant of the payment requirements or sworn statement requirements of this section. The notice must:

(a) State that the defendant is required to comply with this section by a deadline date that is not less than seven days after the notice has been served on the defendant;

(b) Be separate from the eviction summons and complaint;

(c) Contain the names of the parties to the proceeding, the attorney or attorneys, if any, and the court in which the proceeding is being brought;

(d) Be signed and dated by the plaintiff's attorney, or by the plaintiff if there is no attorney;

(e) Contain a street address for service of the payment statement or sworn statement and, if available, a facsimile number for the landlord; and

(f) Be no less than twelve-point font type, in boldface type or capital letters where indicated below, and be substantially in the following form:

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

)	
Plaintiff,)	NO.
)	
vs.)	RCW 59.18.375
)	PAYMENT OR SWORN
)	STATEMENT REQUIREMENT
Defendant,)	
)	

TO: (Name)
..... (Address)

IMPORTANT NOTICE
READ THESE INSTRUCTIONS CAREFULLY

YOU MUST DO THE FOLLOWING BY
THE DEADLINE DATE:

THE DEADLINE DATE IS

- 1. PAY RENT INTO THE COURT REGISTRY;
OR

- 2. FILE A SWORN STATEMENT THAT YOU DO
NOT OWE THE RENT CLAIMED DUE.

IF YOU FAIL TO DO ONE OF THE ABOVE ON OR
BEFORE THE DEADLINE DATE, THE SHERIFF COULD
EVICT YOU WITHOUT A HEARING EVEN IF YOU
HAVE ALSO RECEIVED A NOTICE THAT A HEARING
HAS BEEN SCHEDULED.

YOUR LANDLORD CLAIMS YOU OWE RENT

This eviction lawsuit is based upon nonpayment of rent.
Your landlord claims you owe the following amount:
\$ The landlord is entitled to an order from the court
directing the sheriff to evict you without a hearing unless you
do the following by the deadline date:

YOU MUST DO THE FOLLOWING BY
THE DEADLINE DATE:

- 1. Pay into the court registry the amount your landlord
claims you owe set forth above and continue paying into the
court registry the monthly rent as it becomes due while this
lawsuit is pending;

OR

- 2. If you deny that you owe the amount set forth above
and you do not want to be evicted immediately without a
hearing, you must file with the clerk of the court a written
statement signed and sworn under penalty of perjury that sets
forth why you do not owe that amount.

- 3. You must deliver written notice that the rent has been
paid into the court registry OR deliver a copy of your sworn
statement to the person named below by personal delivery,
mail, or facsimile.

.....
Name

.....
Address

.....
Telephone Number

.....
Fax Number

- 4. The sworn statement must be filed IN ADDITION
TO delivering your written response to the complaint and
YOU MUST ALSO appear for any hearing that has been
scheduled.

Dated:

Signed:

(2008 Ed.)

(8) The notice authorized in this section may be served
pursuant to applicable civil rules either with a filed eviction
summons and complaint or at any time after an eviction sum-
mons and complaint have been filed with the court. If the
defendant has served a response to the eviction summons and
complaint, then the notice may be served before or with an
order to show cause as described in RCW 59.18.370.

(9) This section does not affect the defendant's right to
restore the tenancy under RCW 59.18.410. [2008 c 75 § 2;
2006 c 51 § 2; 1983 c 264 § 13.]

59.18.380 Forcible entry or detainer or unlawful
detainer actions—Writ of restitution—Answer—
Order—Stay—Bond.

At the time and place fixed for the
hearing of plaintiff's motion for a writ of restitution, the
defendant, or any person in possession or claiming posses-
sion of the property, may answer, orally or in writing, and
assert any legal or equitable defense or set-off arising out of
the tenancy. If the answer is oral the substance thereof shall
be endorsed on the complaint by the court. The court shall
examine the parties and witnesses orally to ascertain the mer-
its of the complaint and answer, and if it shall appear that the
plaintiff has the right to be restored to possession of the prop-
erty, the court shall enter an order directing the issuance of a
writ of restitution, returnable ten days after its date, restoring
to the plaintiff possession of the property and if it shall appear
to the court that there is no substantial issue of material fact
of the right of the plaintiff to be granted other relief as prayed
for in the complaint and provided for in this chapter, the court
may enter an order and judgment granting so much of such
relief as may be sustained by the proof, and the court may
grant such other relief as may be prayed for in the plaintiff's
complaint and provided for in this chapter, then the court
shall enter an order denying any relief sought by the plaintiff
for which the court has determined that the plaintiff has no
right as a matter of law: PROVIDED, That within three days
after the service of the writ of restitution the defendant, or
person in possession of the property, may, in any action for
the recovery of possession of the property for failure to pay
rent, stay the execution of the writ pending final judgment by
paying into court or to the plaintiff, as the court directs, all
rent found to be due and all the costs of the action, and in
addition by paying, on a monthly basis pending final judg-
ment, an amount equal to the monthly rent called for by the
lease or rental agreement at the time the complaint was filed:
PROVIDED FURTHER, That before any writ shall issue
prior to final judgment the plaintiff shall execute to the defen-
dant and file in the court a bond in such sum as the court may
order, with sufficient surety to be approved by the clerk, con-
ditioned that the plaintiff will prosecute his action without
delay, and will pay all costs that may be adjudged to the
defendant, and all damages which he may sustain by reason
of the writ of restitution having been issued, should the same
be wrongfully sued out. The court shall also enter an order
directing the parties to proceed to trial on the complaint and
answer in the usual manner.

If it appears to the court that the plaintiff should not be
restored to possession of the property, the court shall deny
plaintiff's motion for a writ of restitution and enter an order
directing the parties to proceed to trial within thirty days on
the complaint and answer. If it appears to the court that there

is a substantial issue of material fact as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff's complaint and provided for in this chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer, the court shall grant or deny so much of plaintiff's other relief sought and so much of defendant's defenses or set-off claimed, as may be proper. [1973 1st ex.s. c 207 § 39.]

59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant's bond. (1) The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his or her agent, or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of the court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of the premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this chapter, and also all the costs of the action. The plaintiff, his or her agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon the bond before the bond shall be approved by the clerk. After the issuance of a writ of restitution, acceptance of a payment by the landlord or plaintiff that only partially satisfies the judgment will not invalidate the writ unless pursuant to a written agreement executed by both parties. The eviction will not be postponed or stopped unless a copy of that written agreement is provided to the sheriff. It is the responsibility of the tenant or defendant to ensure a copy of the agreement is provided to the sheriff. Upon receipt of the agreement the sheriff will cease action unless ordered to do otherwise by the court. The writ of restitution and the notice that accompanies the writ of restitution required under RCW 59.18.312 shall conspicuously state in bold face type, all capitals, not less than twelve points information about partial payments as set forth in subsection (2) of this section. If the writ of restitution has been based upon a finding by the court that the tenant, subtenant, sublessee, or a person residing at the rental premises has engaged in drug-related activity or has allowed any other person to engage in drug-related activity at those premises with his or her knowledge or approval, neither the tenant, the defendant, nor a person in possession of the premises shall be entitled to post a bond in order to retain possession of the premises. The writ may be served by the sheriff, in the event he or she shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of the writ in a conspicuous place upon the premises: PROVIDED, That the sheriff shall not require any bond for the service or execution of the writ. The sheriff shall be immune from all civil liability for serving and enforcing

writs of restitution unless the sheriff is grossly negligent in carrying out his or her duty.

(2) The notice accompanying a writ of restitution required under RCW 59.18.312 shall be substantially similar to the following:

IMPORTANT NOTICE - PARTIAL PAYMENTS

YOUR LANDLORD'S ACCEPTANCE OF A PARTIAL PAYMENT FROM YOU AFTER SERVICE OF THIS WRIT OF RESTITUTION WILL NOT AUTOMATICALLY POSTPONE OR STOP YOUR EVICTION. IF YOU HAVE A WRITTEN AGREEMENT WITH YOUR LANDLORD THAT THE EVICTION WILL BE POSTPONED OR STOPPED, IT IS YOUR RESPONSIBILITY TO PROVIDE A COPY OF THE AGREEMENT TO THE SHERIFF. THE SHERIFF WILL NOT CEASE ACTION UNLESS YOU PROVIDE A COPY OF THE AGREEMENT. AT THE DIRECTION OF THE COURT THE SHERIFF MAY TAKE FURTHER ACTION.

[1997 c 255 § 1; 1989 c 342 § 11; 1988 c 150 § 3; 1973 1st ex.s. c 207 § 40.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.400 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer of defendant. On or before the day fixed for his appearance the defendant may appear and answer. The defendant in his answer may assert any legal or equitable defense or set-off arising out of the tenancy. If the complaint alleges that the tenancy should be terminated because the defendant tenant, subtenant, sublessee, or resident engaged in drug-related activity, or allowed any other person to engage in drug-related activity at the rental premises with his or her knowledge or consent, no set-off shall be allowed as a defense to the complaint. [1988 c 150 § 4; 1973 1st ex.s. c 207 § 41.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.410 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Judgment—Execution. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for the amount of damages thus assessed and for the rent, if any, found due, and the court

may award statutory costs and reasonable attorney's fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his tenancy; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. [1973 1st ex.s. c 207 § 42.]

59.18.415 Applicability to certain single family dwelling leases. The provisions of this chapter shall not apply to any lease of a single family dwelling for a period of a year or more or to any lease of a single family dwelling containing a bona fide option to purchase by the tenant: PROVIDED, That an attorney for the tenant must approve on the face of the agreement any lease exempted from the provisions of this chapter as provided for in this section. [1989 c 342 § 12; 1973 1st ex.s. c 207 § 43.]

59.18.420 RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 inapplicable. The provisions of RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 shall not apply to any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 44.]

59.18.430 Applicability to prior, existing or future leases. RCW 59.18.010 through 59.18.360 and 59.18.900 shall not apply to any lease entered into prior to July 16, 1973. All provisions of this chapter shall apply to any lease or periodic tenancy entered into on or subsequent to July 16, 1973. [1973 1st ex.s. c 207 § 47.]

59.18.440 Relocation assistance for low-income tenants—Certain cities, towns, counties, municipal corporations authorized to require. (1) Any city, town, county, or municipal corporation that is required to develop a comprehensive plan under RCW 36.70A.040(1) is authorized to require, after reasonable notice to the public and a public hearing, property owners to provide their portion of reasonable relocation assistance to low-income tenants upon the demolition, substantial rehabilitation whether due to code enforcement or any other reason, or change of use of residential property, or upon the removal of use restrictions in an assisted-housing development. No city, town, county, or municipal corporation may require property owners to provide relocation assistance to low-income tenants, as defined in this chapter, upon the demolition, substantial rehabilitation, upon the change of use of residential property, or upon the removal of use restrictions in an assisted-housing development, except as expressly authorized herein or when authorized or required by state or federal law. As used in this sec-

tion, "assisted housing development" means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(2) As used in this section, "low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

The department of community, trade, and economic development shall adopt rules defining county median income in accordance with the definitions promulgated by the federal department of housing and urban development.

(3) A requirement that property owners provide relocation assistance shall include the amounts of such assistance to be provided to low-income tenants. In determining such amounts, the jurisdiction imposing the requirement shall evaluate, and receive public testimony on, what relocation expenses displaced tenants would reasonably incur in that jurisdiction including:

- (a) Actual physical moving costs and expenses;
- (b) Advance payments required for moving into a new residence such as the cost of first and last month's rent and security and damage deposits;
- (c) Utility connection fees and deposits; and
- (d) Anticipated additional rent and utility costs in the residence for one year after relocation.

(4)(a) Relocation assistance provided to low-income tenants under this section shall not exceed two thousand dollars for each dwelling unit displaced by actions of the property owner under subsection (1) of this section. A city, town, county, or municipal corporation may make future annual adjustments to the maximum amount of relocation assistance required under this subsection in order to reflect any changes in the housing component of the consumer price index as published by the United States department of labor, bureau of labor statistics.

(b) The property owner's portion of any relocation assistance provided to low-income tenants under this section shall not exceed one-half of the required relocation assistance under (a) of this subsection in cash or services.

(c) The portion of relocation assistance not covered by the property owner under (b) of this subsection shall be paid by the city, town, county, or municipal corporation authorized to require relocation assistance under subsection (1) of this section. The relocation assistance may be paid from proceeds collected from the excise tax imposed under RCW 82.46.010.

(5) A city, town, county, or municipal corporation requiring the provision of relocation assistance under this section shall adopt policies, procedures, or regulations to implement such requirement. Such policies, procedures, or regulations shall include provisions for administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation, and shall require a decision within thirty days of a request for a hearing by either a tenant or property owner.

Judicial review of an administrative hearing decision relating to relocation assistance may be had by filing a petition, within ten days of the decision, in the superior court in

the county where the residential property is located. Judicial review shall be confined to the record of the administrative hearing and the court may reverse the decision only if the administrative findings, inferences, conclusions, or decision is:

- (a) In violation of constitutional provisions;
 - (b) In excess of the authority or jurisdiction of the administrative hearing officer;
 - (c) Made upon unlawful procedure or otherwise is contrary to law; or
 - (d) Arbitrary and capricious.
- (6) Any city, town, county, or municipal corporation may require relocation assistance, under the terms of this section, for otherwise eligible tenants whose living arrangements are exempted from the provisions of this chapter under RCW 59.18.040(3) and if the living arrangement is considered to be a rental or lease not defined as a retail sale under RCW 82.04.050.

(7)(a) Persons who move from a dwelling unit prior to the application by the owner of the dwelling unit for any governmental permit necessary for the demolition, substantial rehabilitation, or change of use of residential property or prior to any notification or filing required for condominium conversion shall not be entitled to the assistance authorized by this section.

(b) Persons who move into a dwelling unit after the application for any necessary governmental permit or after any required condominium conversion notification or filing shall not be entitled to the assistance authorized by this section if such persons receive written notice from the property owner prior to taking possession of the dwelling unit that specifically describes the activity or condition that may result in their temporary or permanent displacement and advises them of their ineligibility for relocation assistance. [1997 c 452 § 17; 1995 c 399 § 151; 1990 1st ex.s. c 17 § 49.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

59.18.450 Relocation assistance for low-income tenants—Payments not considered income—Eligibility for other assistance not affected. Relocation assistance payments received by tenants under *RCW 59.18.440 shall not be considered as income or otherwise affect the eligibility for or amount of assistance paid under any government benefit program. [1990 1st ex.s. c 17 § 50.]

***Reviser's note:** The reference in 1990 1st ex.s. c 17 § 50 to "section 50 of this act" is apparently erroneous and has been translated to RCW 59.18.440, which was 1990 1st ex.s. c 17 § 49.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

59.18.500 Gang-related activity—Legislative findings, declarations, and intent. The legislature finds and declares that the ability to feel safe and secure in one's own home and in one's own community is of primary importance. The legislature recognizes that certain gang-related activity can affect the safety of a considerable number of people in the rental premises and dwelling units. Therefore, such activ-

ity, although it may be occurring within an individual's home or the surrounding areas of an individual's home, becomes the community's concern.

The legislature intends that the remedy provided in RCW 59.18.510 be used solely to protect the health and safety of the community. The remedy is not a means for private citizens to bring malicious or unfounded actions against fellow tenants or residential neighbors for personal reasons. In determining whether the tenant's activity is the type prohibited under RCW 59.18.130(9), the court should consider the totality of the circumstances, including factors such as whether there have been numerous complaints to the landlord, damage to property, police or incident reports, reports of disturbance, and arrests. An absence of any or all of these factors does not necessarily mean gang activity is not occurring. In determining whether the tenant is engaging in gang-related activity, the court should consider the purpose and intent of RCW 59.18.510. The legislature intends to give people in the community a tool that will help them restore the health and vibrance of their community. [1998 c 276 § 4.]

59.18.510 Gang-related activity—Notice and demand the landlord commence unlawful detainer action—Petition to court—Attorneys' fees. (1)(a) Any person whose life, safety, health, or use of property is being injured or endangered by a tenant's gang-related activity, who has legal standing and resides, works in, or owns property in the same multifamily building, apartment complex, or within a one-block radius may serve the landlord with a ten-day notice and demand that the landlord commence an unlawful detainer action against the tenant. The notice and demand must set forth, in reasonable detail, facts and circumstances that lead the person to believe gang-related activity is occurring. The notice and demand shall be served by delivering a copy personally to the landlord or the landlord's agent. If the person is unable to personally serve the landlord after exercising due diligence, the person may deposit the notice and demand in the mail, postage prepaid, to the landlord's or the landlord's agent's last known address.

(b) A copy of the notice and demand must also be served upon the tenant engaging in the gang-related activity by delivering a copy personally to the tenant. However, if the person is prevented from personally serving the tenant due to threats or violence, or if personal service is not reasonable under the circumstances, the person may deposit the notice and demand in the mail, postage prepaid, to the tenant's address, or leave a copy of the notice and demand in a conspicuous location at the tenant's residence.

(2)(a) Within ten days from the time the notice and demand is served, the landlord has a duty to take reasonable steps to investigate the tenant's alleged noncompliance with RCW 59.18.130(9). The landlord must notify the person who brought the notice and demand that an investigation is occurring. The landlord has ten days from the time he or she notifies the person in which to conduct a reasonable investigation.

(b) If, after reasonable investigation, the landlord finds that the tenant is not in compliance with RCW 59.18.130(9), the landlord may proceed directly to an unlawful detainer action or take reasonable steps to ensure the tenant discontinues the prohibited activity and complies with RCW

59.18.130(9). The landlord shall notify the person who served the notice and demand of whatever action the landlord takes.

(c) If, after reasonable investigation, the landlord finds that the tenant is in compliance with RCW 59.18.130(9), the landlord shall notify the person who served the notice and demand of the landlord's findings.

(3) The person who served the notice and demand may petition the appropriate court to have the tenancy terminated and the tenant removed from the premises if: (a) Within ten days of service of the notice and demand, the tenant fails to discontinue the gang-related activity and the landlord fails to conduct a reasonable investigation; or (b) the landlord notifies the person that the landlord conducted a reasonable investigation and found that the tenant was not engaged in gang-related activity as prohibited under RCW 59.18.130(9); or (c) the landlord took reasonable steps to have the tenant comply with RCW 59.18.130(9), but the tenant has failed to comply within a reasonable time.

(4) If the court finds that the tenant was not in compliance with RCW 59.18.130(9), the court shall enter an order terminating the tenancy and requiring the tenant to vacate the premises. The court shall not issue the order terminating the tenancy unless it has found that the allegations of gang-related activity are corroborated by a source other than the person who has petitioned the court.

(5) The prevailing party shall recover reasonable attorneys' fees and costs. The court may impose sanctions, in addition to attorneys' fees, on a person who has brought an action under this chapter against the same tenant on more than one occasion, if the court finds the petition was brought with the intent to harass. However, the court must order the landlord to pay costs and reasonable attorneys' fees to the person petitioning for termination of the tenancy if the court finds that the landlord failed to comply with the duty to investigate, regardless of which party prevails. [1998 c 276 § 5.]

59.18.550 Drug and alcohol free housing—Program of recovery—Terms—Application of chapter. (1) For the purpose of this section, "drug and alcohol free housing" requires a rental agreement and means a dwelling in which:

(a) Each of the dwelling units on the premises is occupied or held for occupancy by at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery;

(b) The landlord is a nonprofit corporation incorporated under Title 24 RCW, a corporation for profit incorporated under Title 23B RCW, or a housing authority created under chapter 35.82 RCW, and is providing federally assisted housing as defined in chapter 59.28 RCW;

(c) The landlord provides:

(i) A drug and alcohol free environment, covering all tenants, employees, staff, agents of the landlord, and guests;

(ii) An employee who monitors the tenants for compliance with the requirements of (d) of this subsection;

(iii) Individual and group support for recovery; and

(iv) Access to a specified program of recovery; and

(d) The rental agreement is in writing and includes the following provisions:

(i) The tenant may not use, possess, or share alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription, either on or off the premises;

(ii) The tenant may not allow the tenant's guests to use, possess, or share alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription, on the premises;

(iii) The tenant must participate in a program of recovery, which specific program is described in the rental agreement;

(iv) On at least a quarterly basis the tenant must provide written verification from the tenant's program of recovery that the tenant is participating in the program of recovery and the tenant has not used alcohol or illegal drugs;

(v) The landlord has the right to require the tenant to take a urine analysis test regarding drug or alcohol usage, at the landlord's discretion and expense; and

(vi) The landlord has the right to terminate the tenant's tenancy by delivering a three-day notice to terminate with one day to comply, if a tenant living in drug and alcohol free housing uses, possesses, or shares alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription.

(2) For the purpose of this section, "program of recovery" means a verifiable program of counseling and rehabilitation treatment services, including a written plan, to assist recovering alcoholics or drug addicts to recover from their addiction to alcohol or illegal drugs while living in drug and alcohol free housing. A "program of recovery" includes Alcoholics Anonymous, Narcotics Anonymous, and similar programs.

(3) If a tenant living for less than two years in drug and alcohol free housing uses, possesses, or shares alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription, the landlord may deliver a written notice to the tenant terminating the tenancy for cause as provided in this subsection. The notice must specify the acts constituting the drug or alcohol violation and must state that the rental agreement terminates in not less than three days after delivery of the notice, at a specified date and time. The notice must also state that the tenant can cure the drug or alcohol violation by a change in conduct or otherwise within one day after delivery of the notice. If the tenant cures the violation within the one-day period, the rental agreement does not terminate. If the tenant does not cure the violation within the one-day period, the rental agreement terminates as provided in the notice. If substantially the same act that constituted a prior drug or alcohol violation of which notice was given reoccurs within six months, the landlord may terminate the rental agreement upon at least three days' written notice specifying the violation and the date and time of termination of the rental agreement. The tenant does not have a right to cure this subsequent violation.

(4) Notwithstanding subsections (1), (2), and (3) of this section, federally assisted housing that is occupied on other than a transient basis by persons who are required to abstain from possession or use of alcohol or drugs as a condition of occupancy and who pay for the use of the housing on a periodic basis, without regard to whether the payment is characterized as rent, program fees, or other fees, costs, or charges,

are covered by this chapter unless the living arrangement is exempt under RCW 59.18.040. [2003 c 382 § 1.]

59.18.570 Victim protection—Definitions. The definitions in this section apply throughout this section and RCW 59.18.575 through 59.18.585 unless the context clearly requires otherwise.

(1) "Domestic violence" has the same meaning as set forth in RCW 26.50.010.

(2) "Sexual assault" has the same meaning as set forth in RCW 70.125.030.

(3) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

(4) "Qualified third party" means any of the following people acting in their official capacity:

(a) Law enforcement officers;

(b) Persons subject to the provisions of chapter 18.120 RCW;

(c) Employees of a court of the state;

(d) Licensed mental health professionals or other licensed counselors;

(e) Employees of crime victim/witness programs as defined in RCW 7.69.020 who are trained advocates for the program; and

(f) Members of the clergy as defined in RCW 26.44.020.

(5) "Household member" means a child or adult residing with the tenant other than the perpetrator of domestic violence, stalking, or sexual assault.

(6) "Tenant screening service provider" means any non-governmental agency that provides, for a fee, background information on prospective tenants to landlords.

(7) "Credit reporting agency" has the same meaning as set forth in RCW 19.182.010(5). [2004 c 17 § 2.]

Findings—Intent—2004 c 17: "The legislature finds and declares that:

(1) Domestic violence, sexual assault, and stalking are widespread societal problems that have devastating effects for individual victims, their children, and their communities. Victims of violence may be forced to remain in unsafe situations because they are bound by residential lease agreements. The legislature finds that the inability of victims to terminate their rental agreements hinders or prevents victims from being able to safely flee domestic violence, sexual assault, or stalking. The legislature further finds that victims of these crimes who do not have access to safe housing are more likely to remain in or return to abusive or dangerous situations. Also, the legislature finds that victims of these crimes are further victimized when they are unable to obtain or retain rental housing due to their history as a victim of these crimes. The legislature further finds that evidence that a prospective tenant has been a victim of domestic violence, sexual assault, or stalking is not relevant to the decision whether to rent to that prospective tenant.

(2) By this act, the legislature intends to increase safety for victims of domestic violence, sexual assault, and stalking by removing barriers to safety and offering protection against discrimination." [2004 c 17 § 1.]

Effective date—2004 c 17: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2004]." [2004 c 17 § 7.]

59.18.575 Victim protection—Notice to landlord—Termination of rental agreement—Procedures. (1)(a) If a tenant notifies the landlord in writing that he or she or a household member was a victim of an act that constitutes a crime of domestic violence, sexual assault, or stalking, and either (a)(i) or (ii) of this subsection applies, then subsection (2) of this section applies:

(i) The tenant or the household member has a valid order for protection under one or more of the following: Chapter 7.90, 26.50, or 26.26 RCW or RCW 9A.46.040, 9A.46.050, 10.14.080, 10.99.040 (2) or (3), or 26.09.050; or

(ii) The tenant or the household member has reported the domestic violence, sexual assault, or stalking to a qualified third party acting in his or her official capacity and the qualified third party has provided the tenant or the household member a written record of the report signed by the qualified third party.

(b) When a copy of a valid order for protection or a written record of a report signed by a qualified third party, as required under (a) of this subsection, is made available to the landlord, the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement or under chapter 59.12 RCW. However, the request to terminate the rental agreement must occur within ninety days of the reported act, event, or circumstance that gave rise to the protective order or report to a qualified third party. A record of the report to a qualified third party that is provided to the tenant or household member shall consist of a document signed and dated by the qualified third party stating: (i) That the tenant or the household member notified him or her that he or she was a victim of an act or acts that constitute a crime of domestic violence, sexual assault, or stalking; (ii) the time and date the act or acts occurred; (iii) the location where the act or acts occurred; (iv) a brief description of the act or acts of domestic violence, sexual assault, or stalking; and (v) that the tenant or household member informed him or her of the name of the alleged perpetrator of the act or acts. The record of the report provided to the tenant or household member shall not include the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, or stalking. The qualified third party shall keep a copy of the record of the report and shall note on the retained copy the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, or stalking. The record of the report to a qualified third party may be accomplished by completion of a form provided by the qualified third party, in substantially the following form:

[Name of organization, agency, clinic, professional service provider]

I and/or my (household member) am/is a victim of

. . . domestic violence as defined by RCW 26.50.010.

. . . sexual assault as defined by RCW 70.125.030.

. . . stalking as defined by RCW 9A.46.110.

Briefly describe the incident of domestic violence, sexual assault, or stalking:

The incident(s) that I rely on in support of this declaration occurred on the following date(s) and time(s) and at the following location(s):

The incident(s) that I rely on in support of this declaration were committed by the following person(s):

I state under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Dated at (city) . . , Washington, this . . . day of , 20. . .

.....
Signature of Tenant or Household Member

I verify that I have provided to the person whose signature appears above the statutes cited in RCW 59.18.575 and that the individual was a victim of an act that constitutes a crime of domestic violence, sexual assault, or stalking, and that the individual informed me of the name of the alleged perpetrator of the act. Dated this . . . day of , 20. . .

.....
Signature of authorized officer/employee of (Organization, agency, clinic, professional service provider)

(2) A tenant who terminates a rental agreement under this section is discharged from the payment of rent for any period following the last day of the month of the quitting date. The tenant shall remain liable for the rent for the month in which he or she terminated the rental agreement unless the termination is in accordance with RCW 59.18.200(1). Notwithstanding lease provisions that allow for forfeiture of a deposit for early termination, a tenant who terminates under this section is entitled to the return of the full deposit, subject to RCW 59.18.020 and 59.18.280. Other tenants who are parties to the rental agreement, except household members who are the victims of sexual assault, stalking, or domestic violence, are not released from their obligations under the rental agreement or other obligations under this chapter.

(3) The provision of verification of a report under subsection (1)(b) of this section does not waive the confidential or privileged nature of the communication between a victim of domestic violence, sexual assault, or stalking with a qualified third party pursuant to RCW 5.60.060, 70.123.075, or 70.125.065. No record or evidence obtained from such disclosure may be used in any civil, administrative, or criminal proceeding against the victim unless a written waiver of applicable evidentiary privilege is obtained, except that the verification itself, and no other privileged information, under subsection (1)(b) of this section may be used in civil proceedings brought under this section. [2006 c 138 § 27; 2004 c 17 § 3.]

Short title—2006 c 138: See RCW 7.90.900.

Findings—Intent—Effective date—2004 c 17: See notes following RCW 59.18.570.

59.18.580 Victim protection—Limitation on landlord’s rental decisions. (1) A landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant’s or applicant’s or a household member’s status as a victim of domestic violence,

sexual assault, or stalking, or based on the tenant or applicant having terminated a rental agreement under RCW 59.18.575.

(2) A landlord who refuses to enter into a rental agreement in violation of this section may be liable to the tenant or applicant in a civil action for damages sustained by the tenant or applicant. The prevailing party may also recover court costs and reasonable attorneys’ fees.

(3) It is a defense to an unlawful detainer action under chapter 59.12 RCW that the action to remove the tenant and recover possession of the premises is in violation of subsection (1) of this section.

(4) This section does not prohibit adverse housing decisions based upon other lawful factors within the landlord’s knowledge. [2004 c 17 § 4.]

Findings—Intent—Effective date—2004 c 17: See notes following RCW 59.18.570.

59.18.585 Victim protection—Possession of dwelling unit—Exclusion of others—New lock or key. (1) A tenant who has obtained a court order from a court of competent jurisdiction granting him or her possession of a dwelling unit to the exclusion of one or more cotenants may request that a lock be replaced or configured for a new key at the tenant’s expense. The landlord shall, if provided a copy of the order, comply with the request and shall not provide copies of the new keys to the tenant restrained or excluded by the court’s order. This section does not release a cotenant, other than a household member who is the victim of domestic violence, sexual assault, or stalking, from liability or obligations under the rental agreement.

(2) A landlord who replaces a lock or configures for a new key of a residential housing unit in accordance with subsection (1) of this section shall be held harmless from liability for any damages that result directly from the lock change. [2004 c 17 § 5.]

Findings—Intent—Effective date—2004 c 17: See notes following RCW 59.18.570.

59.18.900 Severability—1973 1st ex.s. c 207. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act, or its application to other persons or circumstances, is not affected. [1973 1st ex.s. c 207 § 37.]

59.18.910 Severability—1989 c 342. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 342 § 18.]

59.18.911 Effective date—1989 c 342. This act shall take effect on August 1, 1989, and shall apply to landlord-tenant relationships existing on or entered into after the effective date of this act. [1989 c 342 § 19.]

Chapter 59.20 RCW

MANUFACTURED/MOBILE HOME
LANDLORD-TENANT ACT

(Formerly: Mobile Home Landlord-Tenant Act)

Sections

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59.20.300	Manufactured/mobile home communities—Notice of sale.
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59.20.900	Severability—1977 ex.s. c 279.
59.20.901	Effective date—1999 c 359.

Filing fees for unlawful detainer actions: RCW 36.18.012.

Office of manufactured housing: Chapter 59.22 RCW.

Smoke detection devices required in dwelling units: RCW 43.44.110.

59.20.010 Short title. This chapter shall be known and may be cited as the "Manufactured/Mobile Home Landlord-Tenant Act". [1999 c 359 § 1; 1977 ex.s. c 279 § 1.]

59.20.020 Rights and remedies—Obligation of good faith required. Every duty under this chapter and every act

which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [1977 ex.s. c 279 § 2.]

59.20.030 Definitions. For purposes of this chapter:

(1) "Abandoned" as it relates to a mobile home, manufactured home, or park model owned by a tenant in a mobile home park, mobile home park cooperative, or mobile home park subdivision or tenancy in a mobile home lot means the tenant has defaulted in rent and by absence and by words or actions reasonably indicates the intention not to continue tenancy;

(2) "Eligible organization" includes local governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or statewide nonprofit housing assistance organizations;

(3) "Housing authority" or "authority" means any of the public body corporate and politic created in RCW 35.82.030;

(4) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;

(5) "Local government" means a town government, city government, code city government, or county government in the state of Washington;

(6) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

(7) "Manufactured/mobile home" means either a manufactured home or a mobile home;

(8) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the United States department of housing and urban development manufactured home construction and safety act;

(9) "Mobile home lot" means a portion of a mobile home park or manufactured housing community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model;

(10) "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(11) "Mobile home park cooperative" or "manufactured housing cooperative" means real property consisting of com-

mon areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members;

(12) "Mobile home park subdivision" or "manufactured housing subdivision" means real property, whether it is called a subdivision, condominium, or planned unit development, consisting of common areas and two or more lots held for placement of mobile homes, manufactured homes, or park models in which there is private ownership of the individual lots and common, undivided ownership of the common areas by owners of the individual lots;

(13) "Notice of sale" means a notice required under RCW 59.20.300 to be delivered to all tenants of a manufactured/mobile home community and other specified parties within fourteen days after the date on which any advertisement, multiple listing, or public notice advertises that a manufactured/mobile home community is for sale;

(14) "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence;

(15) "Qualified sale of manufactured/mobile home community" means the sale, as defined in RCW 82.45.010, of land and improvements comprising a manufactured/mobile home community that is transferred in a single purchase to a qualified tenant organization or to an eligible organization for the purpose of preserving the property as a manufactured/mobile home community;

(16) "Qualified tenant organization" means a formal organization of tenants within a manufactured/mobile home community, with the only requirement for membership consisting of being a tenant;

(17) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

(18) "Tenant" means any person, except a transient, who rents a mobile home lot;

(19) "Transient" means a person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence;

(20) "Occupant" means any person, including a live-in care provider, other than a tenant, who occupies a mobile home, manufactured home, or park model and mobile home lot. [2008 c 116 § 2; 2003 c 127 § 1; 1999 c 359 § 2; 1998 c 118 § 1; 1993 c 66 § 15; 1981 c 304 § 4; 1980 c 152 § 3; 1979 ex.s. c 186 § 1; 1977 ex.s. c 279 § 3.]

Findings—Intent—Severability—2008 c 116: See notes following RCW 59.20.300.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 186 § 30.]

59.20.040 Chapter applies to rental agreements regarding mobile home lots, cooperatives, or subdivisions

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sions—Applicability of and construction with provisions of chapters 59.12 and 59.18 RCW. This chapter shall regulate and determine legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home park subdivision, where the tenant has no ownership interest in the property or in the association which owns the property, whose uses are referred to as a part of the rent structure paid by the tenant. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. Chapter 59.12 RCW shall be applicable only in implementation of the provisions of this chapter and not as an alternative remedy to this chapter which shall be exclusive where applicable: PROVIDED, That the provision of RCW 59.12.090, 59.12.100, and 59.12.170 shall not apply to any rental agreement included under the provisions of this chapter. RCW 59.18.055 and 59.18.370 through 59.18.410 shall be applicable to any action of forcible entry or detainer or unlawful detainer arising from a tenancy under the provisions of this chapter, except when a mobile home, manufactured home, or park model or a tenancy in a mobile home lot is abandoned. Rentals of mobile homes, manufactured homes, or park models themselves are governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW. [1999 c 359 § 3; 1997 c 86 § 2; 1981 c 304 § 5; 1979 ex.s. c 186 § 2; 1977 ex.s. c 279 § 4.]

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.045 Enforceability of rules against a tenant.

Rules are enforceable against a tenant only if:

(1) Their purpose is to promote the convenience, health, safety, or welfare of the residents, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities made available for the tenants generally;

(2) They are reasonably related to the purpose for which they are adopted;

(3) They apply to all tenants in a fair manner;

(4) They are not for the purpose of evading an obligation of the landlord; and

(5) They are not retaliatory or discriminatory in nature. [1993 c 66 § 18.]

59.20.050 Written rental agreement for term of one year or more required—Waiver—Exceptions—Application of section.

(1) No landlord may offer a mobile home lot for rent to anyone without offering a written rental agreement for a term of one year or more. No landlord may offer to anyone any rental agreement for a term of one year or more for which the monthly rental is greater, or the terms of payment or other material conditions more burdensome to the tenant, than any month-to-month rental agreement also offered to such tenant or prospective tenant. Anyone who desires to occupy a mobile home lot for other than a term of one year or more may have the option to be on a month-to-month basis but must waive, in writing, the right to such one year or more term: PROVIDED, That annually, at any anniversary date of the tenancy the tenant may require that the landlord provide a written rental agreement for a term of one year. No landlord

shall allow a mobile home, manufactured home, or park model to be moved into a mobile home park in this state until a written rental agreement has been signed by and is in the possession of the parties: PROVIDED, That if the landlord allows the tenant to move a mobile home, manufactured home, or park model into a mobile home park without obtaining a written rental agreement for a term of one year or more, or a written waiver of the right to a one-year term or more, the term of the tenancy shall be deemed to be for one year from the date of occupancy of the mobile home lot;

(2) The requirements of subsection (1) of this section shall not apply if:

(a) The mobile home park or part thereof has been acquired or is under imminent threat of condemnation for a public works project, or

(b) An employer-employee relationship exists between a landlord and tenant;

(3) The provisions of this section shall apply to any tenancy upon expiration of the term of any oral or written rental agreement governing such tenancy. [1999 c 359 § 4; 1981 c 304 § 37; 1980 c 152 § 4; 1979 ex.s. c 186 § 3; 1977 ex.s. c 279 § 5.]

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.060 Rental agreements—Required contents—Prohibited provisions. (1) Any mobile home space tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties, which shall contain:

(a) The terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant;

(b) Reasonable rules for guest parking which shall be clearly stated;

(c) The rules and regulations of the park;

(d) The name and address of the person who is the landlord, and if such person does not reside in the state there shall also be designated by name and address a person who resides in the county where the mobile home park is located who is authorized to act as agent for the purposes of service of notices and process. If no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered the agent;

(e) The name and address of any party who has a secured interest in the mobile home, manufactured home, or park model;

(f) A forwarding address of the tenant or the name and address of a person who would likely know the whereabouts of the tenant in the event of an emergency or an abandonment of the mobile home, manufactured home, or park model;

(g)(i) A covenant by the landlord that, except for acts or events beyond the control of the landlord, the mobile home park will not be converted to a land use that will prevent the space that is the subject of the lease from continuing to be used for its intended use for a period of three years after the beginning of the term of the rental agreement;

(ii) A rental agreement may, in the alternative, contain a statement that: "The park may be sold or otherwise transferred at any time with the result that subsequent owners may

close the mobile home park, or that the landlord may close the park at any time after the required notice." The covenant or statement required by this subsection must: (A) Appear in print that is in bold face and is larger than the other text of the rental agreement; (B) be set off by means of a box, blank space, or comparable visual device; and (C) be located directly above the tenant's signature on the rental agreement.

(h) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement;

(i) A listing of the utilities, services, and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any, to be charged;

(j) A description of the boundaries of a mobile home space sufficient to inform the tenant of the exact location of the tenant's space in relation to other tenants' spaces;

(k) A statement of the current zoning of the land on which the mobile home park is located; and

(l) A statement of the expiration date of any conditional use, temporary use, or other land use permit subject to a fixed expiration date that is necessary for the continued use of the land as a mobile home park.

(2) Any rental agreement executed between the landlord and tenant shall not contain any provision:

(a) Which allows the landlord to charge a fee for guest parking unless a violation of the rules for guest parking occurs: PROVIDED, That a fee may be charged for guest parking which covers an extended period of time as defined in the rental agreement;

(b) Which authorizes the towing or impounding of a vehicle except upon notice to the owner thereof or the tenant whose guest is the owner of the vehicle;

(c) Which allows the landlord to alter the due date for rent payment or increase the rent: (i) During the term of the rental agreement if the term is less than one year, or (ii) more frequently than annually if the term is for one year or more: PROVIDED, That a rental agreement may include an escalation clause for a pro rata share of any increase in the mobile home park's real property taxes or utility assessments or charges, over the base taxes or utility assessments or charges of the year in which the rental agreement took effect, if the clause also provides for a pro rata reduction in rent or other charges in the event of a reduction in real property taxes or utility assessments or charges, below the base year: PROVIDED FURTHER, That a rental agreement for a term exceeding one year may provide for annual increases in rent in specified amounts or by a formula specified in such agreement;

(d) By which the tenant agrees to waive or forego rights or remedies under this chapter;

(e) Allowing the landlord to charge an "entrance fee" or an "exit fee." However, an entrance fee may be charged as part of a continuing care contract as defined in RCW 70.38.025;

(f) Which allows the landlord to charge a fee for guests: PROVIDED, That a landlord may establish rules charging for guests who remain on the premises for more than fifteen days in any sixty-day period;

(g) By which the tenant agrees to waive or forego homestead rights provided by chapter 6.13 RCW. This subsection shall not prohibit such waiver after a default in rent so long as such waiver is in writing signed by the husband and wife or by an unmarried claimant and in consideration of the landlord's agreement not to terminate the tenancy for a period of time specified in the waiver if the landlord would be otherwise entitled to terminate the tenancy under this chapter; or

(h) By which, at the time the rental agreement is entered into, the landlord and tenant agree to the selection of a particular arbitrator. [2006 c 296 § 2; 2002 c 63 § 1; 1999 c 359 § 5. Prior: 1990 c 174 § 1; 1990 c 169 § 1; 1989 c 201 § 9; 1984 c 58 § 1; 1981 c 304 § 18; 1979 ex.s. c 186 § 4; 1977 ex.s. c 279 § 6.]

Prospective application—2006 c 296 § 2: "With respect to written mobile or manufactured home space rental agreements in effect on June 7, 2006, section 2 of this act applies prospectively when the term of the tenancy under the agreement is renewed." [2006 c 296 § 4.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.070 Prohibited acts by landlord. A landlord shall not:

(1) Deny any tenant the right to sell such tenant's mobile home, manufactured home, or park model within a park or require the removal of the mobile home, manufactured home, or park model from the park because of the sale thereof. Requirements for the transfer of the rental agreement are in RCW 59.20.073;

(2) Restrict the tenant's freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior structural improvements on a mobile home space: PROVIDED, That door-to-door solicitation in the mobile home park may be restricted in the rental agreement. Door-to-door solicitation does not include public officials or candidates for public office meeting or distributing information to tenants in accordance with subsection (4) of this section;

(3) Prohibit meetings by tenants of the mobile home park to discuss mobile home living and affairs, including political caucuses or forums for or speeches of public officials or candidates for public office, or meetings of organizations that represent the interest of tenants in the park, held in any of the park community or recreation halls if these halls are open for the use of the tenants, conducted at reasonable times and in an orderly manner on the premises, nor penalize any tenant for participation in such activities;

(4) Prohibit a public official or candidate for public office from meeting with or distributing information to tenants in their individual mobile homes, manufactured homes, or park models, nor penalize any tenant for participating in these meetings or receiving this information;

(5) Evict a tenant, terminate a rental agreement, decline to renew a rental agreement, increase rental or other tenant obligations, decrease services, or modify park rules in retaliation for any of the following actions on the part of a tenant taken in good faith:

(a) Filing a complaint with any state, county, or municipal governmental authority relating to any alleged violation

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by the landlord of an applicable statute, regulation, or ordinance;

(b) Requesting the landlord to comply with the provision of this chapter or other applicable statute, regulation, or ordinance of the state, county, or municipality;

(c) Filing suit against the landlord for any reason;

(d) Participation or membership in any homeowners association or group;

(6) Charge to any tenant a utility fee in excess of actual utility costs or intentionally cause termination or interruption of any tenant's utility services, including water, heat, electricity, or gas, except when an interruption of a reasonable duration is required to make necessary repairs;

(7) Remove or exclude a tenant from the premises unless this chapter is complied with or the exclusion or removal is under an appropriate court order; or

(8) Prevent the entry or require the removal of a mobile home, manufactured home, or park model for the sole reason that the mobile home has reached a certain age. Nothing in this subsection shall limit a landlords' right to exclude or expel a mobile home, manufactured home, or park model for any other reason, including but not limited to, failure to comply with fire, safety, and other provisions of local ordinances and state laws relating to mobile homes, manufactured homes, and park models, as long as the action conforms to this chapter or any other relevant statutory provision. [2003 c 127 § 2; 1999 c 359 § 6; 1993 c 66 § 16; 1987 c 253 § 1; 1984 c 58 § 2; 1981 c 304 § 19; 1980 c 152 § 5; 1979 ex.s. c 186 § 5; 1977 ex.s. c 279 § 7.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.073 Transfer of rental agreements. (1) Any rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model.

(2) A tenant who sells a mobile home, manufactured home, or park model within a park shall notify the landlord in writing of the date of the intended sale and transfer of the rental agreement at least fifteen days in advance of such intended transfer and shall notify the buyer in writing of the provisions of this section. The tenant shall verify in writing to the landlord payment of all taxes, rent, and reasonable expenses due on the mobile home, manufactured home, or park model and mobile home lot.

(3) The landlord shall notify the selling tenant, in writing, of a refusal to permit transfer of the rental agreement at least seven days in advance of such intended transfer.

(4) The landlord may require the mobile home, manufactured home, or park model to meet applicable fire and safety standards if a state or local agency responsible for the enforcement of fire and safety standards has issued a notice of violation of those standards to the tenant and those violations remain uncorrected. Upon correction of the violation to the satisfaction of the state or local agency responsible for the enforcement of that notice of violation, the landlord's refusal to permit the transfer is deemed withdrawn.

(5) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the

landlord approves or disapproves of any new tenant, and any disapproval shall be in writing. Consent to an assignment shall not be unreasonably withheld.

(6) Failure to notify the landlord in writing, as required under subsection (2) of this section; or failure of the new tenant to make a good faith attempt to arrange an interview with the landlord to discuss assignment of the rental agreement; or failure of the current or new tenant to obtain written approval of the landlord for assignment of the rental agreement, shall be grounds for disapproval of such transfer. [2003 c 127 § 3; 1999 c 359 § 7; 1993 c 66 § 17; 1981 c 304 § 20.]

Severability—1981 c 304: See note following RCW 26.16.030.

59.20.074 Rent—Liability of secured party with right to possession. (1) A secured party who has a security interest in a mobile home, manufactured home, or park model that is located within a mobile home park and who has a right to possession of the mobile home, manufactured home, or park model under *RCW 62A.9-503, shall be liable to the landlord from the date the secured party receives written notice by certified mail, return receipt requested, for rent for occupancy of the mobile home space under the same terms the tenant was paying prior to repossession, and any other reasonable expenses incurred after the receipt of the notice, until disposition of the mobile home, manufactured home, or park model under *RCW 62A.9-504. The notice of default by a tenant must state the amount of rent and the amount and nature of any reasonable expenses that the secured party is liable for payment to the landlord. The notice must also state that the secured party will be provided a copy of the rental agreement previously signed by the tenant and the landlord upon request.

(2) This section shall not affect the availability of a landlord's lien as provided in chapter 60.72 RCW.

(3) As used in this section, "security interest" shall have the same meaning as this term is defined in RCW 62A.1-201, and "secured party" shall have the same meaning as this term is defined in *RCW 62A.9-105.

(4) For purposes of this section, "reasonable expenses" means any routine maintenance and utility charges for which the tenant is liable under the rental agreement.

(5) Any rent or other reasonable expenses owed by the secured party to the landlord pursuant to this section shall be paid to the landlord prior to the removal of the mobile home, manufactured home, or park model from the mobile home park.

(6) If a secured party who has a secured interest in a mobile home, manufactured home, or park model that is located in a mobile home park becomes liable to the landlord pursuant to this section, then the relationship between the secured party and the landlord shall be governed by the rental agreement previously signed by the tenant and the landlord unless otherwise agreed, except that the term of the rental agreement shall convert to a month-to-month tenancy. No waiver is required to convert the rental agreement to a month-to-month tenancy. Either the landlord or the secured party may terminate the month-to-month tenancy upon giving written notice of thirty days or more. The secured party and the landlord are not required to execute a new rental agreement. Nothing in this section shall be construed to be a waiver of

any rights by the tenant. [1999 c 359 § 8; 1990 c 169 § 2; 1985 c 78 § 1.]

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

59.20.075 Presumption of reprisal or retaliatory action. Initiation by the landlord of any action listed in RCW 59.20.070(5) within one hundred twenty days after a good faith and lawful act by the tenant or within one hundred twenty days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: **PROVIDED**, That if the court finds that the tenant made a complaint or report to a governmental authority within one hundred twenty days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: **PROVIDED FURTHER**, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter. [1999 c 359 § 9; 1984 c 58 § 3; 1980 c 152 § 6.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.080 Grounds for termination of tenancy or occupancy or failure to renew a tenancy or occupancy—Notice—Mediation. (1) A landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140. The tenant shall be given written notice to cease the rule violation immediately. The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of the tenancy, and that the tenant shall vacate the premises within fifteen days: **PROVIDED**, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in termination: **PROVIDED FURTHER**, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes, man-

ufactured homes, or park models or mobile home, manufactured homes, or park model living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes, manufactured homes, or park models or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the effective date of such change, except that for the period of six months following April 28, 1989, the landlord shall give the tenants eighteen months' notice in advance of the proposed effective date of such change;

(f) Engaging in "criminal activity." "Criminal activity" means a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants. A park owner seeking to evict a tenant or occupant under this subsection need not produce evidence of a criminal conviction, even if the alleged misconduct constitutes a criminal offense. Notice from a law enforcement agency of criminal activity constitutes sufficient grounds, but not the only grounds, for an eviction under this subsection. Notification of the seizure of illegal drugs under RCW 59.20.155 is evidence of criminal activity and is grounds for an eviction under this subsection. The requirement that any tenant or occupant register as a sex offender under RCW 9A.44.130 is grounds for eviction under this subsection. If criminal activity is alleged to be a basis of termination, the park owner may proceed directly to an unlawful detainer action;

(g) The tenant's application for tenancy contained a material misstatement that induced the park owner to approve the tenant as a resident of the park, and the park owner discovers and acts upon the misstatement within one year of the time the resident began paying rent;

(h) If the landlord serves a tenant three fifteen-day notices within a twelve-month period to comply or vacate for failure to comply with the material terms of the rental agreement or park rules. The applicable twelve-month period shall commence on the date of the first violation;

(i) Failure of the tenant to comply with obligations imposed upon tenants by applicable provisions of municipal, county, and state codes, statutes, ordinances, and regulations, including this chapter. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(j) The tenant engages in disorderly or substantially annoying conduct upon the park premises that results in the destruction of the rights of others to the peaceful enjoyment and use of the premises. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(k) The tenant creates a nuisance that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to cease the conduct that constitutes a nuisance immediately. The notice must state that failure to cease the conduct will result in ter-

mination of the tenancy and that the tenant shall vacate the premises in five days;

(l) Any other substantial just cause that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days; or

(m) Failure to pay rent by the due date provided for in the rental agreement three or more times in a twelve-month period, commencing with the date of the first violation, after service of a five-day notice to comply or vacate.

(2) Within five days of a notice of eviction as required by subsection (1)(a) of this section, the landlord and tenant shall submit any dispute to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section. It is a defense to an eviction under subsection (1)(a) of this section that a landlord did not participate in the mediation process in good faith.

(3) Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles, as defined in RCW 59.20.030, from mobile home parks. This chapter governs the eviction of mobile homes, manufactured homes, park models, and recreational vehicles used as a primary residence from a mobile home park. [2003 c 127 § 4; 1999 c 359 § 10; 1998 c 118 § 2; 1993 c 66 § 19; 1989 c 201 § 12; 1988 c 150 § 5; 1984 c 58 § 4; 1981 c 304 § 21; 1979 ex.s. c 186 § 6; 1977 ex.s. c 279 § 8.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.090 Term of rental agreements—Renewal—Nonrenewal—Termination—Armed forces exception—

Notices. (1) Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed upon.

(2) A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent.

(3) A tenant shall notify the landlord in writing one month prior to the expiration of a rental agreement of an intention not to renew.

(4)(a) The tenant may terminate the rental agreement upon thirty days written notice whenever a change in the location of the tenant's employment requires a change in his residence, and shall not be liable for rental following such termination unless after due diligence and reasonable effort the landlord is not able to rent the mobile home lot at a fair rental. If the landlord is not able to rent the lot, the tenant

shall remain liable for the rental specified in the rental agreement until the lot is rented or the original term ends.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than thirty days notice if the tenant receives reassignment or deployment orders which do not allow greater notice. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt. [2003 c 7 § 3; 1998 c 118 § 3; 1980 c 152 § 2; 1979 ex.s. c 186 § 7; 1977 ex.s. c 279 § 9.]

Effective date—2003 c 7: See note following RCW 59.18.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.100 Improvements. Improvements, except a natural lawn, purchased and installed by a tenant on a mobile home lot shall remain the property of the tenant even though affixed to or in the ground and may be removed or disposed of by the tenant prior to the termination of the tenancy: PROVIDED, That a tenant shall leave the mobile home lot in substantially the same or better condition than upon taking possession. [1977 ex.s. c 279 § 10.]

59.20.110 Attorney's fees and costs. In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs. [1977 ex.s. c 279 § 11.]

59.20.120 Venue. Venue for any action arising under this chapter shall be in the district or superior court of the county in which the mobile home lot is located. [1977 ex.s. c 279 § 12.]

59.20.130 Duties of landlord. It shall be the duty of the landlord to:

(1) Comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park;

(2) Maintain the common premises and prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water when such condition is not the fault of the tenant;

(3) Keep any shared or common premises reasonably clean, sanitary, and safe from defects to reduce the hazards of fire or accident;

(4) Keep all common premises of the mobile home park, and vacant mobile home lots, not in the possession of tenants, free of weeds or plant growth noxious and detrimental to the health of the tenants and free from potentially injurious or unsightly objects and condition;

(5) Exterminate or make a reasonable effort to exterminate rodents, vermin, or other pests dangerous to the health and safety of the tenant whenever infestation exists on the common premises or whenever infestation occurs in the interior of a mobile home, manufactured home, or park model as a result of infestation existing on the common premises;

(6) Maintain and protect all utilities provided to the mobile home, manufactured home, or park model in good working condition. Maintenance responsibility shall be determined at that point where the normal mobile home, manufac-

tured home, or park model utilities "hook-ups" connect to those provided by the landlord or utility company;

(7) Respect the privacy of the tenants and shall have no right of entry to a mobile home, manufactured home, or park model without the prior written consent of the occupant, except in case of emergency or when the occupant has abandoned the mobile home, manufactured home, or park model. Such consent may be revoked in writing by the occupant at any time. The ownership or management shall have a right of entry upon the land upon which a mobile home, manufactured home, or park model is situated for maintenance of utilities, to insure compliance with applicable codes, statutes, ordinances, administrative rules, and the rental agreement and the rules of the park, and protection of the mobile home park at any reasonable time or in an emergency, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment. The ownership or management shall make a reasonable effort to notify the tenant of their intention of entry upon the land which a mobile home, manufactured home, or park model is located prior to entry;

(8) Allow tenants freedom of choice in the purchase of goods and services, and not unreasonably restrict access to the mobile home park for such purposes;

(9) Maintain roads within the mobile home park in good condition; and

(10) Notify each tenant within five days after a petition has been filed by the landlord for a change in the zoning of the land where the mobile home park is located and make a description of the change available to the tenant.

A landlord shall not have a duty to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, if the defective condition complained of was caused by the conduct of the tenant, the tenant's family, invitee, or other person acting under the tenant's control, or if a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. [1999 c 359 § 11; 1993 c 66 § 20; 1984 c 58 § 5; 1979 ex.s. c 186 § 8.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

Smoke detection devices required in dwelling units: RCW 43.44.110.

59.20.135 Maintenance of permanent structures—Findings and declarations—Definition. (1) The legislature finds that some mobile home park owners transfer the responsibility for the upkeep of permanent structures within the mobile home park to the park tenants. This transfer sometimes occurs after the permanent structures have been allowed to deteriorate. Many mobile home parks consist entirely of senior citizens who do not have the financial resources or physical capability to make the necessary repairs to these structures once they have fallen into disrepair. The inability of the tenants to maintain permanent structures can lead to significant safety hazards to the tenants as well as to visitors to the mobile home park. The legislature therefore finds and declares that it is in the public interest and necessary for the public health and safety to prohibit mobile home park owners from transferring the duty to maintain permanent structures in mobile home parks to the tenants.

(2) A mobile home park owner is prohibited from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the tenants of the park. A provision within a rental agreement or other document transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the park tenants is void.

(3) A "permanent structure" for purposes of this section includes the clubhouse, carports, storage sheds, or other permanent structure. A permanent structure does not include structures built or affixed by a tenant. A permanent structure includes only those structures that were provided as amenities to the park tenants.

(4) Nothing in this section shall be construed to prohibit a park owner from requiring a tenant to maintain his or her mobile home, manufactured home, or park model or yard. Nothing in this section shall be construed to prohibit a park owner from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to an organization of park tenants or to an individual park tenant when requested by the tenant organization or individual tenant. [1999 c 359 § 12; 1994 c 30 § 1.]

Effective date—1994 c 30: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1994]." [1994 c 30 § 2.]

59.20.140 Duties of tenant. It shall be the duty of the tenant to pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances and regulations, and in addition the tenant shall:

(1) Keep the mobile home lot which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose of all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant on the tenant's leased premises;

(3) Not intentionally or negligently destroy, deface, damage, impair, or remove any facilities, equipment, furniture, furnishings, fixtures or appliances provided by the landlord, or permit any member of his family, invitee, or licensee, or any person acting under his control to do so;

(4) Not permit a nuisance or common waste; and

(5) Not engage in drug-related activities as defined in RCW 59.20.080. [1988 c 150 § 6; 1979 ex.s. c 186 § 9.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.145 Live-in care provider—Not a tenant—Agreements—Guest fee. A tenant in a mobile home park may share his or her mobile home, manufactured home, or park model with any person over eighteen years of age, if that person is providing live-in home health care or live-in hospice care to the tenant under an approved plan of treatment ordered by the tenant's physician. The live-in care provider is

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not considered a tenant of the park and shall have no rights of tenancy in the park. Any agreement between the tenant and the live-in care provider does not change the terms and conditions of the rental agreement between the landlord and the tenant. The live-in care provider shall comply with the rules of the mobile home park, the rental agreement, and this chapter. The landlord may not charge a guest fee for the live-in care provider. [1999 c 359 § 13; 1993 c 152 § 1.]

59.20.150 Service of notice on landlord or tenant. (1) Any notice required by this chapter to be given to a tenant shall be served on behalf of the landlord: (a) By delivering a copy personally to the tenant; or (b) if the tenant is absent from the mobile home, manufactured home, or park model by affixing a copy of the notice in a conspicuous place on the mobile home, manufactured home, or park model and also sending a copy through the mail addressed to the tenant at the tenant's last known address.

(2) Any notice required by this chapter to be given to the landlord shall be served by the tenant in the same manner as provided for in subsection (1) of this section, or by mail to the landlord at such place as shall be expressly provided in the rental agreement.

(3) The landlord shall state in any notice of eviction required by RCW 59.20.080(1) as now or hereafter amended the specific reason for eviction in a clear and concise manner. [1999 c 359 § 14; 1979 ex.s. c 186 § 10.]

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.155 Seizure of illegal drugs—Notification of landlord. Any law enforcement agency which seizes a legend drug pursuant to a violation of chapter 69.41 RCW, a controlled substance pursuant to a violation of chapter 69.50 RCW, or an imitation controlled substance pursuant to a violation of chapter 69.52 RCW, shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure of the illegal drugs or substances. [1988 c 150 § 12.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.20.160 Moneys paid as deposit or security for performance by tenant—Written rental agreement to specify terms and conditions for retention by landlord. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a written rental agreement, such rental agreement shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the mobile home space for which the tenant is responsible, the rental agreement shall so specify. It is unlawful to charge or collect a deposit or security for performance if the parties have not entered into a written rental agreement. [1984 c 58 § 17; 1979 ex.s. c 186 § 11.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.170 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims. (1) All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a financial institution as defined by RCW 30.22.041 or licensed escrow agent located in Washington. Except as provided in subsection (2) of this section, unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address and location of the new depository. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.

(2) All moneys paid, in excess of two months' rent on the mobile home lot, to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a rental agreement shall be deposited into an interest-bearing trust account for the particular tenant. The interest accruing on the deposit in the account, minus fees charged to administer the account, shall be paid to the tenant on an annual basis. All other provisions of subsection (1) of this section shall apply to deposits under this subsection. [2004 c 136 § 2; 1999 c 359 § 15; 1979 ex.s. c 186 § 12.]

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.180 Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention. Within fourteen days after the termination of the rental agreement and vacation of the mobile home space, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the mobile home space.

The statement shall be delivered to the tenant personally or by mail to the last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above such landlord shall be liable to the tenant for the full amount of the refund due.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible. [1984 c 58 § 11; 1979 ex.s. c 186 § 13.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.190 Health and sanitation standards—Penalties. The state board of health shall adopt rules on or before January 1, 1982, setting health and sanitation standards for mobile home parks. Such rules shall be enforced by the city, county, city-county, or district health officer of the jurisdiction in which the mobile home park is located, upon notice of a violation to such health officer. Failure to remedy the violation after enforcement efforts are made may result in a fine being imposed on the park owner, or tenant as may be applicable, by the enforcing governmental body of up to one hundred dollars per day, depending on the degree of risk of injury or illness to persons in or around the park. [1988 c 126 § 1; 1981 c 304 § 22.]

Severability—1981 c 304: See note following RCW 26.16.030.

59.20.200 Landlord—Failure to carry out duties—Notice from tenant—Time limits for landlord's remedial action. If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.20.130, the tenant may, in addition to pursuit of remedies otherwise provided the tenant by law, deliver written notice to the landlord, which notice shall specify the property involved, the name of the owner, if known, and the nature of the defective condition. For the purposes of this chapter, a reasonable time for the landlord to commence remedial action after receipt of such notice by the tenant shall be, except where circumstances are beyond the landlord's control;

(1) Not more than twenty-four hours, where the defective condition is imminently hazardous to life;

(2) Not more than forty-eight hours, where the landlord fails to provide water or heat;

(3) Subject to the provisions of subsections (1) and (2) of this section, not more than seven days in the case of a repair under RCW 59.20.130(3);

(4) Not more than thirty days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed with reasonable promptness.

Where circumstances beyond the landlord's control, including the availability of financing, prevent the landlord from complying with the time limitations set forth in this section, the landlord shall endeavor to remedy the defective condition with all reasonable speed. [1984 c 58 § 6.]

Severability—1984 c 58: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 58 § 18.]

59.20.210 Landlord—Failure to carry out duties—Repairs effected by tenant—Bids—Notice—Deduction of cost from rent—Limitations. (1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.20.130, and notice of the defect is given to the landlord pursuant to RCW 59.20.200, the tenant may submit to the landlord or the landlord's designated agent by certified mail or in person at least two bids to perform the repairs necessary to correct the defective condition from licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed,

from responsible persons capable of performing such repairs. Such bids may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.20.200.

(2) If the landlord fails to commence repair of the defective condition within a reasonable time after receipt of notice from the tenant, the tenant may contract with the person submitting the lowest bid to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or the landlord's designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's mobile home space in any calendar year. When, however, the landlord is required to begin remedying the defective condition within thirty days under RCW 59.20.200, the tenant cannot contract for repairs for at least fifteen days following receipt of bids by the landlord. The total costs of repairs deducted by the tenant in any calendar year under this subsection shall not exceed the sum expressed in dollars representing one month's rental of the tenant's mobile home space.

(3) Two or more tenants shall not collectively initiate remedies under this section. Remedial action under this section shall not be initiated for conditions in the design or construction existing in a mobile home park before June 7, 1984.

(4) The provisions of this section shall not:

(a) Create a relationship of employer and employee between landlord and tenant; or

(b) Create liability under the worker's compensation act; or

(c) Constitute the tenant as an agent of the landlord for the purposes of mechanics' and materialmen's liens under chapter 60.04 RCW.

(5) Any repair work performed under this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or rule. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs in return for cash payment or a reasonable reduction in rent, the agreement to be between the parties, and this agreement does not alter the landlord's obligations under this chapter. [1999 c 359 § 16; 1984 c 58 § 8.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.220 Landlord—Failure to carry out duties—Judgment by court or arbitrator for diminished rental value and repair costs—Enforcement of judgment—Reduction in rent. (1) If a court or an arbitrator determines that:

(a) A landlord has failed to carry out a duty or duties imposed by RCW 59.20.130; and

(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord under RCW 59.20.200 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the property due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental

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value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to RCW 59.20.210 for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to contract to make further corrective repairs. The court or arbitrator shall specify a time period in which the landlord may make such repairs before the tenant may contract for such repairs. Such repairs shall not exceed the sum expressed in dollars representing one month's rental of the tenant's mobile home space in any one calendar year.

(2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the mobile home space until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise. [1999 c 359 § 17; 1984 c 58 § 9.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.230 Defective condition—Unfeasible to remedy defect—Termination of tenancy. If a court or arbitrator determines a defective condition as described in RCW 59.20.130 to be so substantial that it is unfeasible for the landlord to remedy the defect within the time allotted by RCW 59.20.200, and that the tenant should not remain on the mobile home space in its defective condition, the court or arbitrator may authorize the termination of the tenancy. The court or arbitrator shall set a reasonable time for the tenant to vacate the premises. [1984 c 58 § 10.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.240 Payment of rent condition to exercising remedies. The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded the tenant under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing. [1984 c 58 § 7.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.250 Mediation of disputes by independent third party. The landlord and tenant may agree in writing to submit any dispute arising under this chapter or under the terms, conditions, or performance of the rental agreement to mediation by an independent third party or to settle the dispute through industry mediation procedures. The parties may agree to submit any dispute to mediation before exercising their right to arbitration under RCW 59.20.260. [1984 c 58 § 12.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.260 Arbitration—Authorized—Selection of arbitrator—Procedure. (1) The landlord and tenant may agree in writing to submit a controversy arising under this chapter to arbitration. The agreement shall contain the name

of the arbitrator agreed upon by the parties or the process for selecting the arbitrator.

(2) The arbitration shall be administered under this chapter and chapter 7.04A RCW. [2005 c 433 § 47; 1984 c 58 § 13.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.270 Arbitration—Application—Hearings—Decisions. (1) If the landlord and tenant agree to submit the matter to arbitration, the parties shall complete an application for arbitration and deliver it to the selected arbitrator.

(2) The arbitrator shall schedule a hearing to be held no later than ten days following receipt of the application.

(3) Reasonable notice of the hearings shall be given to the parties, who shall appear and be heard either in person, by counsel, or by other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Hearings may be public or private. The proceedings may be recorded. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator may administer oaths, issue subpoenas, and require the attendance of witnesses and the production of books, papers, contracts, agreements, and documents deemed by the arbitrator to be material to a just determination of the issues in dispute. If a person refuses to obey a subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held under this section, the arbitrator may invoke the jurisdiction of any district or superior court, and the court shall have jurisdiction to issue an appropriate order. Failure to obey the order may be punished by the court as contempt.

(4) Within five days after the hearing, the arbitrator shall make a written decision upon the issues presented. A copy of the decision shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The decision of the arbitrator shall be final and binding upon all parties.

(5) If a dispute exists affecting more than one tenant in a similar manner, the arbitrator may with the consent of the parties consolidate the cases into a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed under chapter 7.04A RCW. [2005 c 433 § 48; 1984 c 58 § 14.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.280 Arbitration—Fee. The administrative fee for this arbitration procedure shall be established by agreement of the parties and the arbitrator and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties. However, upon either party signing an affidavit to the effect that the party is unable to pay the share of the fee, that portion of the fee may be waived or deferred. [1984 c 58 § 15.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.290 Arbitration—Completion of arbitration after giving notice. When a party gives notice of intent to arbitrate by giving reasonable notice to the other party, that party shall, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice under this section, but in no event shall the arbitrator have less than ten days to complete the arbitration process. [1984 c 58 § 16.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.300 Manufactured/mobile home communities—Notice of sale. (1) A landlord must provide a written notice of sale of a manufactured/mobile home community by certified mail or personal delivery to:

- (a) Each tenant of the manufactured/mobile home community;
- (b) The officers of any known qualified tenant organization;
- (c) The office of manufactured housing;
- (d) The local government within whose jurisdiction all or part of the manufactured/mobile home community exists;
- (e) The housing authority within whose jurisdiction all or part of the manufactured/mobile home community exists; and
- (f) The Washington state housing finance commission.

(2) A notice of sale must include:

- (a) A statement that the landlord intends to sell the manufactured/mobile home community; and
- (b) The contact information of the landlord or landlord's agent who is responsible for communicating with the qualified tenant organization or eligible organization regarding the sale of the property. [2008 c 116 § 4.]

Findings—Intent—2008 c 116: "(1) The legislature finds that:

(a) Manufactured/mobile home communities provide a significant source of homeownership opportunities for Washington residents. However, the increasing closure and conversion of manufactured/mobile home communities to other uses, combined with increasing mobile home lot rents, low vacancy rates in existing manufactured/mobile home communities, and the extremely high cost of moving homes when manufactured/mobile home communities close, increasingly make manufactured/mobile home community living insecure for manufactured/mobile home tenants.

(b) Many tenants who reside in manufactured/mobile home communities are low-income households and senior citizens and are, therefore, those residents most in need of reasonable security in the siting of their manufactured/mobile homes because of the adverse impacts on the health, safety, and welfare of tenants forced to move due to closure, change of use, or discontinuance of manufactured/mobile home communities.

(c) The preservation of manufactured/mobile home communities:

(i) Is a more economical alternative than providing new replacement housing units for tenants who are displaced from closing manufactured/mobile home communities;

(ii) Is a strategy by which all local governments can meet the affordable housing needs of their residents;

(iii) Is a strategy by which local governments planning under RCW 36.70A.040 may meet the housing element of their comprehensive plans as it relates to the provision of housing affordable to all economic sectors; and

(iv) Should be a goal of all housing authorities and local governments.

(d) The loss of manufactured/mobile home communities should not result in a net loss of affordable housing, thus compromising the ability of local governments to meet the affordable housing needs of its residents and the ability of these local governments planning under RCW 36.70A.040 to meet affordable housing goals under chapter 36.70A RCW.

(e) The closure of manufactured/mobile home communities has serious environmental, safety, and financial impacts, including:

(i) Homes that cannot be moved to other locations add to Washington's landfills;

(ii) Homes that are abandoned might attract crime; and

(iii) Vacant homes that will not be reoccupied need to be tested for

asbestos and lead, and these toxic materials need to be removed prior to demolition.

(f) The self-governance aspect of tenants owning manufactured/mobile home communities results in a lesser usage of police resources as tenants experience fewer societal conflicts when they own the real estate as well as their homes.

(g) Housing authorities, by their creation and purpose, are the public body corporate and politic of the city or county responsible for addressing the availability of safe and sanitary dwelling accommodations available to persons of low income, senior citizens, and others.

(2) It is the intent of the legislature to encourage and facilitate the preservation of existing manufactured/mobile home communities in the event of voluntary sales of manufactured/mobile home communities and, to the extent necessary and possible, to involve manufactured/mobile home community tenants or an eligible organization representing the interests of tenants, such as a nonprofit organization, housing authority, or local government, in the preservation of manufactured/mobile home communities." [2008 c 116 § 1.]

Severability—2008 c 116: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 116 § 8.]

59.20.305 Manufactured/mobile home communities—Good faith negotiations. A landlord intending to sell a manufactured/mobile home community is encouraged to negotiate in good faith with qualified tenant organizations and eligible organizations. [2008 c 116 § 5.]

Findings—Intent—Severability—2008 c 116: See notes following RCW 59.20.300.

59.20.900 Severability—1977 ex.s. c 279. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 279 § 13.]

59.20.901 Effective date—1999 c 359. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999. [1999 c 359 § 21.]

Chapter 59.21 RCW

MOBILE HOME RELOCATION ASSISTANCE

Sections

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59.21.904	Severability—1995 c 122.
59.21.905	Effective date—1995 c 122.

59.21.005 Declaration—Purpose. The legislature recognizes that it is quite costly to move a mobile home. Many mobile home tenants need financial assistance in order to move their mobile homes from a mobile home park. The purpose of this chapter is to provide a mechanism for assisting mobile home tenants to relocate to suitable alternative sites when the mobile home park in which they reside is closed or converted to another use. [1995 c 122 § 2; 1991 c 327 § 8.]

59.21.006 Declaration—Intent—Purpose—1995 c 122. The legislature recognizes that, in the decision of *Guimont et al. v. Clarke*, 121 Wn.2d (1993), the Washington supreme court held the mobile home relocation assistance program of chapter 59.21 RCW invalid for its monetary burden on mobile home park-owners. However, during the program’s operation, substantial funds were validly collected from mobile home owners and accumulated in the mobile home park relocation fund, created under the program. The legislature intends to utilize those funds for the purposes for which they were collected. The legislature also recognizes that, for a period of almost three years since this state’s courts invalidated the program, no such assistance was available. The most needy tenants may have been forced to sell or abandon rather than relocate their homes in the face of park closures. Because the purpose of the program was to assist relocation, those persons should be compensated in a like manner to those who could afford to pay for relocation without assistance. To that end, the legislature has: (1) Repealed RCW 59.21.020, 59.21.035, 59.21.080, 59.21.085, 59.21.095, 59.21.900, 59.21.901, 59.21.902, and 59.21.903; (2) amended RCW 59.21.010, 59.21.030, 59.21.040, 59.21.050, 59.21.070, *59.21.100, 59.21.110, and 43.84.092; (3) reenacted without amendment RCW 59.21.005 and **59.21.105; and (4) added new sections to chapter 59.21 RCW. [1995 c 122 § 1.]

Reviser’s note: *(1) RCW 59.21.100 and 59.21.110 were not amended by 1995 c 122.

***(2) RCW 59.21.105 was reenacted and amended by 1995 c 122.

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

(1) "Director" means the director of the department of community, trade, and economic development.

(2) "Department" means the department of community, trade, and economic development.

(3) "Fund" means the mobile home park relocation fund established under RCW 59.21.050.

(4) "Mobile home park" or "park" means real property that is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

(5) "Landlord" or "park-owner" means the owner of the mobile home park that is being closed at the time relocation assistance is provided.

(6) "Relocate" means to remove the mobile home from the mobile home park being closed and to either reinstall it in another location or to demolish it and purchase another

mobile/manufactured home constructed to the standards set by the department of housing and urban development.

(7) "Relocation assistance" means the monetary assistance provided under this chapter. [2002 c 257 § 1; 1998 c 124 § 1; 1995 c 122 § 3; 1991 c 327 § 10; 1990 c 171 § 1; 1989 c 201 § 1.]

Effective date—2002 c 257: "This act takes effect January 1, 2003." [2002 c 257 § 5.]

59.21.021 Relocation assistance—Eligibility after December 31, 1995—Amounts of assistance—Priority for distribution of assistance. (1) If a mobile home park is closed or converted to another use after December 31, 1995, eligible tenants shall be entitled to assistance on a first-come, first-serve basis. The department shall give priority for distribution of relocation assistance to tenants residing in parks that are closed as a result of park-owner fraud or as a result of health and safety concerns as determined by the local board of health. Payments shall be made upon the department's verification of eligibility, subject to the availability of remaining funds. Eligibility for relocation assistance funds is limited to low-income households. As used in this section, "low-income household" means a single person, family, or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the mobile or manufactured home is located.

(2) Assistance for closures occurring after December 31, 1995, is limited to persons who maintain ownership of and relocate their mobile home or who dispose of a home not relocatable to a new site.

(3) Persons who removed and disposed of their mobile home or maintained ownership of and relocated their mobile homes are entitled to reimbursement of actual relocation expenses up to twelve thousand dollars for a double-wide home and up to seven thousand five hundred dollars for a single-wide home.

(4) Any individual or organization may apply to receive funds from the mobile home park relocation fund, for use in combination with funds from public or private sources, toward relocation of tenants eligible under this section. Funds received from the mobile home park relocation fund shall only be used for relocation assistance expenses or other mobile/manufactured home ownership expenses, that include down payment assistance, if the owners are not planning to relocate their mobile home as long as their original home is removed from the park. [2005 c 399 § 5; 2002 c 257 § 2; 1998 c 124 § 2; 1995 c 122 § 5.]

Effective date—2002 c 257: See note following RCW 59.21.010.

59.21.025 Relocation assistance—Sources other than fund—Reductions. (1) If financial assistance for relocation is obtained from sources other than the mobile home park relocation fund established under this chapter, then the relocation assistance provided to any person under this chapter shall be reduced as necessary to ensure that no person receives from all sources combined more than: (a) That person's actual cost of relocation; or (b) seven thousand dollars for a double-wide mobile home and three thousand five hundred dollars for a single-wide mobile home.

(2) When a person receives financial assistance for relocation from a source other than the mobile home park relocation assistance fund, then the assistance received from the fund will be the difference between the maximum amount to which a person is entitled under RCW 59.21.021(3) and the amount of assistance received from the outside source.

(3) If the amount of assistance received from an outside source exceeds the maximum amounts of assistance to which a person is entitled under RCW 59.21.021(3), then that person will not receive any assistance from the mobile home park relocation assistance fund. [1998 c 124 § 3; 1995 c 122 § 6.]

59.21.030 Notice—Requirements. (1) Notice required by RCW 59.20.080 before park closure or conversion of the park, whether twelve months or longer, shall be given to the director and all tenants in writing, and posted at all park entrances. The notice required by RCW 59.20.080 must also meet the following requirements:

(a) A copy of the closure notice must be provided with all month-to-month rental agreements signed after the original park closure notice date;

(b) Notice to the director must include: (i) A good faith estimate of the timetable for removal of the mobile homes; (ii) the reason for closure; and (iii) a list of the names and mailing addresses of the current registered park tenants. Notice required under this subsection must be sent to the director within ten business days of the date notice was given to all tenants as required by RCW 59.20.080; and

(c) Notice must be recorded in the office of the county auditor for the county where the mobile home park is located.

(2) The department must mail every tenant an application and information on relocation assistance within ten business days of receipt of the notice required in subsection (1) of this section. [2006 c 296 § 1; 1995 c 122 § 7; 1990 c 171 § 3; 1989 c 201 § 3.]

59.21.040 Relocation assistance—Exemptions. A tenant is not entitled to relocation assistance under this chapter if: (1) The tenant has given notice to the landlord of his or her intent to vacate the park and terminate the tenancy before any written notice of closure pursuant to RCW 59.20.080(1)(e) has been given; (2) the tenant purchased a mobile home already situated in the park or moved a mobile home into the park after a written notice of closure pursuant to RCW 59.20.090 has been given and the person received actual prior notice of the change or closure; or (3) the tenant receives assistance from an outside source that exceeds the maximum amounts of assistance to which a person is entitled under RCW 59.21.021(3). However, no tenant may be denied relocation assistance under subsection (1) of this section if the tenant has remained on the premises and continued paying rent for a period of at least six months after giving notice of intent to vacate and before receiving formal notice of a closure or change of use. [1998 c 124 § 4; 1995 c 122 § 8; 1989 c 201 § 4.]

59.21.050 Relocation fund—Administration—Tenant's application—Form. (1) The existence of the mobile home park relocation fund in the custody of the state treasurer

is affirmed. Expenditures from the fund may be used only for relocation assistance awarded under this chapter. Only the director or the director's designee may authorize expenditures from the fund. All relocation payments to tenants shall be made from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) A park tenant is eligible for assistance under this chapter only after an application is submitted by that tenant or an organization acting on the tenant's account under RCW 59.21.021(4) on a form approved by the director which shall include:

(a) For those persons who maintained ownership of and relocated their homes or removed their homes from the park: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; (iii) a copy of the contract for relocating the home which includes the date of relocation, or other proof of actual relocation expenses incurred on a date certain; and (iv) a statement of any other available assistance;

(b) For those persons who sold their homes and incurred no relocation expenses: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; and (iii) a copy of the record of title transfer issued by the department of licensing when the tenant sold the home rather than relocate it due to park closure or conversion.

(3) The department may deduct a percentage amount of the fee collected under RCW 59.21.055, not to exceed five percent of the fees received, for administration expenses incurred by the department. [2002 c 257 § 4; 1998 c 124 § 5; 1995 c 122 § 9; 1991 sp.s. c 13 § 74; 1991 c 327 § 12; 1990 c 171 § 5; 1989 c 201 § 5.]

Effective date—2002 c 257: See note following RCW 59.21.010.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

59.21.055 Fee imposed on transfer of title—Circumstances—Deposit—Rules. (1) A one hundred dollar fee is imposed upon the purchaser on every transfer of title issued under chapter 46.12 RCW on a mobile home one year old or more where (a) the ownership of the mobile home changes; and (b) the mobile home is located in a mobile home park. A transfer of title does not include the addition or deletion of a spouse co-owner or secured interest.

(2) Mobile homes with a sale price of less than five thousand dollars are not subject to the fee imposed in subsection (1) of this section.

(3) The department of licensing or its agents shall collect the fee when processing an application for transfer of title. The fee collected under this section shall be forwarded to the state treasurer for deposit into the mobile home park relocation fund created in this chapter. The department of licensing may deduct a percentage amount, not to exceed two percent of the fees collected, for the collection expenses incurred by the department of licensing.

(2008 Ed.)

(4) The department of licensing and the state treasurer may adopt rules necessary to carry out this section. [2002 c 257 § 3.]

Effective date—2002 c 257: See note following RCW 59.21.010.

59.21.070 Rental agreement—Covenants. If the rental agreement includes a covenant by the landlord as described in RCW 59.20.060(1)(g)(i), the covenant runs with the land and is binding upon the purchasers, successors, and assigns of the landlord. [1995 c 122 § 10; 1989 c 201 § 10.]

59.21.100 Tenants—Waiver of rights—Attorney approval. A tenant may, with the written approval of his or her attorney-at-law, waive or compromise their right to relocation assistance under this chapter. [1989 c 201 § 14.]

59.21.105 Existing older mobile homes—Forced relocation—Code waiver. (1) The legislature finds that existing older mobile homes provide affordable housing to many persons, and that requiring these homes that are legally located in mobile home parks to meet new fire, safety, and construction codes because they are relocating due to the closure or conversion of the mobile home park, compounds the economic burden facing these tenants.

(2) Mobile homes that are relocated due to either the closure or conversion of a mobile home park, may not be required by any city or county to comply with the requirements of any applicable fire, safety, or construction code for the sole reason of its relocation. This section shall only apply if the original occupancy classification of the building is not changed as a result of the move.

(3) This section shall not apply to mobile homes that are substantially remodeled or rehabilitated, nor to any work performed in compliance with installation requirements. For the purpose of determining whether a moved mobile home has been substantially remodeled or rebuilt, any cost relating to preparation for relocation or installation shall not be considered. [1995 c 122 § 11; 1991 c 327 § 16.]

59.21.110 Violations—Penalty. Any person who intentionally violates, intentionally attempts to evade, or intentionally evades the provisions of this chapter is guilty of a misdemeanor. [1991 c 327 § 14; 1989 c 201 § 15.]

59.21.904 Severability—1995 c 122. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 122 § 14.]

59.21.905 Effective date—1995 c 122. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 20, 1995]. [1995 c 122 § 15.]

Chapter 59.22 RCW

OFFICE OF MANUFACTURED HOUSING—
RESIDENT-OWNED MOBILE HOME PARKS

Sections

59.22.010	Legislative findings.
59.22.020	Definitions.
59.22.030	Mobile home park purchase account.
59.22.032	Loans for mobile home park conversion costs—Resident eligibility—Flexible repayment terms.
59.22.034	Loan duration—Rate of interest—Security—Administration of loan.
59.22.036	Requirements for financing approval—Department's duties.
59.22.038	Eligibility for loans—Amount of loans—Determining factors.
59.22.039	Technical assistance for mobile home park conversion.
59.22.050	Office of manufactured housing—Duties.
59.22.070	Manufactured housing account.
59.22.080	Transfer of title—Fee—Department of licensing—Rules.
59.22.085	Transfer of title—Fee supersedes other fee.
59.22.090	Manufactured housing task force—Duties—Membership.

Manufactured/mobile home landlord-tenant act: Chapter 59.20 RCW.

59.22.010 Legislative findings. (1) The legislature finds:

(a) That manufactured housing and mobile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing; but rising costs of mobile home park development and operation, as well as turnover in ownership, has resulted in mobile home park living becoming unaffordable to the low income, elderly, poor and infirmed, resulting in increased numbers of homeless persons, and persons who must look to public housing and public programs, increasing the burden on the state to meet the housing needs of its residents;

(b) That state government can play a vital role in addressing the problems confronted by mobile home park residents by providing assistance which makes it possible for mobile home park residents to acquire the mobile home parks in which they reside and convert them to resident ownership; and

(c) That to accomplish this purpose, information and technical support shall be made available through the department.

(2) Therefore, it is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile home park residents from both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market. [1995 c 399 § 154; 1987 c 482 § 1.]

59.22.020 Definitions. The following definitions shall apply throughout this chapter unless the context clearly requires otherwise:

(1) "Account" means the *mobile home affairs account created under RCW 59.22.070.

(2) "Affordable" means that, where feasible, low-income residents should not pay more than thirty percent of their monthly income for housing costs.

(3) "Conversion costs" includes the cost of acquiring the mobile home park, the costs of planning and processing the

conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a government agency or lender for the project.

(4) "Department" means the department of community, trade, and economic development.

(5) "Fee" means the mobile home title transfer fee imposed under RCW 59.22.080.

(6) "Fund" or "park purchase account" means the mobile home park purchase account created pursuant to RCW 59.22.030.

(7) "Housing costs" means the total cost of owning, occupying, and maintaining a mobile home and a lot or space in a mobile home park.

(8) "Individual interest in a mobile home park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobile home park for a period of not less than either fifteen years or the life of the holder. Individual interests in a mobile home park include, but are not limited to, the following:

(a) Ownership of a lot or space in a mobile home park or subdivision;

(b) A membership or shares in a stock cooperative, or a limited equity housing cooperative; or

(c) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobile home park.

(9) "Low-income resident" means an individual or household who resided in the mobile home park prior to application for a loan pursuant to this chapter and with an annual income at or below eighty percent of the median income for the county of standard metropolitan statistical area of residence. Net worth shall be considered in the calculation of income with the exception of the resident's mobile/manufactured home which is used as their primary residence.

(10) "Low-income spaces" means those spaces in a mobile home park operated by a resident organization which are occupied by low-income residents.

(11) "Mobile home park" means a mobile home park, as defined in **RCW 59.20.030(4), or a manufactured home park subdivision as defined by **RCW 59.20.030(6) created by the conversion to resident ownership of a mobile home park.

(12) "Resident organization" means a group of mobile home park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobile home park in which they reside and converting the mobile home park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobile home park at the time of application for assistance from the department.

(13) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobile home park which entitles the resident organization to control the operations of the mobile home park for a term of no less than fifteen years, or the ownership of individual interests in a mobile home park, or both.

(14) "Landlord" shall have the same meaning as it does in RCW 59.20.030.

(15) "Manufactured housing" means residences constructed on one or more chassis for transportation, and which bear an insignia issued by a state or federal regulatory agency indicating compliance with all applicable construction standards of the United States department of housing and urban development.

(16) "Mobile home" shall have the same meaning as it does in RCW 46.04.302.

(17) "Mobile home lot" shall have the same meaning as it does in RCW 59.20.030.

(18) "Tenant" means a person who rents a mobile home lot for a term of one month or longer and owns the mobile home on the lot. [1995 c 399 § 155; 1993 c 66 § 9; 1991 c 327 § 2; 1988 c 280 § 3; 1987 c 482 § 2.]

Reviser's note: *(1) The "mobile home affairs account" was changed to the "manufactured housing account" by 2007 c 432 § 10.

** (2) RCW 59.20.030 was amended by 1999 c 359 § 2, changing subsection (4) to subsection (6) and subsection (6) to subsection (8). RCW 59.20.030 was subsequently amended by 2008 c 116 § 2, changing subsection (6) to subsection (10) and subsection (8) to subsection (12).

59.22.030 Mobile home park purchase account. The mobile home park purchase account is hereby created in the state treasury. The purpose of this account is to provide loans according to the provisions of this chapter and for related administrative costs of the department. The account shall include appropriations, loan repayments, and any other money from private sources made available to the state for the purposes of this chapter. Owners of mobile home parks shall not be assessed for the purposes of this account. [1991 sp.s. c 13 § 89; 1987 c 482 § 4.]

Reviser's note: Substantial portions of 1987 c 482, authorizing loans from the mobile home park purchase fund [account], were vetoed by the governor.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

59.22.032 Loans for mobile home park conversion costs—Resident eligibility—Flexible repayment terms.

(1) The department may make loans from the fund to resident organizations for the purpose of financing mobile home park conversion costs. The department may only make loans to resident organizations of mobile home parks where a significant portion of the residents are low-income or infirm.

(2) The department may make loans from the fund to low-income residents of mobile home parks converted to resident ownership or which plan to convert to resident ownership. The purpose of providing loans under this subsection is to reduce the monthly housing costs for low-income residents to an affordable level. The department may establish flexible repayment terms for loans provided under this subsection if the terms are necessary to reduce the monthly housing costs for low-income residents to an affordable level, and do not represent an unacceptable risk to the security of the fund. Flexible repayment terms may include, but are not limited to, graduated payment schedules with negative amortization. [1993 c 66 § 10.]

59.22.034 Loan duration—Rate of interest—Security—Administration of loan. (1) Any loans granted under RCW 59.22.032 shall be for a term of no more than thirty years.

(2008 Ed.)

(2) The department shall establish the rate of interest to be paid on loans made from the fund.

(3) The department shall obtain security for loans made under this chapter. The security may be in the form of a note, deed of trust, assignment of lease, or other form of security on real or personal property which the department determines is adequate to protect the security of the fund and the interests of the state. To the extent applicable, the documents evidencing the security shall be recorded or referenced in a recorded document in the office of the county auditor of the county in which the mobile home park is located.

(4) The department may contract with private lenders, nonprofit organizations, or units of local government to provide program administration and to service loans made under this chapter. [1993 c 66 § 11.]

59.22.036 Requirements for financing approval—Department's duties. Before providing financing under this chapter, the department shall require:

(1) Verification that at least two-thirds of the households residing in the mobile home park support the plan for acquisition and conversion of the park;

(2) Verification that either no park residents will be involuntarily displaced as a result of the park conversion, or the impacts of displacement will be mitigated so as not to impose a hardship on the displaced resident;

(3) Projected costs and sources of funds for conversion activities;

(4) A projected operating budget for the park during and after conversion; and

(5) A management plan for the conversion and operation of the park. [1993 c 66 § 12.]

59.22.038 Eligibility for loans—Amount of loans—Determining factors. The department shall consider the following factors in determining the eligibility for, and the amount, of loans made under this chapter:

(1) The reasonableness of the conversion costs relating to repairs, rehabilitation, construction, or other costs;

(2) The number of available and affordable mobile home park spaces in the general area;

(3) The adequacy of the management plan for the conversion and operation of the park; and

(4) Other factors established by the department by rule. [1993 c 66 § 13.]

59.22.039 Technical assistance for mobile home park conversion. The department may provide technical assistance to resident organizations who wish to convert the mobile home park in which they reside to resident ownership. Technical assistance does not include details connected with the sale or conversion of a mobile home park which would require the department to act in a representative capacity, or the drafting of documents affecting legal or property rights of the parties by the department. [1993 c 66 § 14.]

59.22.050 Office of manufactured housing—Duties. (1) In order to provide general assistance to manufactured/mobile home resident organizations, qualified tenant organizations, manufactured/mobile home community or

park owners, and landlords and tenants, the department shall establish an office of manufactured housing.

This office will provide, either directly or through contracted services, technical assistance to qualified tenant organizations as defined in RCW 59.20.030 and resident organizations or persons in the process of forming a resident organization pursuant to chapter 59.22 RCW. The office will keep records of its activities in this area.

(2) The office shall administer the mobile home relocation assistance program established in chapter 59.21 RCW, including verifying the eligibility of tenants for relocation assistance. [2008 c 116 § 6; 2007 c 432 § 9; 1991 c 327 § 3; (2005 c 429 § 9 expired December 31, 2005); 1989 c 294 § 1; 1988 c 280 § 2.]

Findings—Intent—Severability—2008 c 116: See notes following RCW 59.20.300.

Registration assessments—2005 c 429: "Any amount assessed under section 7(2), chapter 429, Laws of 2005 that remains uncollected on December 31, 2005, shall be collected under the terms of section 7, chapter 429, Laws of 2005 as it existed before December 31, 2005." [2005 c 429 § 10.]

Effective date—2005 c 429: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 429 § 11.]

Expiration date—2005 c 429: "Except for sections 10 and 13 of this act, this act expires December 31, 2005." [2005 c 429 § 12.]

Registration assessments—2005 c 429: "Beginning in January 2006, the state treasurer shall transfer any funds remaining in the manufactured/mobile home investigations account under section 8, chapter 429, Laws of 2005 to the mobile home affairs account under RCW 59.22.070 for the purposes under RCW 59.22.050. All funds collected by the department under section 10, chapter 429, Laws of 2005 shall be transferred to the state treasurer for deposit into the mobile home affairs account." [2005 c 429 § 13.]

59.22.070 Manufactured housing account. There is created in the custody of the state treasurer a special account known as the manufactured housing account.

Disbursements from this special account shall be as follows:

(1) For the two-year period beginning July 1, 1988, forty thousand dollars, or so much thereof as may be necessary for costs incurred in registering landlords and collecting fees, and thereafter five thousand dollars per year for that purpose.

(2) All remaining amounts shall be remitted to the department for the purpose of implementing RCW 59.22.050, except those funds needed to implement the state administrative agency function and manufactured home installation training and certification program under chapter 43.22A RCW, as well as all appropriated and nonappropriated funds related to department of labor and industries functions. [2007 c 432 § 10; 1995 c 399 § 156; 1989 c 201 § 8; 1988 c 280 § 5.]

59.22.080 Transfer of title—Fee—Department of licensing—Rules. (1) There is hereby imposed a fee of fifteen dollars on every transfer of title issued pursuant to chapter 46.12 RCW on a new or used mobile home where ownership of the mobile home is changed and on each application for the elimination of title under chapter 65.20 RCW. A transfer of title does not include the addition or deletion of a spouse co-owner or a secured interest. The department of licensing or its agents shall collect the fee when processing

the application for transfer or elimination of title. The fee collected under this section shall be forwarded to the state treasurer. The state treasurer shall deposit each fee collected in the *mobile home affairs account created by RCW 59.22.070.

(2) The department of licensing and the state treasurer may enact any rules necessary to carry out this section. [1991 c 327 § 1.]

***Reviser's note:** The "mobile home affairs account" was changed to the "manufactured housing account" by 2007 c 432 § 10.

59.22.085 Transfer of title—Fee supersedes other fee. The fifteen-dollar fee imposed in RCW 59.22.080 on the transfer or elimination of mobile home titles for deposit in the *mobile home affairs account, shall supersede the fifteen dollars collected in **RCW 59.21.060 for deposit into the *mobile home affairs account on July 1, 1991. [1991 c 327 § 7.]

Reviser's note: *(1) The "mobile home affairs account" was changed to the "manufactured housing account" by 2007 c 432 § 10.

** (2) RCW 59.21.060 expired July 1, 1992.

59.22.090 Manufactured housing task force—Duties—Membership. (1) A manufactured housing task force is established to study and make recommendations concerning the structure state government should use to regulate manufactured housing in this state. In conducting this study, the task force shall review the structures used in other states, including those states with a commission structure. The task force shall consider the report prepared by the department of licensing, the department of labor and industries, and the department of community, trade, and economic development on consolidating mobile home-related functions in conducting its study. The task force may not consider any form of mobile home rent control, but shall consider mobile home park siting and density regulatory issues.

(2) The task force shall terminate on December 31, 1992.

(3) The task force shall consist of the following members:

(a) Two members of the house of representatives appointed by the speaker of the house of representatives, from different political caucuses;

(b) Two members of the senate appointed by the president of the senate, from different political caucuses;

(c) Two members who represent mobile home park owners, appointed by the governor;

(d) Two members who represent mobile home owners, appointed by the governor;

(e) One member who represents mobile home manufacturers, appointed by the governor;

(f) One member who represents mobile home dealers, appointed by the governor;

(g) One member who represents mobile home transporters, appointed by the governor;

(h) One member who represents local building officials, appointed by the governor;

(i) One member who is either an elected or appointed government official of a county with a population of one hundred thousand or more persons, appointed by the governor;

(j) One member who is either an elected or appointed government official of a county with a population of less than one hundred thousand persons, appointed by the governor;

(k) One member who is either an elected or appointed government official of a city with a population of thirty-five thousand persons, appointed by the governor;

(l) One member who is either an elected or appointed government official of a city with a population of less than thirty-five thousand persons, appointed by the governor;

(m) One member who represents local health officials, appointed by the governor; and

(n) The director, or the director's designee from the department of community, trade, and economic development, the department of licensing, the department of labor and industries, and the attorney general's office. The designees shall be nonvoting, ex officio members of the task force.

(4) The members of the task force shall select the chair or co-chairs of the task force.

(5) Staff assistance for the task force will be provided by legislative staff and staff from the agencies or offices listed in subsection (3)(n) of this section. [1998 c 245 § 105; 1991 c 327 § 4.]

Chapter 59.24 RCW

**RENTAL SECURITY DEPOSIT
GUARANTEE PROGRAM**

Sections

59.24.010	Legislative findings.
59.24.020	Program established—Grants—Eligible participants.
59.24.030	Contracts required—Terms.
59.24.040	Authority of grant recipients.
59.24.050	Rules.
59.24.060	Sources of funds.
59.24.900	Severability—1988 c 237.

59.24.010 Legislative findings. The legislature finds that one of the most difficult problems that temporarily homeless persons or families face in seeking permanent housing is the necessity of paying a security deposit in addition to paying the first month's rent. The security deposit requirement is often impossible for the temporarily homeless person or family to meet because their savings are depleted due, for example, to purchasing temporary shelter in a motel when space at an emergency shelter was not available. A program to guarantee the security deposit for the temporarily homeless person or family will help the poor in this state achieve adequate permanent shelter. [1988 c 237 § 1.]

59.24.020 Program established—Grants—Eligible participants. (1) The department of community, trade, and economic development shall establish the rental security deposit guarantee program. Through this program the department of community, trade, and economic development shall provide grants and technical assistance to local governments or nonprofit corporations, including local housing authorities as defined in RCW 35.82.030, who operate emergency housing shelters or transitional housing programs. The grants are to be used for the payment of residential rental security deposits under this chapter. The technical assistance is to help the local government or nonprofit corporation apply for grants and carry out the program. In order to be eligible for

grants under this program, the recipient local government or nonprofit corporation shall provide fifteen percent of the total amount needed for the security deposit. The security deposit may include last month's rent where such rent is required as a normal practice by the landlord.

(2) The grants and matching funds shall be placed by the recipient local government or nonprofit corporation in a revolving loan fund and deposited in a bank or savings institution in an account that is separate from all other funds of the recipient. The funds and interest earned on these funds shall be utilized only as collateral to guarantee the payment of a security deposit required by a residential rental property owner as a condition for entering into a rental agreement with a prospective tenant.

(3) Prospective tenants who are eligible to participate in the rental security deposit guarantee program shall be limited to homeless persons or families who are residing in an emergency shelter or transitional housing operated by a local government or a nonprofit corporation, or to families who are temporarily residing in a park, car, or are otherwise without adequate shelter. The local government or nonprofit corporation shall make a determination regarding the person's or family's eligibility to participate in this program and a determination that a local rental unit is available for occupation. A determination of eligibility shall include, but is not limited to: (a) A determination that the person or family is homeless or is in transitional housing; (b) a verification of income and that the person or family can reasonably make the monthly rental payment; and (c) a determination that the person or family does not have the financial resources to make the rental security deposit. [1995 c 399 § 157; 1988 c 237 § 2.]

59.24.030 Contracts required—Terms. (1) A three-party contract shall be required of persons participating in the rental deposit guarantee program. The parties to the contract shall be the local government or nonprofit corporation operating a shelter for homeless persons or transitional housing, the tenant, and the rental property owner. The terms of the contract shall include, but are not limited to, all of the following:

(a) The owner of the rental property shall agree to allow the security deposit to be paid by the tenant over a specified number of months as an addition to the regular rental payment, rather than as a lump-sum payment.

(b) Upon execution of the agreement, the local government or nonprofit corporation shall encumber or reserve funds in a special fund created under RCW 59.24.020, as a guarantee of the contract, an amount no less than eighty percent of the outstanding balance of the security deposit owed by the tenant to the landlord.

(c) The tenant shall agree to a payment schedule of a specified number of months in which time the total amount of the required deposit shall be paid to the property owner.

(d) At any time during the operation of the guarantee, the property owner shall make all claims first against amounts of the security deposit actually paid by the tenant and secondly against the guarantee. At no time during or after the tenancy may the property owner make claims against the guarantee in excess of that amount agreed to as the guarantee.

(e) If a deduction from the guarantee fund is required, it may be accomplished only to the extent permitted by the con-

tract and in the manner provided by law, including notice to the legal agency or organization. The tenant shall have no direct use of guarantee funds, including funds which may be referred to as "last month's rent."

(2) The department shall make available to local governments and nonprofit corporations receiving grants under this chapter the forms deemed necessary for the contracts and the determination of eligibility. Local governments and nonprofit corporations may develop and use their own forms as long as the forms meet the requirements specified in this chapter. [1988 c 237 § 3.]

59.24.040 Authority of grant recipients. A local government or nonprofit corporation receiving a grant under this chapter may utilize a portion of the allocation for costs of administering and operating its rental security deposit guarantee program. The department shall approve the amount so utilized prior to expenditure, and the amount may not exceed five percent of the allocation. The staff of the grant recipient shall be responsible for soliciting housing opportunities for low-income homeless persons, coordinating with local low-income rental property owners, making determinations regarding the eligibility of prospective tenants for the program, and providing information to prospective tenants on the tenant-property owner relationship, appropriate treatment of property, and the importance of timely rental payments. The staff of the grant recipient assigned to administer the program shall be reasonably available to property owners and tenants to answer questions or complaints about the program. [1988 c 237 § 4.]

59.24.050 Rules. The department of community, trade, and economic development may adopt rules to implement this chapter, including but not limited to: (1) The eligibility of and the application process for local governments and nonprofit corporations; (2) the criteria by which grants and technical assistance shall be provided to local governments and nonprofit corporations; and (3) the criteria local governments and nonprofit corporations shall use in entering into contracts with tenants and rental property owners. [1995 c 399 § 158; 1988 c 237 § 5.]

59.24.060 Sources of funds. The department of community, trade, and economic development may receive such gifts, grants, or endowments from public or private sources, as may be made from time to time, in trust or otherwise, to be used by the department of community, trade, and economic development for its programs, including the rental security deposit guarantee program. Funds from the housing trust fund, chapter 43.185 RCW, up to one hundred thousand dollars, may be used for the rental security deposit guarantee program by the department of community, trade, and economic development, local governments, and nonprofit organizations, provided all the requirements of this chapter and chapter 43.185 RCW are met. [1995 c 399 § 159; 1988 c 237 § 6.]

59.24.900 Severability—1988 c 237. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1988 c 237 § 8.]

Chapter 59.28 RCW

FEDERALLY ASSISTED HOUSING

Sections

59.28.010	Legislative findings—Purpose.
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59.28.901	Severability—2000 c 255.
59.28.902	Effective date—2000 c 255.

59.28.010 Legislative findings—Purpose. The legislature finds that:

(1) There is a severe shortage of federally assisted housing within the state of Washington. Over one hundred seventy thousand low and moderate-income households are eligible for federally assisted housing but are unable to locate vacant units.

(2) Within the next twenty years, more than twenty-six thousand existing low-income housing units may be lost as a result of the prepayment of mortgages or loans by the owners, or as a result of the expiration of rental assistance contracts. Over three thousand units of federally assisted housing have already been lost and an additional nine thousand units may be lost within the next two and one-half years.

(3) Recent reductions in federal housing assistance and tax benefits related to low-income housing make it uncertain whether additional units of federally assisted housing will be built or that those lost will be replaced.

(4) The loss of federally assisted housing will adversely affect current tenants and lead to their displacement. It will also drastically reduce the supply of affordable housing in our communities.

It is the purpose of this chapter to preserve federally assisted housing in the state of Washington and to minimize the involuntary displacement of tenants currently residing in such housing. [1989 c 188 § 1.]

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

(1) "Federally assisted housing" means any multifamily housing that is insured, financed, assisted, or held by the secretary of housing and urban development or the secretary of agriculture under:

(a) Section 8 of the United States housing act of 1937, as amended (42 U.S.C. Sec. 1437f);

(b) Section 101 of the housing and urban development act of 1965, as amended (12 U.S.C. Sec. 1701s);

(c) The following sections of the national housing act:

(i) Section 202 (12 U.S.C. Sec. 1701q);

(ii) Section 213 (12 U.S.C. Sec. 1715e);

(iii) Section 221(d) (3) and (4) (12 U.S.C. Sec. 17151(d) (3) and (4));

(iv) Section 223(f) (12 U.S.C. Sec. 1715n(f));

(v) Section 231 (12 U.S.C. Sec. 1715v); or

(vi) Section 236 (12 U.S.C. Sec. 1715z-1); and

(d) The following sections of the housing act of 1949, as amended:

(i) Section 514 (42 U.S.C. Sec. 1484);

(ii) Section 515 (42 U.S.C. Sec. 1485);

(iii) Section 516 (42 U.S.C. Sec. 1486);

(iv) Section 521(a)(1)(B) (42 U.S.C. Sec. 1490a(a)(1));

or

(v) Section 521(a)(2) (42 U.S.C. Sec. 1490a(a)(2)).

(2) "Rental agreement" means any agreement that establishes or modifies the terms, conditions, rules, regulations, or any other provision concerning the use and occupancy of a federally assisted housing unit.

(3) "Owner" means the current or subsequent owner or owners of federally assisted housing.

(4) "Low-income use restrictions" means any federal, state, or local statute, rule, regulation, ordinance, or contract which, as a condition of receipt of any federal, state, or local financial assistance, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development, or requires that rent for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

(5) "Prepayment" means the payment in full or refinancing of the federally insured or federally held mortgage or loan prior to its original maturity date, or the voluntary cancellation of mortgage insurance, if that would have the effect of terminating any low-income use restrictions.

(6) "Public housing agency" means any state or local agency or nonprofit entity that is authorized to administer tenant-based rental assistance under federal, state, or local law. [2000 c 255 § 1; 1989 c 188 § 2.]

59.28.030 Contracts—Expiration or termination—Notice—Applicability. (1) This chapter shall not apply to the expiration or termination of a housing assistance contract between a public housing agency and an owner of existing housing participating in either the section 8 certificate or voucher program (42 U.S.C. Sec. 1437f).

(2) An owner of federally assisted housing shall not be required to give notice of a prepayment under this chapter, if the owner has: (a) Entered into an agreement with a federal, state, or local agency continuing existing, or imposing new, low-income use restrictions for at least twenty years that ensure that the tenants residing in the development at the time of prepayment are not involuntarily displaced except for good cause and that the housing will continue to serve very low and low-income families and persons in need of affordable housing; and (b) served notice of the agreement on the clerk of the city, or county if in an unincorporated area, in

which the property is located, on any public housing agency that would be responsible for administering tenant-based rental assistance to persons who would otherwise be displaced from this housing, and on the department of community, trade, and economic development by regular and certified mail and posted a copy of the agreement in a conspicuous place at the development where it is likely to be seen by the tenants. The posted agreement shall be maintained intact and in legible form for the life of the agreement.

(3) An owner of federally assisted housing is not required to give notice that a rental assistance contract is expiring if: (a) The owner has entered into an agreement with the United States department of housing and urban development or other federal, state, or local agency to renew the rental assistance contract for a minimum of five years subject to the availability of adequate appropriations; (b) the agreement itself does not expire in less than twelve months; and (c) the owner has served written notice of the agreement on the clerk of the city, or county if in an unincorporated area, in which the property is located, on any public housing agency that would be responsible for administering tenant-based rental assistance to persons who would otherwise be displaced from this housing, and on the department of community, trade, and economic development, by regular and certified mail and posted these notices in a conspicuous place at the development where they are likely to be seen by the tenants. The posted notices shall be maintained intact and in legible form for the life of the agreement to renew the rental assistance contract. [2000 c 255 § 2; 1989 c 188 § 3.]

59.28.040 Notice of expiration or prepayment—Owner's duty. Except as provided in RCW 59.28.030, all owners of federally assisted housing shall, at least twelve months before the expiration of the rental assistance contract or prepayment of a mortgage or loan, serve a written notice of the anticipated expiration or prepayment date on each tenant household residing in the housing, on the clerk of the city, or clerk of the county legislative authority if in an unincorporated area, in which the property is located, on any public housing agency that would be responsible for administering tenant-based rental assistance to persons who would otherwise be displaced from this housing, and on the department of community, trade, and economic development, by regular and certified mail. All owners of federally assisted housing shall also serve written notice of the anticipated expiration or prepayment date on each tenant household that moves into the housing after the initial notice has been given, but before the expiration of the rental assistance contract or prepayment of the mortgage or loan. This notice shall be given before a new tenant is asked to execute a rental agreement or required to pay any deposits. [2002 c 30 § 3; 2000 c 255 § 3; 1995 c 399 § 160; 1989 c 188 § 4.]

59.28.050 Owner's rights—Public regulatory powers—Applicability. This chapter shall not in any way prohibit an owner of federally assisted housing from terminating a rental assistance contract or prepaying a mortgage or loan. The requirement in this chapter for notice shall not be construed as conferring any new or additional regulatory power upon the city or county clerk or upon the department of com-

munity, trade, and economic development. [1995 c 399 § 161; 1989 c 188 § 5.]

59.28.060 Notice of expiration or prepayment—Contents—Location—Requests for information. (1) The notice to tenants required by RCW 59.28.040 shall state:

(a) Whether the owner (i) intends to prepay the mortgage or loan or allow the rental assistance contract to expire in order to operate the housing without any low-income use restrictions, (ii) plans on renewing the rental assistance contract subject to the availability of adequate appropriations, or (iii) is seeking additional financial incentives or higher rents as a condition of remaining in the federal program; (b) the reason the owner plans on taking this action; (c) the owner's plans for the project, including any timetables or deadlines for actions to be taken by the owner and any specific federal, state, or local agency approvals that the owner is required to obtain; (d) the anticipated date of the prepayment of the mortgage or loan or expiration of the rental assistance contract; (e) the effect, if any, that prepayment of the mortgage or loan or expiration of the rental assistance contract will have upon the tenants' rent and other terms of their rental agreement; and (f) that additional information will be served on the city or county, on the local public housing agency, and on the department of community, trade, and economic development and will be posted at the development. The owner shall also include with the notice written information, prepared by the department of community, trade, and economic development under RCW 59.28.120(1), concerning the legal rights, responsibilities, and options of owners and tenants when an owner intends to prepay a mortgage or loan or terminate a rental assistance contract.

(2) The notice to the city or county clerk and to the department of community, trade, and economic development required by RCW 59.28.040 shall state: (a) The name, location, and project number of the federally assisted housing and the type of assistance received from the federal government; (b) the number and size of units; (c) the age, race, family size, and estimated incomes of the tenants who will be affected by the prepayment of the loan or mortgage or expiration of the federal assistance contract; (d) the current rents and projected rent increases for each affected tenant after the prepayment of the mortgage or loan or expiration of the rental assistance contract without disclosing the identities of the affected tenants; (e) the availability and type, if any, of rental assistance after the prepayment of the mortgage or loan or expiration of the rental assistance contract; and (f) the age, race, family size, and estimated incomes of any applicants on the project's waiting list without disclosing the identities of the applicants. The owner shall attach to this notice a copy of the notice the owner sends to the tenants under this chapter.

(3) All owners of federally assisted housing shall immediately post a copy of any notices they send the city or county clerk, any public housing agency, and the department of community, trade, and economic development, under RCW 59.28.040, in a conspicuous place at the development where they are likely to be seen by current and prospective tenants. The notices shall be maintained intact and in legible form for twelve months from the date they are posted.

All owners of federally assisted housing shall, upon request of any state or local agency, provide the agency with

a copy of any rent comparability study, market analysis, or projected budget that they submit to the United States department of housing and urban development or other federal agency in conjunction with the prepayment of their mortgage or loan or in anticipation of the expiration of their rental assistance contract, together with any physical inspection reports or capital needs assessments completed by the owner or federal agency within the last three years. [2000 c 255 § 4; 1995 c 399 § 162; 1989 c 188 § 6.]

59.28.070 Removal of tenants—Notice of expiration or prepayment—Timing. From the date of service of the notice under RCW 59.28.040 until either twelve months have elapsed or expiration or prepayment of the rental assistance contract or mortgage or loan, whichever is later, no owner of federally assisted housing may evict a tenant or demand possession of any federally assisted housing unit, except as authorized by the federal assistance program applicable to the project, prior to expiration or prepayment of the rental assistance contract or mortgage or loan. [1989 c 188 § 7.]

59.28.080 Rent increase—Notice of expiration or prepayment—Timing. From the date of service of the notice under RCW 59.28.040 until either twelve months have elapsed or expiration or prepayment of the rental assistance contract, mortgage, or loan, whichever is later, no owner of federally assisted housing may increase the rent of a federally assisted housing unit, or the share of the rent paid by the tenant, above the amount authorized by the federal assistance program applicable to the project prior to expiration or prepayment of the rental assistance contract or mortgage or loan. [2000 c 255 § 5; 1989 c 188 § 8.]

59.28.090 Modification of rental agreement—Notice of expiration or prepayment—Timing. From the date of service of the notice under RCW 59.28.040 until either twelve months have elapsed or expiration or prepayment of the rental assistance contract, mortgage, or loan, whichever is later, no owner of federally assisted housing may change the terms of the rental agreement, except as permitted under the existing rental agreement, prior to expiration or prepayment of the rental assistance contract or mortgage or loan. [1989 c 188 § 9.]

59.28.100 Violations—Civil actions—Parties. Any party who is entitled to receive notice under this chapter may bring a civil action to enjoin or recover actual damages for any violation of this chapter, together with the costs of the suit including reasonable attorneys' fees. Any tenant who is entitled to receive notice under this chapter shall also recover statutory damages of fifty dollars. [2000 c 255 § 6; 1989 c 188 § 10.]

59.28.120 Department of community, trade, and economic development—Develop and provide information and technical assistance. The department of community, trade, and economic development shall within ninety days after March 31, 2000, consult with all interested stakeholders and develop and provide to owners and tenants of federally

assisted housing, state and local agencies, and other interested persons all of the following:

(1) Written information concerning the legal rights, responsibilities, and options of owners and tenants when an owner intends to prepay a mortgage or loan or terminate a rental assistance contract. This information shall include the name and telephone number of any qualified legal aid program that provides civil legal services to indigent persons and of any other state, regional, or local organization that can be contacted to request additional information about an owner’s responsibilities and the rights and options of an affected tenant;

(2) Written information sufficient to enable an owner of federally assisted housing to comply with the notification requirements of this chapter, including the name and address of any public housing agency that would be responsible for administering tenant-based rental assistance to persons who would otherwise be displaced from federally assisted housing; and

(3) Any other information or technical assistance the department determines will further the purposes of this chapter. [2000 c 255 § 7.]

59.28.130 Eviction of tenant—Restriction. An owner of federally assisted housing who prepays the mortgage or loan or whose rental assistance contract expires and who continues to operate the property as residential housing within the scope of this chapter shall not evict a tenant residing in the dwelling unit when the mortgage or loan is prepaid or the rental assistance contract expires, except as authorized by the federal assistance program applicable to the project prior to prepayment of the mortgage or loan, or expiration of the rental assistance contract. [2000 c 255 § 8.]

59.28.900 Severability—1989 c 188. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 188 § 12.]

59.28.901 Severability—2000 c 255. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2000 c 255 § 10.]

59.28.902 Effective date—2000 c 255. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000]. [2000 c 255 § 11.]

**Chapter 59.30 RCW
MANUFACTURED/MOBILE HOME
COMMUNITIES—DISPUTE RESOLUTION
AND REGISTRATION**

Sections

- 59.30.010 Findings—Purpose—Intent.
- 59.30.020 Definitions.

(2008 Ed.)

- 59.30.030 Dispute resolution program—Purpose—Attorney general duties.
- 59.30.040 Dispute resolution program—Complaint process.
- 59.30.050 Registration process, fees.
- 59.30.060 Database.
- 59.30.070 Manufactured/mobile home dispute resolution program account.
- 59.30.080 Immunity from suit.

59.30.010 Findings—Purpose—Intent. (1) The legislature finds that there are factors unique to the relationship between a manufactured/mobile home tenant and a manufactured/mobile home community landlord. Once occupancy has commenced, the difficulty and expense in moving and relocating a manufactured/mobile home can affect the operation of market forces and lead to an inequality of the bargaining position of the parties. Once occupancy has commenced, a tenant may be subject to violations of the manufactured/mobile home landlord-tenant act without an adequate remedy at law. This chapter is created for the purpose of protecting the public, fostering fair and honest competition, and regulating the factors unique to the relationship between the manufactured/mobile home tenant and the manufactured/mobile home community landlord.

(2) The legislature finds that taking legal action against a manufactured/mobile home community landlord for violations of the manufactured/mobile home landlord-tenant act can be a costly and lengthy process, and that many people cannot afford to pursue a court process to vindicate statutory rights. Manufactured/mobile home community landlords will also benefit by having access to a process that resolves disputes quickly and efficiently.

(3)(a) Therefore, it is the intent of the legislature to provide an equitable as well as a less costly and more efficient way for manufactured/mobile home tenants and manufactured/mobile home community landlords to resolve disputes, and to provide a mechanism for state authorities to quickly locate manufactured/mobile home community landlords.

(b) The legislature intends to authorize the department of licensing to register manufactured/mobile home communities and collect a registration fee.

(c) The legislature intends to authorize the attorney general to:

(i) Produce and distribute educational materials regarding the manufactured/mobile home landlord-tenant act and the manufactured/mobile home dispute resolution program created in RCW 59.30.030;

(ii) Administer the dispute resolution program by taking complaints, conducting investigations, making determinations, issuing fines and other penalties, and participating in administrative dispute resolutions, when necessary, when there are alleged violations of the manufactured/mobile home landlord-tenant act; and

(iii) Collect and annually report upon data related to disputes and violations, and make recommendations on modifying chapter 59.20 RCW, to the appropriate committees of the legislature. [2007 c 431 § 1.]

Implementation—2007 c 431: "The attorney general may take the necessary steps to ensure that this act is implemented on its effective date." [2007 c 431 § 12.]

59.30.020 Definitions. For purposes of this chapter:

(1) "Complainant" means a landlord, community owner, or tenant, who has a complaint alleging a violation of chapter 59.20 RCW;

(2) "Department" means the department of licensing;

(3) "Director" means the director of licensing;

(4) "Landlord" or "community owner" means the owner of a mobile home park or a manufactured housing community and includes the agents of a landlord;

(5) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

(6) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the United States department of housing and urban development manufactured home construction and safety act;

(7) "Manufactured/mobile home" means either a manufactured home or a mobile home;

(8) "Manufactured/mobile home lot" means a portion of a manufactured/mobile home community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model;

(9) "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means any real property that is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, park models, or recreational vehicles for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purposes only and is not used for year-round occupancy;

(10) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to the real property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the real property;

(11) "Park model" means a recreational vehicle intended for permanent or semipermanent installation and is used as a permanent residence;

(12) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily used as a permanent residence located in a mobile home park or manufactured housing community;

(13) "Respondent" means a landlord, community owner, or tenant, alleged to have committed [a] violation of chapter 59.20 RCW;

(14) "Tenant" means any person, except a transient as defined in RCW 59.20.030, who rents a mobile home lot. [2007 c 431 § 2.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.030 Dispute resolution program—Purpose—Attorney general duties. (1) The attorney general shall administer a manufactured/mobile home dispute resolution program.

(2) The purpose of the manufactured/mobile home dispute resolution program is to provide manufactured/mobile home community landlords and tenants with a cost-effective and time-efficient process to resolve disputes regarding alleged violations of the manufactured/mobile home landlord-tenant act.

(3) The attorney general under the manufactured/mobile home dispute resolution program shall:

(a) Produce educational materials regarding chapter 59.20 RCW and the manufactured/mobile home dispute resolution program, including a notice in a format that a landlord can reasonably post in a manufactured/mobile home community that summarizes tenant rights and responsibilities, includes information on how to file a complaint with the attorney general, and includes a toll-free telephone number and web site address that landlords and tenants can use to seek additional information and communicate complaints;

(b) Distribute the educational materials described in (a) of this subsection to all known landlords and information alerting landlords that:

(i) All landlords must post the notice provided by the attorney general that summarizes tenant rights and responsibilities and includes information on how to file complaints, in a clearly visible location in all common areas of manufactured/mobile home communities, including in each clubhouse;

(ii) The attorney general may visually confirm that the notice is appropriately posted; and

(iii) The attorney general may issue a fine or other penalty if the attorney general discovers that the landlord has not appropriately posted the notice or that the landlord has not maintained the posted notice so that it is clearly visible to tenants;

(c) Distribute the educational materials described in (a) of this subsection to any complainants and respondents, as requested;

(d) Perform dispute resolution activities, including investigations, negotiations, determinations of violations, and imposition of fines or other penalties as described in RCW 59.30.040;

(e) Create and maintain a database of manufactured/mobile home communities that have had complaints filed against them. For each manufactured/mobile home community in the database, the following information must be contained, at a minimum:

(i) The number of complaints received;

(ii) The nature and extent of the complaints received;

(iii) The violation of law complained of; and

(iv) The manufactured/mobile home dispute resolution program outcomes for each complaint;

(f) Provide an annual report to the appropriate committees of the legislature on the data collected under this section, including program performance measures and recommendations regarding how the manufactured/mobile home dispute

resolution program may be improved, by December 31st, beginning in 2007.

(4) The manufactured/mobile home dispute resolution program, including all of the duties of the attorney general under the program as described in this section, shall be funded by the collection of fines, other penalties, and fees deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070, and all other sources directed to the manufactured/mobile home dispute resolution program. [2007 c 431 § 3.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.040 Dispute resolution program—Complaint process. (1) An aggrieved party has the right to file a complaint with the attorney general alleging a violation of chapter 59.20 RCW.

(2) Upon receiving a complaint under this chapter, the attorney general must:

(a) Inform the complainant of any notification requirements under RCW 59.20.080 for tenant violations or RCW 59.20.200 for landlord violations and encourage the complainant to appropriately notify the respondent of the complaint; and

(b) If a statutory time period is applicable, inform the complainant of the time frame that the respondent has to remedy the complaint under RCW 59.20.080 for tenant violations or RCW 59.20.200 for landlord violations.

(3) After receiving a complaint under this chapter, the attorney general shall initiate the manufactured/mobile home dispute resolution program by investigating the alleged violations at its discretion and, if appropriate, facilitating negotiations between the complainant and the respondent.

(4)(a) Complainants and respondents shall cooperate with the attorney general in the course of an investigation by (i) responding to subpoenas issued by the attorney general, which may consist of providing access to papers or other documents, and (ii) providing access to the manufactured/mobile home facilities relevant to the investigation. Complainants and respondents must respond to attorney general subpoenas within thirty days.

(b) Failure to cooperate with the attorney general in the course of an investigation is a violation of this chapter.

(5) If after an investigation the attorney general determines that an agreement cannot be negotiated between the parties, the attorney general shall make a written determination on whether a violation of chapter 59.20 RCW has occurred.

(a) If the attorney general finds by a written determination that a violation of chapter 59.20 RCW has occurred, the attorney general shall deliver a written notice of violation to the respondent who committed the violation by certified mail. The notice of violation must specify the violation, the corrective action required, the time within which the corrective action must be taken, the penalties including fines, other penalties, and actions that will result if corrective action is not taken within the specified time period, and the process for contesting the determination, fines, penalties, and other actions included in the notice of violation through an administrative hearing. The attorney general must deliver to the

complainant a copy of the notice of violation by certified mail.

(b) If the attorney general finds by a written determination that a violation of chapter 59.20 RCW has not occurred, the attorney general shall deliver a written notice of nonviolation to both the complainant and the respondent by certified mail. The notice of nonviolation must include the process for contesting the determination included in the notice of nonviolation through an administrative hearing.

(6) Corrective action must take place within fifteen business days of the respondent's receipt of a notice of violation, except as required otherwise by the attorney general, unless the respondent has submitted a timely request for an administrative hearing to contest the notice of violation as required under subsection (8) of this section. If a respondent, which includes either a landlord or a tenant, fails to take corrective action within the required time period and the attorney general has not received a timely request for an administrative hearing, the attorney general may impose a fine, up to a maximum of two hundred fifty dollars per violation per day, for each day that a violation remains uncorrected. The attorney general must consider the severity and duration of the violation and the violation's impact on other community residents when determining the appropriate amount of a fine or the appropriate penalty to impose on a respondent. If the respondent shows upon timely application to the attorney general that a good faith effort to comply with the corrective action requirements of the notice of violation has been made and that the corrective action has not been completed because of mitigating factors beyond the respondent's control, the attorney general may delay the imposition of a fine or penalty.

(7) The attorney general may issue an order requiring the respondent, or its assignee or agent, to cease and desist from an unlawful practice and take affirmative actions that in the judgment of the attorney general will carry out the purposes of this chapter. The affirmative actions may include, but are not limited to, the following:

(a) Refunds of rent increases, improper fees, charges, and assessments collected in violation of this chapter;

(b) Filing and utilization of documents that correct a statutory or rule violation; and

(c) Reasonable action necessary to correct a statutory or rule violation.

(8) A complainant or respondent may request an administrative hearing before an administrative law judge under chapter 34.05 RCW to contest:

(a) A notice of violation issued under subsection (5)(a) of this section or a notice of nonviolation issued under subsection (5)(b) of this section;

(b) A fine or other penalty imposed under subsection (6) of this section; or

(c) An order to cease and desist or an order to take affirmative actions under subsection (7) of this section.

The complainant or respondent must request an administrative hearing within fifteen business days of receipt of a notice of violation, notice of nonviolation, fine, other penalty, order, or action. If an administrative hearing is not requested within this time period, the notice of violation, notice of nonviolation, fine, other penalty, order, or action constitutes a final order of the attorney general and is not subject to review by any court or agency.

(9) If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses.

(10) The administrative law judge appointed under chapter 34.12 RCW shall:

- (a) Hear and receive pertinent evidence and testimony;
- (b) Decide whether the evidence supports the attorney general finding by a preponderance of the evidence; and
- (c) Enter an appropriate order within thirty days after the close of the hearing and immediately mail copies of the order to the affected parties.

The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter 34.05 RCW.

(11) When the attorney general imposes a fine, refund, or other penalty against a respondent, the respondent may not seek any recovery or reimbursement of the fine, refund, or other penalty from a complainant or from other manufactured/mobile home tenants.

(12) All receipts from the imposition of fines or other penalties collected under this section other than those due to a complainant must be deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070.

(13) This section is not exclusive and does not limit the right of landlords or tenants to take legal action against another party as provided in chapter 59.20 RCW or otherwise. Exhaustion of the administrative remedy provided in this chapter is not required before a landlord or tenants may bring a legal action. This section does not apply to unlawful detainer actions initiated under RCW 59.20.080 prior to the filing and service of an unlawful detainer court action; however, a tenant is not precluded from seeking relief under this chapter if the complaint claims the notice of termination violates RCW 59.20.080 prior to the filing and service of an unlawful detainer action. [2007 c 431 § 4.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.050 Registration process, fees. (1) The department shall annually register all manufactured/mobile home communities. Each community must be registered separately. The department must deliver by certified mail registration notifications to all known manufactured/mobile home community landlords. Registration information packets must include:

- (a) Registration forms; and
- (b) Registration assessment information, including registration due dates and late fees, and the collections procedures, liens, and charging costs to tenants.

(2) To apply for registration, the landlord of a manufactured/mobile home community must file with the department an application for registration on a form provided by the department and must pay a registration fee as described in subsection (3) of this section. The department may require the submission of information necessary to assist in identifying and locating a manufactured/mobile home community and other information that may be useful to the state, which must include, at a minimum:

- (a) The names and addresses of the owners of the manufactured/mobile home community;

- (b) The name and address of the manufactured/mobile home community;

- (c) The name and address of the landlord and manager of the manufactured/mobile home community;

- (d) The number of lots within the manufactured/mobile home community that are subject to chapter 59.20 RCW; and

- (e) The addresses of each manufactured/mobile home lot within the manufactured/mobile home community that is subject to chapter 59.20 RCW.

(3) Each manufactured/mobile home community landlord shall pay to the department:

- (a) A one-time master application fee for the first year of registration and, in subsequent years, an annual master renewal application fee, as provided in RCW 19.02.075; and

- (b) An annual registration assessment of ten dollars for each manufactured/mobile home that is subject to chapter 59.20 RCW within a manufactured/mobile home community. Manufactured/mobile home community landlords may charge a maximum of five dollars of this assessment to tenants. Nine dollars of the registration assessment for each manufactured/mobile home shall be deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070 to fund the costs associated with the manufactured/mobile home dispute resolution program. The remaining one dollar shall be deposited into the master license fund created in RCW 19.02.210. The annual registration assessment must be reviewed once each biennium by the department and the attorney general and may be adjusted to reasonably relate to the cost of administering this chapter. The registration assessment may not exceed ten dollars, but if the assessment is reduced, the portion allocated to the manufactured/mobile home dispute resolution program account and the master license fund shall be adjusted proportionately.

(4) Initial registrations of mobile/manufactured housing communities must be filed with the department before November 1, 2007, or within three months of the availability of mobile home lots for rent within the community. The manufactured/mobile home community is subject to a delinquency fee of two hundred fifty dollars for late initial registrations. The delinquency fee shall be deposited in the master license fund. Renewal registrations that are not renewed by the expiration date as assigned by the department are subject to delinquency fees under RCW 19.02.085.

(5) Thirty days after sending late fee notices to a non-complying landlord, the department may refer the past due account to a collection agency. If there is no response from a noncomplying landlord after sixty days in collections, the department may file an action to enforce payment of unpaid registration assessments and late fees in the superior court for Thurston county or in the county in which the manufactured/mobile home community is located. If the department prevails, the manufactured/mobile home community landlord shall pay the department's costs, including reasonable attorneys' fees, for the enforcement proceedings.

(6) Registration is effective on the date determined by the department, and the department shall issue a registration number to each registered manufactured/mobile home community. The department must provide an expiration date, assigned by the department, to each manufactured/mobile home community who registers. [2007 c 431 § 6.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.060 Database. The department must have the capability to compile, update, and maintain the most accurate database possible of all the manufactured/mobile home communities in the state, which must include all of the information collected under RCW 59.30.050, except for the addresses of each manufactured/mobile home lot within the manufactured/mobile home community that is subject to chapter 59.20 RCW, which must be made available to the attorney general and the department of community, trade, and economic development in a format to be determined by a collaborative agreement between the department of licensing and the attorney general. [2007 c 431 § 7.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.070 Manufactured/mobile home dispute resolution program account. The manufactured/mobile home dispute resolution program account is created in the custody of the state treasurer. All receipts from sources directed to the manufactured/mobile home dispute resolution program must be deposited in the account. Expenditures from the account may be used only for the costs associated with administering the manufactured/mobile home dispute resolution program. Only the attorney general or the attorney general's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 431 § 8.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.080 Immunity from suit. The attorney general, director, or individuals acting on behalf of the attorney general or director are immune from suit in any action, civil or criminal, based upon any disciplinary actions or other official acts performed in the course of their duties under this chapter, except their intentional or willful misconduct. [2007 c 431 § 5.]

Implementation—2007 c 431: See note following RCW 59.30.010.

Title 60

LIENS

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Chapter 60.04 RCW

MECHANICS' AND MATERIALMEN'S LIENS

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Crop lien for furnishing work or labor: RCW 60.11.040.

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

(1) "Construction agent" means any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person having charge of any improvement to real property, who shall be deemed the agent of the owner for the limited purpose of establishing the lien created by this chapter.

(2) "Contract price" means the amount agreed upon by the contracting parties, or if no amount is agreed upon, then the customary and reasonable charge therefor.

(3) "Draws" means periodic disbursements of interim or construction financing by a lender.

(4) "Furnishing labor, professional services, materials, or equipment" means the performance of any labor or professional services, the contribution owed to any employee benefit plan on account of any labor, the provision of any supplies or materials, and the renting, leasing, or otherwise supplying of equipment for the improvement of real property.

(5) "Improvement" means: (a) Constructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property or street or road in front of or adjoining the same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns, or providing other landscaping materials on any real property; and (c) providing profes-

sional services upon real property or in preparation for or in conjunction with the intended activities in (a) or (b) of this subsection.

(6) "Interim or construction financing" means that portion of money secured by a mortgage, deed of trust, or other encumbrance to finance improvement of, or to real property, but does not include:

(a) Funds to acquire real property;

(b) Funds to pay interest, insurance premiums, lease deposits, taxes, assessments, or prior encumbrances;

(c) Funds to pay loan, commitment, title, legal, closing, recording, or appraisal fees;

(d) Funds to pay other customary fees, which pursuant to agreement with the owner or borrower are to be paid by the lender from time to time;

(e) Funds to acquire personal property for which the potential lien claimant may not claim a lien pursuant to this chapter.

(7) "Labor" means exertion of the powers of body or mind performed at the site for compensation. "Labor" includes amounts due and owed to any employee benefit plan on account of such labor performed.

(8) "Mortgagee" means a person who has a valid mortgage of record or deed of trust of record securing a loan.

(9) "Owner-occupied" means a single-family residence occupied by the owner as his or her principal residence.

(10) "Payment bond" means a surety bond issued by a surety licensed to issue surety bonds in the state of Washington that confers upon potential claimants the rights of third party beneficiaries.

(11) "Potential lien claimant" means any person or entity entitled to assert lien rights under this chapter who has otherwise complied with the provisions of this chapter and is registered or licensed if required to be licensed or registered by the provisions of the laws of the state of Washington.

(12) "Prime contractor" includes all contractors, general contractors, and specialty contractors, as defined by chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who contract directly with a property owner or their common law agent to assume primary responsibility for the creation of an improvement to real property, and includes property owners or their common law agents who are contractors, general contractors, or specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year.

(13) "Professional services" means surveying, establishing or marking the boundaries of, preparing maps, plans, or specifications for, or inspecting, testing, or otherwise performing any other architectural or engineering services for the improvement of real property.

(14) "Real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, trust, or individual that makes loans secured by real property located in the state of Washington.

(15) "Site" means the real property which is or is to be improved.

(16) "Subcontractor" means a general contractor or specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who is otherwise required to be registered or licensed by law, who contracts for the improvement of real property with someone other than the owner of the property or their common law agent. [1992 c 126 § 1; 1991 c 281 § 1.]

60.04.021 Lien authorized. Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner. [1991 c 281 § 2.]

60.04.031 Notices—Exceptions. (1) Except as otherwise provided in this section, every person furnishing professional services, materials, or equipment for the improvement of real property shall give the owner or reputed owner notice in writing of the right to claim a lien. If the prime contractor is in compliance with the requirements of RCW 19.27.095, 60.04.230, and 60.04.261, this notice shall also be given to the prime contractor as described in this subsection unless the potential lien claimant has contracted directly with the prime contractor. The notice may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after the date which is sixty days before:

- (a) Mailing the notice by certified or registered mail to the owner or reputed owner; or
- (b) Delivering or serving the notice personally upon the owner or reputed owner and obtaining evidence of delivery in the form of a receipt or other acknowledgement signed by the owner or reputed owner or an affidavit of service.

In the case of new construction of a single-family residence, the notice of a right to claim a lien may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after a date which is ten days before the notice is given as described in this subsection.

(2) Notices of a right to claim a lien shall not be required of:

- (a) Persons who contract directly with the owner or the owner's common law agent;
- (b) Laborers whose claim of lien is based solely on performing labor; or
- (c) Subcontractors who contract for the improvement of real property directly with the prime contractor, except as provided in subsection (3)(b) of this section.

(3) Persons who furnish professional services, materials, or equipment in connection with the repair, alteration, or remodel of an existing owner-occupied single-family residence or appurtenant garage:

- (a) Who contract directly with the owner-occupier or their common law agent shall not be required to send a written notice of the right to claim a lien and shall have a lien for the full amount due under their contract, as provided in RCW 60.04.021; or
- (b) Who do not contract directly with the owner-occupier or their common law agent shall give notice of the right to

claim a lien to the owner-occupier. Liens of persons furnishing professional services, materials, or equipment who do not contract directly with the owner-occupier or their common law agent may only be satisfied from amounts not yet paid to the prime contractor by the owner at the time the notice described in this section is received, regardless of whether amounts not yet paid to the prime contractor are due. For the purposes of this subsection "received" means actual receipt of notice by personal service, or registered or certified mail, or three days after mailing by registered or certified mail, excluding Saturdays, Sundays, or legal holidays.

(4) The notice of right to claim a lien described in subsection (1) of this section, shall include but not be limited to the following information and shall substantially be in the following form, using lower-case and upper-case ten-point type where appropriate.

NOTICE TO OWNER

IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

PROTECT YOURSELF FROM PAYING TWICE

To:Date:
Re: (description of property: Street address or general location.)
From:

AT THE REQUEST OF: (Name of person ordering the professional services, materials, or equipment)

THIS IS NOT A LIEN: This notice is sent to you to tell you who is providing professional services, materials, or equipment for the improvement of your property and to advise you of the rights of these persons and your responsibilities. Also take note that laborers on your project may claim a lien without sending you a notice.

OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

Under Washington law, those who furnish labor, professional services, materials, or equipment for the repair, remodel, or alteration of your owner-occupied principal residence and who are not paid, have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

The law limits the amount that a lien claimant can claim against your property. Claims may only be made against that portion of the contract price you have not yet paid to your prime contractor as of the time this notice was given to you or three days after this notice was mailed to you. Review the back of this notice for more information and ways to avoid lien claims.

COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

We have or will be providing professional services, materials, or equipment for the improvement of your commercial or new residential project. In the event you or your contractor fail to pay us, we may file a lien against your property. A lien may be claimed for all professional services, materials, or

equipment furnished after a date that is sixty days before this notice was given to you or mailed to you, unless the improvement to your property is the construction of a new single-family residence, then ten days before this notice was given to you or mailed to you.

Sender:
Address:
Telephone:

Brief description of professional services, materials, or equipment provided or to be provided:

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

This notice is sent to inform you that we have or will provide professional services, materials, or equipment for the improvement of your property. We expect to be paid by the person who ordered our services, but if we are not paid, we have the right to enforce our claim by filing a construction lien against your property.

LEARN more about the lien laws and the meaning of this notice by discussing them with your contractor, suppliers, Department of Labor and Industries, the firm sending you this notice, your lender, or your attorney.

COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods available to protect your property from construction liens. The following are two of the more commonly used methods.

DUAL PAYCHECKS (Joint Checks): When paying your contractor for services or materials, you may make checks payable jointly to the contractor and the firms furnishing you this notice.

LIEN RELEASES: You may require your contractor to provide lien releases signed by all the suppliers and subcontractors from whom you have received this notice. If they cannot obtain lien releases because you have not paid them, you may use the dual payee check method to protect yourself.

YOU SHOULD TAKE APPROPRIATE STEPS TO PROTECT YOUR PROPERTY FROM LIENS.

YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT RECEIVED IT, ASK THEM FOR IT.

(5) Every potential lien claimant providing professional services where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been commenced, and the professional services provided are not visible from an inspection of the real property may record in the real property records of the county where the property is located a notice which shall contain the professional service provider's name, address, telephone number, legal description of the property, the

owner or reputed owner's name, and the general nature of the professional services provided. If such notice is not recorded, the lien claimed shall be subordinate to the interest of any subsequent mortgagee and invalid as to the interest of any subsequent purchaser if the mortgagee or purchaser acts in good faith and for a valuable consideration acquires an interest in the property prior to the commencement of an improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of the professional services being provided. The notice described in this subsection shall be substantially in the following form:

NOTICE OF FURNISHING PROFESSIONAL SERVICES

That on the (day) day of (month and year), (name of provider) began providing professional services upon or for the improvement of real property legally described as follows:

[Legal Description is mandatory]

The general nature of the professional services provided is

The owner or reputed owner of the real property is

(Signature)

(Name of Claimant)

(Street Address)

(City, State, Zip Code)

(Phone Number)

(6) A lien authorized by this chapter shall not be enforced unless the lien claimant has complied with the applicable provisions of this section. [1992 c 126 § 2; 1991 c 281 § 3.]

60.04.035 Acts of coercion—Application of chapter 19.86 RCW. The legislature finds that acts of coercion or attempted coercion, including threats to withhold future contracts, made by a contractor or developer to discourage a contractor, subcontractor, or material or equipment supplier from giving an owner the notice of right to claim a lien required by RCW 60.04.031, or from filing a claim of lien under this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. These acts of coercion are not reasonable in relation to the development and preservation of business. These acts of coercion shall constitute an unfair or deceptive act or practice in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1992 c 126 § 3.]

60.04.041 Contractor registration. A contractor or subcontractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other certificate or license issued pursuant to law, covering the period when the labor, professional services, material, or equipment shall be furnished, and the lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. No lien rights described in this chapter shall be lost or denied by virtue of the absence, suspension, or revocation of such registration or license with respect to any contractor or subcontractor not in immediate contractual privity with the lien claimant. [1992 c 126 § 4; 1991 c 281 § 4.]

60.04.051 Property subject to lien. The lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the owner at whose instance, directly or through a common law or construction agent the labor, professional services, equipment, or materials were furnished, as the court deems appropriate for satisfaction of the lien. If, for any reason, the title or interest in the land upon which the improvement is situated cannot be subjected to the lien, the court in order to satisfy the lien may order the sale and removal of the improvement from the land which is subject to the lien. [1992 c 126 § 5; 1991 c 281 § 5.]

60.04.061 Priority of lien. The claim of lien created by this chapter upon any lot or parcel of land shall be prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant. [1991 c 281 § 6.]

60.04.071 Release of lien rights. Upon payment and acceptance of the amount due to the lien claimant and upon demand of the owner or the person making payment, the lien claimant shall immediately prepare and execute a release of all lien rights for which payment has been made, and deliver the release to the person making payment. In any suit to compel deliverance of the release thereafter in which the court determines the delay was unjustified, the court shall, in addition to ordering the deliverance of the release, award the costs of the action including reasonable attorneys' fees and any damages. [1991 c 281 § 7.]

60.04.081 Frivolous claim—Procedure. (1) Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order directing the lien claimant to appear before the court at a time

no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the relief requested should not be granted. The motion shall state the grounds upon which relief is asked, and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien shall be released, with prejudice, and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee pursuant to RCW 36.18.016. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(5) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [2006 c 192 § 3; 1992 c 126 § 6; 1991 c 281 § 8.]

60.04.091 Recording—Time—Contents of lien. Every person claiming a lien under RCW 60.04.021 shall file for recording, in the county where the subject property is located, a notice of claim of lien not later than ninety days after the person has ceased to furnish labor, professional services, materials, or equipment or the last date on which employee benefit contributions were due. The notice of claim of lien:

- (1) Shall state in substance and effect:
 - (a) The name, phone number, and address of the claimant;
 - (b) The first and last date on which the labor, professional services, materials, or equipment was furnished or employee benefit contributions were due;
 - (c) The name of the person indebted to the claimant;
 - (d) The street address, legal description, or other description reasonably calculated to identify, for a person familiar with the area, the location of the real property to be charged with the lien;
 - (e) The name of the owner or reputed owner of the property, if known, and, if not known, that fact shall be stated; and
 - (f) The principal amount for which the lien is claimed.

(2) Shall be signed by the claimant or some person authorized to act on his or her behalf who shall affirmatively state they have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury, and shall be acknowledged pursuant to chapter 64.08

RCW. If the lien has been assigned, the name of the assignee shall be stated. Where an action to foreclose the lien has been commenced such notice of claim of lien may be amended as pleadings may be by order of the court insofar as the interests of third parties are not adversely affected by such amendment. A claim of lien substantially in the following form shall be sufficient:

CLAIM OF LIEN

....., claimant, vs, name of person indebted to claimant:

Notice is hereby given that the person named below claims a lien pursuant to *chapter 64.04 RCW. In support of this lien the following information is submitted:

1. NAME OF LIEN CLAIMANT:
TELEPHONE NUMBER:
ADDRESS:

2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR, PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME DUE:

3. NAME OF PERSON INDEBTED TO THE CLAIMANT:

4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS CLAIMED (Street address, legal description or other information that will reasonably describe the property):

5. NAME OF THE OWNER OR REPUTED OWNER (If not known state "unknown"):

6. THE LAST DATE ON WHICH LABOR WAS PERFORMED; PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS FURNISHED:

7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:

8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE HERE:

....., Claimant
.....
.....
(Phone number, address, city, and state of claimant)

STATE OF WASHINGTON, COUNTY OF, ss.

....., being sworn, says: I am the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

Subscribed and sworn to before me this day of

The period provided for recording the claim of lien is a period of limitation and no action to foreclose a lien shall be maintained unless the claim of lien is filed for recording within the ninety-day period stated. The lien claimant shall give a copy of the claim of lien to the owner or reputed owner by mailing it by certified or registered mail or by personal service within fourteen days of the time the claim of lien is filed for recording. Failure to do so results in a forfeiture of any right the claimant may have to attorneys' fees and costs against the owner under RCW 60.04.181. [1992 c 126 § 7; 1991 c 281 § 9.]

*Reviser's note: The reference to chapter 64.04 RCW appears to be erroneous. Reference to chapter 60.04 RCW was apparently intended.

60.04.101 Separate residential units—Time for filing. When furnishing labor, professional services, materials, or equipment for the construction of two or more separate residential units, the time for filing claims of lien against each separate residential unit shall commence to run upon the cessation of the furnishing of labor, professional services, materials, or equipment on each residential unit, as provided in this chapter. For the purposes of this section a separate residential unit is defined as consisting of one residential structure together with any garages or other outbuildings appurtenant thereto. [1991 c 281 § 10.]

60.04.111 Recording—Fees. The county auditor shall record the notice of claim of lien in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of lien for registered land need not be recorded in the Torrens register. The county auditor shall charge no higher fee for recording notices of claim of lien than other documents. [1991 c 281 § 11.]

60.04.121 Lien—Assignment. Any lien or right of lien created by this chapter and the right of action to recover therefor, shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made. [1991 c 281 § 12.]

60.04.131 Claims—Designation of amount due. In every case in which the notice of claim of lien is recorded against two or more separate pieces of property owned by the same person or owned by two or more persons jointly or otherwise, who contracted for the labor, professional services, material, or equipment for which the notice of claim of lien is recorded, the person recording the notice of claim of lien

shall designate in the notice of claim of lien the amount due on each piece of property, otherwise the lien is subordinated to other liens that may be established under this chapter. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon any of such pieces of property. [1991 c 281 § 13.]

60.04.141 Lien—Duration—Procedural limitations.

No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim of lien has been recorded unless an action is filed by the lien claimant within that time in the superior court in the county where the subject property is located to enforce the lien, and service is made upon the owner of the subject property within ninety days of the date of filing the action; or, if credit is given and the terms thereof are stated in the claim of lien, then eight calendar months after the expiration of such credit; and in case the action is not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the action for want of prosecution, and the dismissal of the action or a judgment rendered thereon that no lien exists shall constitute a cancellation of the lien. This is a period of limitation, which shall be tolled by the filing of any petition seeking protection under Title Eleven, United States Code by an owner of any property subject to the lien established by this chapter. [1992 c 126 § 8; 1991 c 281 § 14.]

60.04.151 Rights of owner—Recovery options.

The lien claimant shall be entitled to recover upon the claim recorded the contract price after deducting all claims of other lien claimants to whom the claimant is liable, for furnishing labor, professional services, materials, or equipment; and in all cases where a claim of lien shall be recorded under this chapter for labor, professional services, materials, or equipment supplied to any lien claimant, he or she shall defend any action brought thereupon at his or her own expense. During the pendency of the action, the owner may withhold from the prime contractor the amount of money for which a claim is recorded by any subcontractor, supplier, or laborer. In case of judgment against the owner or the owner's property, upon the lien, the owner shall be entitled to deduct from sums due to the prime contractor the principal amount of the judgment from any amount due or to become due from the owner to the prime contractor plus such costs, including interest and attorneys' fees, as the court deems just and equitable, and the owner shall be entitled to recover back from the prime contractor the amount for which a lien or liens are established in excess of any sum that may remain due from the owner to the prime contractor. [1992 c 126 § 9; 1991 c 281 § 15.]

60.04.161 Bond in lieu of claim. Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who disputes the correctness or validity of the claim of lien may record, either before or after the commencement of an action to enforce the lien, in the office of the county recorder or auditor in the county where the claim of lien was recorded, a bond issued by a surety company authorized to issue surety bonds in the state. The surety shall be listed in the latest fed-

eral department of the treasury list of surety companies acceptable on federal bonds, published in the Federal Register, as authorized to issue bonds on United States government projects with an underwriting limitation, including applicable reinsurance, equal to or greater than the amount of the bond to be recorded. The bond shall contain a description of the claim of lien and real property involved, and be in an amount equal to the greater of five thousand dollars or two times the amount of the lien claimed if it is ten thousand dollars or less, and in an amount equal to or greater than one and one-half times the amount of the lien if it is in excess of ten thousand dollars. If the claim of lien affects more than one parcel of real property and is segregated to each parcel, the bond may be segregated the same as in the claim of lien. A separate bond shall be required for each claim of lien made by separate claimants. However, a single bond may be used to guarantee payment of amounts claimed by more than one claim of lien by a single claimant so long as the amount of the bond meets the requirements of this section as applied to the aggregate sum of all claims by such claimant. The condition of the bond shall be to guarantee payment of any judgment upon the lien in favor of the lien claimant entered in any action to recover the amount claimed in a claim of lien, or on the claim asserted in the claim of lien. The effect of recording a bond shall be to release the real property described in the notice of claim of lien from the lien and any action brought to recover the amount claimed. Unless otherwise prohibited by law, if no action is commenced to recover on a lien within the time specified in RCW 60.04.141, the surety shall be discharged from liability under the bond. If an action is timely commenced, then on payment of any judgment entered in the action or on payment of the full amount of the bond to the holder of the judgment, whichever is less, the surety shall be discharged from liability under the bond.

Nothing in this section shall in any way prohibit or limit the use of other methods, devised by the affected parties to secure the obligation underlying a claim of lien and to obtain a release of real property from a claim of lien. [1992 c 126 § 10; 1991 c 281 § 16.]

60.04.171 Foreclosure—Parties. The lien provided by this chapter, for which claims of lien have been recorded, may be foreclosed and enforced by a civil action in the court having jurisdiction in the manner prescribed for the judicial foreclosure of a mortgage. The court shall have the power to order the sale of the property. In any action brought to foreclose a lien, the owner shall be joined as a party. The interest in the real property of any person who, prior to the commencement of the action, has a recorded interest in the property, or any part thereof, shall not be foreclosed or affected unless they are joined as a party.

A person shall not begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to the prior action, he or she may apply to the court to be joined as a party thereto, and his or her lien may be foreclosed in the same action. The filing of such application shall toll the running of the period of limitation established by RCW 60.04.141 until disposition of the application or other time set by the court. The court shall grant the application for joinder unless to do so would create

an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions as the court deems just. If a lien foreclosure action is filed during the pendency of another such action, the court may, on its own motion or the motion of any party, consolidate actions upon such terms and conditions as the court deems just, unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions. If consolidation of actions is not permissible under this section, the lien foreclosure action filed during the pendency of another such action shall not be dismissed if the filing was the result of mistake, inadvertence, surprise, excusable neglect, or irregularity. An action to foreclose a lien shall not be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien. [1992 c 126 § 11; 1991 c 281 § 17.]

60.04.181 Rank of lien—Application of proceeds—Attorneys' fees. (1) In every case in which different construction liens are claimed against the same property, the court shall declare the rank of such lien or class of liens, which liens shall be in the following order:

- (a) Liens for the performance of labor;
- (b) Liens for contributions owed to employee benefit plans;
- (c) Liens for furnishing material, supplies, or equipment;
- (d) Liens for subcontractors, including but not limited to their labor and materials; and
- (e) Liens for prime contractors, or for professional services.

(2) The proceeds of the sale of property must be applied to each lien or class of liens in order of its rank and, in an action brought to foreclose a lien, pro rata among each claimant in each separate priority class. A personal judgment may be rendered against any party personally liable for any debt for which the lien is claimed. If the lien is established, the judgment shall provide for the enforcement thereof upon the property liable as in the case of foreclosure of judgment liens. The amount realized by such enforcement of the lien shall be credited upon the proper personal judgment. The deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against any party liable therefor.

(3) The court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for recording the claim of lien, costs of title report, bond costs, and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems reasonable. Such costs shall have the priority of the class of lien to which they are related, as established by subsection (1) of this section.

(4) Real property against which a lien under this chapter is enforced may be ordered sold by the court and the proceeds deposited into the registry of the clerk of the court, pending further determination respecting distribution of the proceeds of the sale. [1992 c 126 § 12; 1991 c 281 § 18.]

60.04.190 Destruction or concealment of property—Removal from premises—Penalty. See RCW 61.12.030, 9.45.060.

60.04.191 Effect of note—Personal action preserved. The taking of a promissory note or other evidence of indebtedness for any labor, professional services, material, or equipment furnished for which a lien is created by this chapter does not discharge the lien therefor, unless expressly received as payment and so specified therein.

Nothing in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for the furnishing of labor, professional services, material, or equipment to maintain a personal action to recover the debt against any person liable therefor. [1991 c 281 § 19.]

60.04.201 Material exempt from process—Exception. Whenever material is furnished for use in the improvement of property subject to a lien created by this chapter, the material is not subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of the material, except a debt due for the purchase money thereof, so long as in good faith, the material is about to be applied in the improvement of such property. [1991 c 281 § 20.]

60.04.211 Lien—Effect on community interest. The claim of lien, when filed as required by this chapter, shall be notice to the spouse or the domestic partner of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both spouses or both domestic partners to the lien. [2008 c 6 § 641; 1991 c 281 § 21.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

60.04.221 Notice to lender—Withholding of funds. Any lender providing interim or construction financing where there is not a payment bond of at least fifty percent of the amount of construction financing shall observe the following procedures and the rights and liabilities of the lender and potential lien claimant shall be affected as follows:

(1) Any potential lien claimant who has not received a payment within five days after the date required by their contract, invoice, employee benefit plan agreement, or purchase order may within thirty-five days of the date required for payment of the contract, invoice, employee benefit plan agreement, or purchase order, give a notice as provided in subsections (2) and (3) of this section of the sums due and to become due, for which a potential lien claimant may claim a lien under this chapter.

(2) The notice shall be signed by the potential lien claimant or some person authorized to act on his or her behalf.

(3) The notice shall be given in writing to the lender at the office administering the interim or construction financing, with a copy given to the owner and appropriate prime contractor. The notice shall be given by:

- (a) Mailing the notice by certified or registered mail to the lender, owner, and appropriate prime contractor; or
- (b) Delivering or serving the notice personally and obtaining evidence of delivery in the form of a receipt or

other acknowledgment signed by the lender, owner, and appropriate prime contractor, or an affidavit of service.

(4) The notice shall state in substance and effect as follows:

(a) The person, firm, trustee, or corporation filing the notice is entitled to receive contributions to any type of employee benefit plan or has furnished labor, professional services, materials, or equipment for which a lien is given by this chapter.

(b) The name of the prime contractor, common law agent, or construction agent ordering the same.

(c) A common or street address of the real property being improved or the legal description of the real property.

(d) The name, business address, and telephone number of the lien claimant.

The notice to the lender may contain additional information but shall be in substantially the following form:

NOTICE TO REAL PROPERTY LENDER
(Authorized by RCW)

TO:
(Name of Lender)

.
(Administrative Office-Street Address)

.
(City) (State) (Zip)

AND TO:
(Owner)

AND TO:
(Prime Contractor-If Different Than Owner)

.
(Name of Laborer, Professional,
Materials, or Equipment Supplier)

whose business address is, did at the property located at

(Check appropriate box) () perform labor () furnish professional services () provide materials () supply equipment as follows:

.
.

which was ordered by
(Name of Person)

whose address was stated to be

The amount owing to the undersigned according to contract or purchase order for labor, supplies, or equipment (as above mentioned) is the sum of Dollars (\$). Said sums became due and owing as of

.
(State Date)

You are hereby required to withhold from any future draws on existing construction financing which has been made on the subject property (to the

extent there remain undisbursed funds) the sum of Dollars (\$).

IMPORTANT

Failure to comply with the requirements of this notice may subject the lender to a whole or partial compromise of any priority lien interest it may have pursuant to RCW 60.04.226.

DATE:

By:

Its:

(5) After the receipt of the notice, the lender shall withhold from the next and subsequent draws the amount claimed to be due as stated in the notice. Alternatively, the lender may obtain from the prime contractor or borrower a payment bond for the benefit of the potential lien claimant in an amount sufficient to cover the amount stated in the potential lien claimant's notice. The lender shall be obligated to withhold amounts only to the extent that sufficient interim or construction financing funds remain undisbursed as of the date the lender receives the notice.

(6) Sums so withheld shall not be disbursed by the lender, except by the written agreement of the potential lien claimant, owner, and prime contractor in such form as may be prescribed by the lender, or the order of a court of competent jurisdiction.

(7) In the event a lender fails to abide by the provisions of *subsections (4) and (5) of this section, then the mortgage, deed of trust, or other encumbrance securing the lender shall be subordinated to the lien of the potential lien claimant to the extent of the interim or construction financing wrongfully disbursed, but in no event more than the amount stated in the notice plus costs as fixed by the court, including reasonable attorneys' fees.

(8) Any potential lien claimant shall be liable for any loss, cost, or expense, including reasonable attorneys' fees and statutory costs, to a party injured thereby arising out of any unjust, excessive, or premature notice filed under purported authority of this section. "Notice" as used in this subsection does not include notice given by a potential lien claimant of the right to claim liens under this chapter where no actual claim is made.

(9)(a) Any owner of real property subject to a notice to real property lender under this section, or the contractor, subcontractor, lender, or lien claimant who believes the claim that underlies the notice is frivolous and made without reasonable cause, or is clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order commanding the potential lien claimant who issued the notice to the real property lender to appear before the court at a time no earlier than six nor later than fifteen days from the date of service of the application and order on the potential lien claimant, and show cause, if any he or she has, why the notice to real property lender should not be declared void. The motion shall state the grounds upon which relief is asked and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(b) The order shall clearly state that if the potential lien claimant fails to appear at the time and place noted, the notice to lender shall be declared void and that the potential lien claimant issuing the notice shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(c) The clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars.

(d) If, following a hearing on the matter, the court determines that the claim upon which the notice to real property lender is based is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order declaring the notice to real property lender void if frivolous and made without reasonable cause, or reducing the amount stated in the notice if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the person who issued the notice. If the court determines that the claim underlying the notice to real property lender is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the issuer of the notice to be paid by the applicant.

(e) Proceedings under this subsection shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1992 c 126 § 13; 1991 c 281 § 22.]

***Reviser's note:** The reference to subsections (4) and (5) of this section appears to be erroneous. Engrossed Senate Bill No. 6441 changed the subsection numbers. Subsections (4) and (5) are now subsections (5) and (6).

60.04.226 Financial encumbrances—Priorities.

Except as otherwise provided in RCW 60.04.061 or 60.04.221, any mortgage or deed of trust shall be prior to all liens, mortgages, deeds of trust, and other encumbrances which have not been recorded prior to the recording of the mortgage or deed of trust to the extent of all sums secured by the mortgage or deed of trust regardless of when the same are disbursed or whether the disbursements are obligatory. [1991 c 281 § 23.]

60.04.230 Construction projects—Notice to be posted by prime contractor—Penalty.

(1) For any construction project costing more than five thousand dollars the prime contractor shall post in plain view for the duration of the construction project a legible notice at the construction job site containing the following:

(a) The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number and identification; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

(ii) The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for

the protection of the owner if the bond is for an amount not less than fifty percent of the total amount of the construction project.

(2) For any construction project which requires a building permit under local ordinance, compliance with the posting requirements of RCW 19.27.095 shall constitute compliance with this section. Otherwise, the information shall be posted as set forth in this section.

(3) Failure to comply with this section shall subject the prime contractor to a civil penalty of not more than five thousand dollars, payable to the county where the project is located. [1991 c 281 § 28; 1984 c 202 § 3.]

60.04.250 Informational materials on construction lien laws—Master documents.

The department of labor and industries shall prepare master documents that provide informational material about construction lien laws and available safeguards against real property lien claims. The material shall include methods of protection against lien claims, including obtaining lien release documents, performance bonds, joint payee checks, the opportunity to require contractor disclosure of all potential lien claimants as a condition of payment, and lender supervision under *RCW 60.04.200 and 60.04.210. The material shall also include sources of further information, including the department of labor and industries and the office of the attorney general. [1990 c 81 § 1; 1988 c 270 § 1.]

***Reviser's note:** RCW 60.04.200 and 60.04.210 were repealed by 1991 c 281 § 31, effective April 1, 1992.

Effective date—1988 c 270: "This act shall take effect July 1, 1989." [1988 c 270 § 4.]

60.04.255 Informational materials on construction lien laws—Copies—Liability.

(1) Every real property lender shall provide a copy of the informational material described in RCW 60.04.250 to all persons obtaining loans, the proceeds of which are to be used for residential construction or residential repair or remodeling.

(2) Every contractor shall provide a copy of the informational material described in RCW 60.04.250 to customers required to receive contractor disclosure notice under RCW 18.27.114.

(3) No cause of action may lie against the state, a real property lender, or a contractor arising from the provisions of RCW 60.04.250 and this section.

(4) For the purpose of this section, "real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, or individual that makes loans secured by real property in this state. [1988 c 270 § 2.]

Effective date—1988 c 270: See note following RCW 60.04.250.

60.04.261 Availability of information.

The prime contractor shall immediately supply the information listed in RCW 19.27.095(2) to any person who has contracted to supply materials, equipment, or professional services or who is a subcontractor on the improvement, as soon as the identity and mailing address of such subcontractor, supplier, or professional is made known to the prime contractor either directly or through another subcontractor, supplier, or professional. [1991 c 281 § 24.]

60.04.900 Liberal construction—1991 c 281. RCW 19.27.095, 60.04.230, and 60.04.011 through 60.04.226 and 60.04.261 are to be liberally construed to provide security for all parties intended to be protected by their provisions. [1991 c 281 § 25.]

60.04.901 Captions not law—1991 c 281. Section headings as used in this chapter do not constitute any part of the law. [1991 c 281 § 26.]

60.04.902 Effective date, application—1991 c 281. This act shall take effect June 1, 1992. Lien claims based on an improvement commenced by a potential lien claimant on or after June 1, 1992, shall be governed by the provisions of this act. [1992 c 126 § 14; 1991 c 281 § 32.]

60.04.903 Effective date—1992 c 126. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1992, except section 14 of this act which shall take effect immediately [March 31, 1992]. [1992 c 126 § 15.]

60.04.904 Application of chapter 281, Laws of 1991, to actions pending as of June 1, 1992—1993 c 357. All rights acquired and liabilities incurred under acts or parts of act repealed by chapter 281, Laws of 1991, are hereby preserved, and all actions pending as of June 1, 1992, shall proceed under the law as it existed at the time chapter 281, Laws of 1991, took effect. [1993 c 357 § 1.]

Retroactive application—1993 c 357: "This act is remedial in nature and shall be applied retroactively to June 1, 1992." [1993 c 357 § 2.]

Effective date—1993 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 357 § 3.]

**Chapter 60.08 RCW
CHATTEL LIENS**

Sections

- 60.08.010 Lien authorized.
- 60.08.020 Notice of lien—Contents—Form.
- 60.08.030 Priority of lien.
- 60.08.040 Enforcement of lien—Limitation of action.
- 60.08.050 Rank of lien—Personal judgment—Deficiency—Costs.
- 60.08.060 Filing notice of liens.
- 60.08.080 Frivolous or clearly excessive claims of lien—Motion to court—Procedures.
- 60.08.085 Transferring title of a vehicle—Requirements—Application to chapter 60.10 RCW.

60.08.010 Lien authorized. Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: PROVIDED, HOWEVER, That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of

the lien. [1917 c 68 § 1; 1909 c 166 § 1; 1905 c 72 § 1; RRS § 1154.]

60.08.020 Notice of lien—Contents—Form. In order to make such lien effectual the lien claimant shall, within ninety days from the date of delivery of such chattel to the owner, file in the office of the auditor of the county in which such chattel is kept, a lien notice, which notice shall state the name of the claimant, the name of the owner, a description of the chattel upon which the claimant has performed labor or furnished material, the amount for which a lien is claimed and the date upon which such expenditure of labor or material was completed, which notice shall be signed by the claimant or someone on his behalf, and may be in substantially the following form:

CHATTEL LIEN NOTICE.

.....	Claimant,	}
.....	Owner.	
.....	against	
.....		

Notice is hereby given that has and claims a lien upon (here insert description of chattel), owned by for the sum of dollars, for and on account of labor, skill and material expended upon said which was completed upon the day of, 19...
.....
Claimant.

[1983 c 33 § 1; 1917 c 68 § 2; 1905 c 72 § 2; RRS § 1155.]

60.08.030 Priority of lien. The liens created by this chapter are preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of the commencement of the performance of the labor, or the furnishing of the materials for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant has no notice. [1917 c 68 § 3; 1905 c 72 § 3; RRS § 1156.]

60.08.040 Enforcement of lien—Limitation of action. The lien herein provided for may be enforced against all persons having a junior or subsequent interest in any such chattel, by judicial procedure or by summary procedure as set forth in chapter 60.10 RCW within nine months after the filing of such lien notice, and if no such action shall be commenced within such time such lien shall cease. [1995 c 62 § 4; 1969 c 82 § 11; 1917 c 68 § 4; 1905 c 72 § 4; RRS § 1157.]

Secured transactions: Article 62A.9A RCW.

60.08.050 Rank of lien—Personal judgment—Deficiency—Costs. In every case originating in or removed to a court of competent jurisdiction, in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

- (1) All persons performing labor;
- (2) All persons furnishing material;

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the action. [1917 c 68 § 5; RRS § 1157a.]

60.08.060 Filing notice of liens. Upon presentation of such lien notice to the auditor of any county, he shall file the same, and endorse thereon the time of the reception, the number thereof, and shall enter the same in a suitable book or file (but need not record the same). Such book or file shall have herewith an alphabetic index, in which the county auditor shall index such notice by noting the name of the owner, name of lien claimant, description of property, date of lien (which shall be the date upon which such expenditure of labor, skill or material was completed), date of filing and when released, the date of release. [1983 c 33 § 2; 1905 c 72 § 5; RRS § 1158.]

60.08.080 Frivolous or clearly excessive claims of lien—Motion to court—Procedures. (1) Any owner of property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply by motion to the superior court for the county where the property is located, for an order directing the lien claimant to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the relief requested should not be granted. The motion shall state the grounds upon which relief is asked, and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien shall be released, with prejudice, and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) The applicant must give notice of the hearing to the lien claimant by providing copies of the motion, order, and any other documents filed with the court, to the lien claimant by first-class mail, by certified or registered mail, or by personal service.

(5) If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(6) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [2006 c 283 § 1.]

Effective date—2006 c 283: "This act takes effect October 1, 2006." [2006 c 283 § 5.]

60.08.085 Transferring title of a vehicle—Requirements—Application to chapter 60.10 RCW. The department of licensing, and the department's agents and sub-agents, shall not transfer title of a vehicle through the chattel lien process under this chapter and chapter 60.10 RCW unless an affidavit of sale and the following documentation is submitted: (1) A certified copy of the lien filing that is filed with the county auditor; (2) a copy of the letter, sent by the lien claimant via first-class mail, and certified or registered mail, including the return receipt, to the address of the current registered owner notifying the current registered owner of the lien filing; and (3) an affidavit of service by mail. [2006 c 283 § 2.]

Effective date—2006 c 283: See note following RCW 60.08.080.

Chapter 60.10 RCW

PERSONAL PROPERTY LIENS— SUMMARY FORECLOSURE

Sections

60.10.010	Definitions.
60.10.020	Methods of foreclosure.
60.10.023	Judicial foreclosure of personal property liens.
60.10.027	Judicial foreclosure of a security interest.
60.10.030	Notice and sale—Priorities—Sale procedure—Surplus—Deficiency—Obligation of lien holder.
60.10.040	Rights and interest of purchaser for value—Certificates of title.
60.10.050	Redemption.
60.10.060	Noncompliance with chapter—Rights of lien debtor.
60.10.070	"Commercially reasonable."

60.10.010 Definitions. As used in this chapter:

(1) The term "lien debtor" means the person who is obligated, owes payment or other performance. Where the lien debtor and the owner of the collateral are not the same person, the term "lien debtor" means the owner of the collateral.

(2) "Collateral" means the property subject to a statutory lien.

(3) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest.

(4) "Secured party" has the same meaning as used in Article 9A of the Uniform Commercial Code (Title 62A RCW). [2001 c 32 § 3; 1969 c 82 § 2.]

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

Judicial foreclosure of personal property liens: RCW 60.10.023.

60.10.020 Methods of foreclosure. Any lien upon personal property, excluded by *RCW 62A.9-104 from the provisions of the Uniform Commercial Code (Title 62A RCW), may be foreclosed by: (1) An action in the district court having jurisdiction in the district in which the property is situated in accordance with RCW 60.10.023, if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the property is situated in accordance with RCW 60.10.023, if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in this chapter. [1995 c 62 § 5; 1991 c 33 § 3; 1969 c 82 § 3.]

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

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

60.10.023 Judicial foreclosure of personal property liens. The provisions of chapter 61.12 RCW, so far as they are applicable, govern in actions for the judicial foreclosure of liens on personal property excluded by *RCW 62A.9-104 from the provisions of the Uniform Commercial Code, Title 62A RCW. The lien holder may proceed on the lien; and if there is a separate obligation secured by the lien, the lienholder may bring suit on the obligation. If the lienor proceeds on the obligation, the court shall, in addition to entering a decree foreclosing the lien, render judgment for the amount due on the obligation. The decree shall direct the sale of the lien property, and if there is a judgment on an obligation and the proceeds of the sale are insufficient to satisfy the judgment, the sheriff is authorized to proceed under the same execution and levy on and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied.

Redemption rights and the rights and interest of a purchaser for value under this section are governed by RCW 60.10.040 and 60.10.050. [1995 c 62 § 1; 1969 c 82 § 1. Formerly RCW 61.12.162.]

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

60.10.027 Judicial foreclosure of a security interest. The provisions of chapter 61.12 RCW, so far as they are applicable, shall also be available to a secured party seeking to enforce a security interest by judicial proceedings as authorized by *RCW 62A.9-501(1). In such a proceeding, the court shall enter a judgment foreclosing the security interest and shall render judgment for the amount due on the secured obligation. The decree shall direct the sale of property that is subject to the foreclosed security interest and is within the court's jurisdiction, and if the proceeds of sale are insufficient to satisfy the judgment, the sheriff is authorized to proceed under the same execution and levy on other property of the judgment debtor, not exempt from execution, for the sum remaining unsatisfied.

The rights and interest of a purchaser for value are governed by RCW 60.10.040 except as otherwise provided in Title 62A RCW. [1995 c 62 § 2.]

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

60.10.030 Notice and sale—Priorities—Sale procedure—Surplus—Deficiency—Obligation of lien holder. (1) A lien foreclosure authorized by RCW 60.10.020 may be summarily foreclosed by notice and sale as provided herein. The lien holder may sell, or otherwise dispose of the collateral in its then condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the lien under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the lien holder, the holder of a subordinate security interest must seasonably furnish reasonable proof of his or her interest, and unless that is done, the lien holder need not comply with that demand.

(2) The lien holder must account to the lien debtor for any surplus, and, unless otherwise agreed, the lien debtor is not liable for any deficiency.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable which shall be construed as provided in RCW 60.10.070. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the lien holder to the lien debtor, by first-class mail, and registered or certified mail, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the lien debtor in this state or who is known by the lien holder to have a security interest in the collateral. The lien holder may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he or she may buy at private sale. Before accepting any bid or offer for purchase, the lien holder shall inform the bidder or purchaser of the existence of any prior lien or security interest in the collateral, and the identity of the holder of the prior lien or security interest. If the lien holder does not know this information, he or she shall advise the prospective purchaser of that. [2006 c 283 § 3; 1969 c 82 § 4.]

Effective date—2006 c 283: See note following RCW 60.08.080.

60.10.040 Rights and interest of purchaser for value—Certificates of title. When a lien is foreclosed in accordance with the provisions of this chapter, the disposition transfers to a purchaser for value all of the lien debtor's rights therein, discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the lien holder fails to comply with the requirements of this chapter:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the lien holder, other bidders, or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith.

The purchaser takes subject to any security interest or lien that is superior to the lien under which the sale is made. In the case of property that is subject to a certificate of title, the department of licensing and the department's agents and subagents shall not transfer title through this process unless the new certificate of title reflects the security interest that is superior to the lien under which the sale is made. If a new certificate of title is issued that does not reflect the security interest that is superior to the lien under which the sale is made, the holder of such interest may request and obtain from the department of licensing a replacement certificate of title reflecting such security interest, and showing the purchaser as the registered owner. The department of licensing shall notify the purchaser of the issuance of any replacement title. [2006 c 283 § 4; 1995 c 62 § 6; 1969 c 82 § 5.]

Effective date—2006 c 283: See note following RCW 60.08.080.

60.10.050 Redemption. At any time before the lien holder has disposed of collateral or entered into a contract for its disposition under this chapter, the lien debtor or any other secured party may redeem the collateral by tendering fulfillment of all obligations to the holder that are secured by the collateral as well as the expenses reasonably incurred by the lien holder in holding and preparing the collateral for disposition, in arranging for the sale, and for reasonable attorneys' fees and legal expenses. [1995 c 62 § 7; 1969 c 82 § 6.]

60.10.060 Noncompliance with chapter—Rights of lien debtor. If it is established that the lien holder is not proceeding in accordance with the provisions of this chapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the lien debtor or any person entitled to notification or whose security interest has been made known to the lien holder prior to the disposition has a right to recover from the lien holder any loss caused by a failure to comply with the provisions of this chapter. The lien debtor has a right to recover in any event an amount not less than ten percent of the original lien claimed. [1969 c 82 § 7.]

60.10.070 "Commercially reasonable." As used in this chapter, "commercially reasonable" shall be construed in a manner consistent with the following:

The fact that a better price could have been obtained by a sale at a different time or in a different method from that

selected by the lien holder is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the lien holder either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [1969 c 82 § 8.]

Chapter 60.11 RCW CROP LIENS

Sections

60.11.010	Definitions.
60.11.020	Persons entitled to crop liens—Property subject to lien.
60.11.030	Attachment and effectiveness of lien on crops and proceeds—Filing.
60.11.040	Statement of lien—Filing—Contents—Duration.
60.11.050	Priorities of liens and security interests.
60.11.060	Foreclosure and enforcement of crop lien.
60.11.070	Judicial foreclosure.
60.11.080	Summary foreclosure.
60.11.090	Rights and interest of purchaser for value.
60.11.100	Redemption.
60.11.110	Noncompliance with chapter—Rights of lien debtor.
60.11.120	"Commercially reasonable."
60.11.130	Limitation of action to foreclose.
60.11.140	Termination statement.
60.11.900	Savings—Liens created under prior law.
60.11.901	Section captions.
60.11.902	Severability—1986 c 242.
60.11.903	Effective date—1986 c 242.
60.11.904	Transition rule for filings made before July 1, 2001.

60.11.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Crop" means all products of the soil either growing or cropped, cut, or gathered which require annual planting, harvesting, or cultivating. A crop includes orchard crops, but does not include vegetation produced by the powers of nature alone, nursery stock, or vegetation intended as a permanent enhancement of the land itself.

(2) "Handler" means a person who prepares an orchard crop for market for the account of, or as agent for, the producer of the orchard crop, which preparation includes, but is not limited to, receiving, storing, packing, marketing, selling, or delivering the orchard crop; and who takes delivery of the orchard crop from the producer of the orchard crop or from another handler. "Handler" does not include a person who solely transports the orchard crop from the producer or another handler to another person.

(3) "Landlord" means a person who leases or subleases to a tenant real property upon which crops are growing or will be grown.

(4) "Orchard crop" means cherries, peaches, nectarines, plums or prunes, pears, apricots, and apples.

(5) "Secured party" and "security interest" have the same meaning as used in the Uniform Commercial Code, Title 62A RCW.

(6) "Supplier" includes, but is not limited to, a person who furnishes seed, furnishes and/or applies commercial fertilizer, pesticide, fungicide, weed killer, or herbicide, including spraying and dusting, upon the land of the grower or landowner, or furnishes any work or labor upon the land of the grower or landowner including tilling, preparing for the growing of crops, sowing, planting, cultivating, cutting, digging, picking, pulling, or otherwise harvesting any crop grown thereon, or in gathering, securing, or housing any crop grown thereon, or in threshing any grain or hauling to any warehouse any crop, including grain, grown thereon.

(7) "Lien debtor" means the person who is obligated or owes payment or other performance. If the lien debtor and the owner of the property encumbered by the crop lien or security interest are not the same person, "lien debtor" means the owner of the property encumbered by the crop lien or security interest.

(8) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest. [2000 c 250 § 9A-824; 1991 c 286 § 1; 1986 c 242 § 1.]

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

60.11.020 Persons entitled to crop liens—Property subject to lien. (1) A landlord whose lease or other agreement with the tenant provides for cash rental payment shall have a lien upon all crops grown upon the demised land in which the landlord has an interest for payment of no more than one year's rent, where the last or only payment of such one year's rent is due or will become due within six months following the last day of harvest of the crops encumbered by the crop lien. A landlord with a crop share agreement has an interest in the growing crop which shall not be encumbered by crop liens except as provided in subsections (2) and (3) of this section.

(2) A supplier shall have a lien upon all crops for which the supplies are used or applied for payment of the purchase price of the supplies and/or services performed: PROVIDED, That the landlord's interest in the crop shall only be subject to the lien for the amount obligated to be paid by the landlord if prior written consent of the landlord is obtained or if the landlord has agreed in writing with the tenant to pay or be responsible for a portion of the supplies and/or services provided by the lien holder.

(3) A handler shall have a lien on all orchard crops delivered by the lien debtor or another handler to the handler and on all proceeds of the orchard crops for payment of: (a) All customary charges for the ordinary and necessary handling of the orchard crop, including but not limited to charges for transporting, receiving, inspecting, materials and supplies furnished, washing, waxing, sorting, packing, storing, promoting, marketing, selling, advertising, insuring, or otherwise handling the lien debtor's orchard crop; and (b) reasonable cooperative per unit retainages, and for all governmental or quasi-governmental assessments imposed by statute, ordinance, or government regulation. Charges shall not include direct or indirect advances or extensions of credit to a lien

debtor. [2000 c 250 § 9A-825; 1991 c 286 § 2; 1986 c 242 § 2.]

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

60.11.030 Attachment and effectiveness of lien on crops and proceeds—Filing. (1) Upon the later of both: (a) Execution of the lease or other agreement, or commencement of delivery of such supplies, and/or of provision of such services giving rise to the crop lien; and (b) filing a financing statement as required by RCW 62A.9A-310 and subsection (3) of this section, the crop liens described in RCW 60.11.020 (1) and (2) shall become effective and attach to the subject crop for all sums then and thereafter due and owing the lien holder under this chapter, and those liens shall continue in all identifiable cash proceeds of the crop.

(2) Upon the delivery of an orchard crop by the lien debtor or another handler to a handler without the necessity of filing, the crop lien described in RCW 60.11.020(3) shall become effective and attach to and be perfected in the delivered orchard crop for all sums then and thereafter due and owing the lien holder under this chapter, and the lien shall continue and be perfected in all proceeds of the orchard crop.

(3) Except as provided in RCW 60.11.040(4) with respect to the lien of a landlord, and except for the lien of a handler on orchard crops as provided in RCW 60.11.020(3), the lien holder must file the required financing statement during the period after the commencement of delivery of such supplies and/or of provision of such services, but before the completion of the harvest of the crops for which the lien is claimed, or in the case of a lien for furnishing work or labor, before the end of the fortieth day after the cessation of the work or labor for which the lien is claimed. If the lien holder under the crop liens described in RCW 60.11.020 (1) or (2) is to be allowed costs, disbursements, and attorneys' fees, the lien holder must also mail a copy of such financing statement to the last known address of the debtor by certified mail, return receipt requested, within ten days after filing the financing statement. [2001 c 32 § 4; 2000 c 250 § 9A-826; 1991 c 286 § 3; 1986 c 242 § 3.]

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

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

60.11.040 Statement of lien—Filing—Contents—Duration. (1) Within fourteen days of receipt of a written request from the lien debtor, or other person who provides the lien holder authorization from the lien debtor for such statement, the lien holder shall provide that person a statement described in subsection (2) of this section. Failure timely to provide the statement shall cause the lien holder to be liable to the person requesting for the attorneys' fees and costs incurred by that person to obtain the statement, together with damages incurred by that person due to the failure of the lien holder to provide the statement, including in the case of the lien debtor any loss resulting from the lien debtor's inability to obtain financing, or the increased costs thereof.

(2) The statement shall be in writing, authenticated by the claimant, and shall contain in substance the following information:

- (a) The name and address of the claimant;
- (b) The name and address of the debtor;

(c) The date of commencement of performance for which the lien is claimed;

(d) A description of the labor services, materials, or supplies furnished;

(e) A description of the crop and its location to be charged with the lien sufficient for identification; and

(f) The signature of the claimant.

(3) The statement need not be filed with the department of licensing.

(4) A lien for rent claimed by a landlord pursuant to this chapter shall be effective during the term of the lease for a period of up to five years. A financing statement for a landlord lien covering a lease term longer than five years may be continued in accordance with RCW 62A.9A-515(d). A landlord who has a right to a share of the crop may place suppliers on notice by filing a financing statement in the same manner as provided for filing a financing statement for a landlord's lien. [2000 c 250 § 9A-827; 1991 c 286 § 4; 1989 c 229 § 1; 1986 c 242 § 4.]

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

Severability—1989 c 229: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 229 § 2.]

60.11.050 Priorities of liens and security interests.

(1) Except as provided in subsections (2), (3), (4), and (5) of this section, conflicting liens and security interests in crops and their proceeds shall rank in accordance with the time of filing.

(2) The lien created in RCW 60.11.020(2) in favor of any person who furnishes any work or labor upon the land of the grower or landowner shall be preferred and prior to any other lien or security interest upon the crops to which they attach including the liens described in subsections (3), (4), and (5) of this section.

(3) The lien created in RCW 60.11.020(3) in favor of handlers is preferred and prior to a lien or security interest described in subsection (4) or (5) of this section and to any other lien or security interest upon the orchard crops to which they attach except the liens in favor of a person who furnishes work or labor upon the land of the grower or landlord. Whenever more than one handler holds a handler's lien created by RCW 60.11.020(3) in the same orchard crop, unless the affected parties otherwise agree in writing, the later of the liens to attach has priority over all previously attached handlers' liens created by RCW 60.11.020(3).

(4) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a later perfected lien or security interest incurred to produce the crop to the extent that obligations secured by such earlier perfected security interest or lien were not incurred to produce such crops.

(5) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a properly perfected landlord's lien. [2000 c § 9A-828; 1991 c 286 § 5; 1986 c 242 § 5.]

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

60.11.060 Foreclosure and enforcement of crop lien.

Any lien created by this chapter may be foreclosed or

enforced by: (1) An action in the district court having jurisdiction in the district in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070, if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070, if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in RCW 60.11.080; or (4) procedures in Part 6 of Article 9A of the Uniform Commercial Code. [2000 c 250 § 9A-829; 1991 c 33 § 4; 1986 c 242 § 6.]

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

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

60.11.070 Judicial foreclosure. The lien holder may proceed upon his or her lien; and if there is a separate obligation in writing to pay the same, secured by the lien, he or she may bring suit upon such separate promise. When he or she proceeds on the promise, if there is a specific agreement therein contained, for the payment of a certain sum or there is a separate obligation for the sum in addition to a decree of sale of lien property, judgment shall be rendered for the amount due upon the promise or other instrument, the payment of which is thereby secured; the decree shall direct the sale of the lien property and if the proceeds of the sale are insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied. In a judicial foreclosure, the court shall allow reasonable attorneys' fees and disbursements for establishing a lien. [2000 c 250 § 9A-830; 1986 c 242 § 7.]

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

60.11.080 Summary foreclosure. (1) A lien may be summarily foreclosed by notice and sale as provided in this section. The lien holder may sell or otherwise dispose of the collateral in its existing condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale, selling and the like, and to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the lien under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the lien holder, the holder of a subordinate security interest must seasonably furnish reasonable proof of his or her interest, and unless he or she does so, the lien holder need not comply with the demand.

(2) The lien holder shall account to the lien debtor for any surplus, and, unless otherwise agreed, the lien debtor is not liable for any deficiency.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline quickly in value or is of a type customarily sold on a recognized market, reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the lien holder to the lien debtor, and to any other person who has a duly filed crop lien, or who has a security interest in the collateral and has duly filed a financing statement indexed in the name of the lien debtor in this state, or who is known by the lien holder to have a security interest or crop lien in the collateral. The lien holder may buy at any public sale, and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the lien holder may buy at private sale. [1986 c 242 § 8.]

60.11.090 Rights and interest of purchaser for value.

When a lien is foreclosed in accordance with RCW 60.11.060, the disposition transfers to a purchaser for value all of the lien debtor's right therein and discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the lien holder fails to comply with the requirements of this chapter or of any judicial proceedings under RCW 60.11.070:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the lien holder, other bidders, or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith. [1986 c 242 § 9.]

60.11.100 Redemption. The right of the lien debtor and others to redeem collateral shall be as provided in RCW 62A.9A-623. [2000 c 250 § 9A-831; 1986 c 242 § 10.]

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

60.11.110 Noncompliance with chapter—Rights of lien debtor. If the lien holder is not proceeding in accordance with the provisions of this chapter, disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the lien debtor or any person entitled to notification or whose security interest has been made known to the lien holder prior to the disposition has a right to recover from the lien holder any loss caused by a failure to comply with the provisions of this chapter. [1986 c 242 § 11.]

60.11.120 "Commercially reasonable." For purposes of this chapter, "commercially reasonable" has the meaning given and shall be construed in a manner consistent with RCW 62A.9A-627. [2000 c 250 § 9A-832; 1986 c 242 § 12.]

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

60.11.130 Limitation of action to foreclose. Judicial foreclosure or summary procedure as provided in RCW 60.11.060 shall be brought within twenty-four calendar months after filing the financing statement for the lien, except: (1) In the case of a landlord lien which shall be twenty-four calendar months from the date of default on the lease, and (2) in the case of a handler's lien on a given orchard crop which shall be twenty-four calendar months from the date of default on payment of the charges described in RCW 60.11.020(3) attributable to that orchard crop. Upon expiration of such time, the claimed lien shall expire. [2000 c 250 § 9A-833; 1986 c 242 § 13.]

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

60.11.140 Termination statement. Whenever the total amount of the lien has been fully paid and as otherwise provided in RCW 62A.9A-513 (c) and (d), within twenty days following receipt of an authenticated demand following such full payment of the lien, the lien holder filing a lien shall send to the lien debtor or file with the department of licensing a termination statement for the financing statement. Failure to file a termination statement by the lien holder or the assignee of the lien holder shall cause the lien holder or its assignee to be liable to the debtor for the attorneys' fees and costs incurred by the debtor to have the lien terminated together with damages incurred by the debtor due to the failure of the lien holder to terminate the lien. [2000 c 250 § 9A-834; 1991 c 286 § 6; 1986 c 242 § 14.]

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

60.11.900 Savings—Liens created under prior law.

Liens created prior to January 1, 1987, which are based on statutes repealed by *this act, shall remain in effect for the duration provided by the law in effect before January 1, 1987. The department of licensing shall notify persons requesting information for crop liens that, for this transition period, records of crop liens may exist at a county auditor's office as well as at the department of licensing. [1986 c 242 § 15.]

***Reviser's note:** "this act" [1986 c 242] repealed chapters 60.12, 60.14, and 60.22 RCW.

60.11.901 Section captions. As used in this chapter, section captions constitute no part of the law. [1986 c 242 § 18.]

60.11.902 Severability—1986 c 242. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 242 § 19.]

60.11.903 Effective date—1986 c 242. This act shall take effect January 1, 1987. [1986 c 242 § 21.]

60.11.904 Transition rule for filings made before July 1, 2001. All statements filed with the department of licensing under this chapter before July 1, 2001, shall satisfy the requirements of RCW 62A.9A-310 and 60.11.030 for filing a financing statement. [2001 c 32 § 5; 2000 c 250 § 9A-835.]

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

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

Chapter 60.13 RCW

PROCESSOR AND PREPARER LIENS FOR AGRICULTURAL PRODUCTS

Sections

60.13.010	Definitions.
60.13.020	Processor lien.
60.13.030	Preparer lien for grain, hay, or straw.
60.13.035	Notice of preparer lien for dairy products—Proof of lien.
60.13.040	Filing of statement evidencing lien—Contents—Standard filing forms, fees, and procedures.
60.13.050	Priority of lien.
60.13.060	Duration of lien—Statement of discharge.
60.13.070	Foreclosure and enforcement of lien—Costs.

60.13.010 Definitions. As used in this chapter, the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Agricultural product" means any unprocessed horticultural, vermicultural and its byproducts, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock. When used in RCW 60.13.020, "agricultural product" means horticultural, viticultural, aquacultural, or berry products, hay and straw, milk and milk products, vegetable seed, or turf and forage seed and applies only when such products are delivered to a processor or conditioner in an unprocessed form.

(2) "Conditioner," "consignor," "person," and "producer" have the meanings defined in RCW 20.01.010.

(3) "Delivers" means that a producer completes the performance of all contractual obligations with reference to the transfer of actual or constructive possession or control of an agricultural product to a processor or conditioner or preparer, regardless of whether the processor or conditioner or preparer takes physical possession.

(4) "Preparer" means a person engaged in the business of feeding livestock or preparing livestock products for market.

(5) "Processor" means any person, firm, company, or other organization that purchases agricultural products except milk and milk products from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale, or that purchases or markets milk from a dairy producer and is obligated to remit payment to such dairy producer directly.

(6) "Commercial fisherman" means a person licensed to fish commercially for or to take food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute.

(7) "Fish" means food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute. [2002 c 278 § 1; 1991 c 174 § 2; 1987 c 148 § 1; 1985 c 412 § 1.]

60.13.020 Processor lien. Starting on the date a producer delivers any agricultural product to a processor or conditioner, the producer has a first priority statutory lien, referred to as a "processor lien." A commercial fisherman

who delivers fish to a processor also has a first priority statutory "processor lien" starting on the date the fisherman delivers fish to the processor. This processor lien shall continue until twenty days after payment for the product is due and remains unpaid, without filing any notice of lien, for the contract price, if any, or the fair market value of the products delivered. The processor lien attaches to the agricultural products or fish delivered, to the processor's or conditioner's inventory, and to the processor's or conditioner's accounts receivable. However, no processor lien may attach to agricultural products or fish delivered by a producer or commercial fisherman, or on the producer's or fisherman's behalf, to a processor which is organized and operated on a cooperative basis and of which the producer or fisherman is a member, nor may such lien attach to such processor's inventory or accounts receivable. [1987 c 148 § 2; 1985 c 412 § 2.]

60.13.030 Preparer lien for grain, hay, or straw. Starting on the date a producer delivers grain, hay, or straw to a preparer, the producer has a first priority statutory lien, referred to as a "preparer lien." This preparer lien shall continue twenty days after payment for the product is due and remains unpaid, without filing any notice of lien, for the contract price, if any, or the fair market value of the products delivered. The preparer lien attaches to the agricultural products delivered by the producer to the preparer, and to the preparer's accounts receivable. [1985 c 412 § 3.]

60.13.035 Notice of preparer lien for dairy products—Proof of lien. A person who controls or possesses amounts payable to the preparer of dairy products or the preparer's assigns, if the preparer or preparer's assigns is not a producer-handler, which are properly encumbered by a preparer's lien upon an account receivable shall not be obligated to pay a producer amounts to which the producer's preparer lien has attached until that person receives written notice of such lien, nor shall that person be liable to the producer for any amounts paid out prior to receipt of said notice. The notice required herein shall contain the information described in RCW 60.13.040(2). If requested by the person responsible for payment of such amounts, the producer must seasonably furnish reasonable proof that the preparer lien continues to exist and unless such proof is so furnished, that person has no obligation to pay the producer. A preparer of dairy products shall provide the name of the purchaser or marketing agent of the products to the producer upon request.

Failure to furnish the written notice as provided in this section shall not affect the status of the lien established under this chapter in regard to the relationship with other creditors. [1986 c 178 § 15.]

60.13.040 Filing of statement evidencing lien—Contents—Standard filing forms, fees, and procedures. (1) A producer or commercial fisherman claiming a processor or preparer lien may file a statement evidencing the lien with the department of licensing after payment from the processor, conditioner, or preparer to the producer or fisherman is due and remains unpaid. For purposes of this subsection and RCW 60.13.050, payment is due on the date specified in the

contract, or if not specified, then within thirty days from time of delivery.

(2) The statement shall be in a record, authenticated by the producer or fisherman, and shall contain in substance the following information:

(a) A true statement or a reasonable estimate of the amount demanded after deducting all credits and offsets;

(b) The name of the processor, conditioner, or preparer who received the agricultural product or fish to be charged with the lien;

(c) A description sufficient to identify the agricultural product or fish to be charged with the lien;

(d) A statement that the amount claimed is a true and bona fide existing debt as of the date of the filing of the notice evidencing the lien;

(e) The date on which payment was due for the agricultural product or fish to be charged with the lien; and

(f) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers. [2002 c 278 § 2; 2001 c 32 § 6. Prior: 1987 c 189 § 7; 1987 c 148 § 3; 1985 c 412 § 4.]

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

60.13.050 Priority of lien. (1)(a) If a statement is filed pursuant to RCW 60.13.040 within twenty days of the date upon which payment from the processor, conditioner, or preparer to the producer or commercial fisherman is due and remains unpaid, the processor or preparer lien evidenced by the statement continues its priority over all other liens or security interests upon agricultural products or fish, inventory, and accounts receivable, except as provided in (b) of this subsection. Such priority is without regard to whether the other liens or security interests attached before or after the date on which the processor or preparer lien attached.

(b) The processor or preparer lien shall be subordinate to liens for taxes or labor perfected before filing of the processor or preparer lien.

(2) If the statement provided for in RCW 60.13.040 is not filed within twenty days of the date payment is due and remains unpaid, the processor or preparer lien shall thereupon become subordinate to:

(a) A lien that has attached to the agricultural product or fish, inventory, or accounts receivable before the date on which the processor or preparer lien attaches; and

(b) A perfected security interest in the agricultural product or fish, inventory, or accounts receivable. [1987 c 148 § 4; 1985 c 412 § 5.]

60.13.060 Duration of lien—Statement of discharge.

(1) The processor lien shall terminate twelve months after, and the preparer lien shall terminate fifty days after, the later of the date of attachment or filing, unless a suit to foreclose the lien has been filed before that time as provided in RCW 60.13.070.

(2) If a statement has been filed as provided in RCW 60.13.040 and the producer or commercial fisherman has received payment for the obligation secured by the lien, the producer or fisherman shall promptly file with the department of licensing a statement declaring that full payment has

been received and that the lien is discharged. If, after payment, the producer or fisherman fails to file such statement of discharge within ten days following a request to do so, the producer or fisherman shall be liable to the processor, conditioner, or preparer in the sum of one hundred dollars plus actual damages caused by the failure. [2002 c 278 § 3; 1987 c 148 § 5; 1985 c 412 § 6.]

60.13.070 Foreclosure and enforcement of lien—Costs. (1) The processor or preparer liens may be foreclosed and enforced by civil action in superior court.

(2) In all suits to enforce processor or preparer liens, the court shall, upon entering judgment, allow to the prevailing party as a part of the costs, all moneys paid for the filing and recording of the lien and reasonable attorney fees. [1985 c 412 § 7.]

Chapter 60.16 RCW

LABOR LIENS ON ORCHARDS AND ORCHARD LANDS

Sections

- 60.16.010 Liens authorized.
- 60.16.020 Notice of lien—Filing—Contents—Foreclosure.
- 60.16.030 Limitation of action to foreclose—Costs.

60.16.010 Liens authorized. Any person or corporation who shall do or cause to be done any labor upon any orchard or orchard lands, in pruning, spraying, cultivating and caring for the same, at the request of the owner thereof, or his agent, shall have a lien upon such orchard and orchard lands for such work and labor so performed. [1917 c 110 § 1; RRS § 1131-1.]

60.16.020 Notice of lien—Filing—Contents—Foreclosure. Any person or corporation claiming the benefit of this chapter, must within forty days after the close of such work or labor for each season during which such work and labor is done, file for record with the county auditor of the county in which said work and labor was performed and in which said land or part thereof is situated, a claim of lien which shall be in substance in accordance with the provisions of *RCW 60.04.060, so far as the same is applicable, which said claim of lien shall be verified as in said section provided, and such lien may be enforced in a civil action in the same manner as near as may be, as provided in *RCW 60.04.120. [1917 c 110 § 2; RRS § 1131-2.]

***Reviser's note:** RCW 60.04.060 and 60.04.120 were repealed by 1991 c 281 § 31, effective April 1, 1992.

60.16.030 Limitation of action to foreclose—Costs. Any action to foreclose such claim of lien shall be brought within eight calendar months after the filing of such claim for lien as provided in RCW 60.16.020 and in any such action brought to enforce such lien, the court shall allow as part of the costs the money paid for making, filing and recording such claim of lien and a reasonable attorney's fee. [1917 c 110 § 3; RRS § 1131-3.]

Chapter 60.24 RCW

LIEN FOR LABOR AND SERVICES ON
TIMBER AND LUMBER

Sections

60.24.020	Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber.
60.24.030	Lien on lumber—"Lumber" defined.
60.24.033	Lien on real property for labor or services on timber and lumber.
60.24.035	Lien for stumpage.
60.24.038	Priority of lien.
60.24.040	Period covered by labor liens.
60.24.070	Period covered by stumpage lien.
60.24.075	Claims—Contents—Form.
60.24.080	Filing claim for stumpage lien.
60.24.100	Recording claims—Fees.
60.24.110	Limitation of action.
60.24.120	Venue—Procedure.
60.24.130	Sheriff as receiver—Deposit to recover possession—Costs.
60.24.140	Pleadings by defendant—Amendments—Hearing.
60.24.150	Enforcement against all or part of property.
60.24.160	Errors in claim, effect of.
60.24.170	Purchase of property subject to lien—Presumption of notice.
60.24.180	Joinder—Costs.
60.24.190	Judgment—Sale—Disposition of proceeds.
60.24.195	Sale of property subject to lien—When.
60.24.200	Damages for eloigning, injuring, destroying or removing marks, etc.—Recovery.

Lien under this chapter extends to real property on which labor and services are performed: RCW 60.24.033.

60.24.020 Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber. Every person performing labor upon or who shall assist in obtaining or securing saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any tugboat or towboat, which shall tow or assist in towing, from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any team or any logging engine, which shall haul or assist in hauling from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any logging or other railroad over which saw logs, spars, piles, cord wood, shingle bolts, or other timber shall be transported and delivered, shall have a lien upon the same for the work or labor done upon, or in obtaining or securing, or for services rendered in towing, transporting, hauling, or driving, the particular saw logs, spars, cord wood, shingle bolts, or other timber in said claim of lien described whether such work, labor or services was done, rendered or performed at the instance of the owner of the same or his agent. Scalpers, and bull cooks, and cooks, flunkeys and waiters in lumber camps, shall be regarded as persons who assist in obtaining or securing the timber herein mentioned. [1923 c 10 § 1; 1907 c 9 § 1; 1895 c 88 § 1; 1893 c 132 § 1; RRS § 1162. Prior: Code 1881 § 1941; 1879 p 100 § 2; 1877 p 217 § 3; 1860 p 340 § 1.]

60.24.030 Lien on lumber—"Lumber" defined. Every person performing work or labor or assisting in manufacturing saw logs and other timber into lumber and shingles, has a lien upon such lumber while the same remains at the mill where it was manufactured, or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner. The term lumber, as used in this chapter, shall be held and be con-

strued to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from saw logs or other timber. [1893 c 132 § 2; 1893 c 10 § 1; RRS § 1163. Prior: Code 1881 § 1942; 1877 p 217 § 4. Formerly RCW 60.24.010, part.]

60.24.033 Lien on real property for labor or services on timber and lumber. The lot tract, parcel of land, or any other type of real property or real property improvements upon which the type of activities listed in RCW 60.24.020, 60.24.030, or 60.24.035 are to be performed, or so much property thereof as may be necessary to satisfy the lien and the judgment thereon, to be determined by the court on rendering judgment in a foreclosure of lien, shall also be subject to the lien to the extent of its interest of the persons who in their own behalf, or through any of their agents, caused any of the types of activities listed in RCW 60.24.020, 60.24.030, or 60.24.035. [1986 c 179 § 1. Formerly RCW 60.04.045.]

60.24.035 Lien for stumpage. Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles or other timber, has a lien upon the same for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price. [1893 c 132 § 3; RRS § 1164. Prior: Code 1881 § 1943; 1877 p 217 § 5. Formerly RCW 60.24.060.]

60.24.038 Priority of lien. The liens provided for in this chapter are preferred liens and are prior to any other liens, and no sale or transfer of any saw logs, spars, piles or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this chapter those for work and labor shall be preferred: PROVIDED, That as between liens for work and labor claimed by several laborers on the same logs or lot of logs the claim or claims for work or labor done or performed on the identical logs proceeded against to the extent that said logs can be identified, shall be preferred as against the general claim of lien for work and labor recognized and provided for in this chapter. [1893 c 132 § 4; RRS § 1165. Prior: Code 1881 § 1944; 1877 p 217 § 6. Formerly RCW 60.24.090.]

60.24.040 Period covered by labor liens. The person rendering the service of [or] doing the work or labor named in RCW 60.24.020 and 60.24.030 is only entitled to the liens as provided herein for services, work or labor for the period of eight calendar months, or any part thereof next preceding the filing of the claim, as provided in *section 8 of this act. [1893 c 132 § 5; RRS § 1166. Prior: Code 1881 § 1945; 1877 p 217 § 7.]

*Reviser's note: "section 8 of this act" is codified as RCW 60.24.080. Section 7 (codified as RCW 60.24.075) was probably intended.

60.24.070 Period covered by stumpage lien. The person granting the privilege mentioned in RCW 60.24.035 is only entitled to the lien as provided therein for saw logs, spars, piles and other timber cut during the eight months next

preceding the filing of the claim, as herein provided in RCW 60.24.075. [1893 c 132 § 6; RRS § 1167. Prior: Code 1881 § 1946; 1877 p 217 § 8.]

60.24.075 Claims—Contents—Form. Every person, within sixty days after the close of the rendition of the services, or after the close of the work or labor mentioned in the preceding sections, claiming the benefit hereof, must file for record with the county auditor of the county in which such saw logs, spars, piles, and other timber were cut, or in which such lumber or shingles were manufactured, a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:

..... Claimant, vs.

Notice is hereby given that of county, state of Washington, claims a lien upon a of, being about in quantity, which were cut or manufactured in county, state of Washington, are marked thus, and are now lying in, for labor performed upon and assistance rendered in said,; that the name of the owner or reputed owner is,; that employed said to perform such labor and render such assistance upon the following terms and conditions, to wit:

The said agreed to pay the said for such labor and assistance,; that said contract has been faithfully performed and fully complied with on the part of said, who performed labor upon and assisted in said for the period of,; that said labor and assistance were so performed and rendered upon said between the ... day of and the ... day of,; and the rendition of said service was closed on the ... day of, and sixty days have not elapsed since that time; that the amount of claimant's demand for said service is,; that no part thereof has been paid except, and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of, in which amount he claims a lien upon said, The said also claims a lien on all said now owned by said of said county to secure payment for the work and labor performed in obtaining or securing the said logs, spars, piles, or other timber, lumber, or shingles herein described.

State of Washington, county of ss.

..... being first duly sworn, on oath says that he is named in the foregoing claim, has heard the same read, knows the contents thereof, and believes the same to be true.

Subscribed and sworn to before me this day of

[1986 c 179 § 2; 1893 c 132 § 7; RRS § 1168. Prior: Code 1881 § 1947; 1879 p 100 § 4; 1877 p 217 § 9. Formerly RCW 60.24.050.]

60.24.080 Filing claim for stumpage lien. Every person mentioned in RCW 60.24.035 claiming the benefit thereof must file for record with the county auditor of the county in which such saw logs, spars, piles or other timber were cut, a claim in substance the same as provided in RCW 60.24.075, and verified as therein provided. [1893 c 132 § 8; RRS § 1169. Prior: Code 1881 § 1948; 1877 p 218 § 10.]

60.24.100 Recording claims—Fees. The county auditor must record any claim filed under this chapter in a book kept by him for that purpose, which record must be indexed, as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments. [1893 c 132 § 9; RRS § 1170. Prior: Code 1881 § 1949; 1877 p 218 § 11.]

60.24.110 Limitation of action. No lien provided for in this chapter binds any saw logs, spars, piles or other timber, or lumber and shingles, for a longer period than eight calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court, within that time, to enforce the same: PROVIDED, HOWEVER, That in case such civil action so commenced should for any cause other than the merits, be nonsuited or dismissed, then the lien shall continue for the term of one calendar month, if the said eight months have expired, to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of eight months hereinbefore stated. [1893 c 132 § 10; RRS § 1171. Prior: Code 1881 § 1950; 1879 p 100 § 5; 1877 p 218 § 12.]

60.24.120 Venue—Procedure. The liens provided for in this chapter shall be enforced by a civil action in the superior court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that be against it; except as hereinafter otherwise provided. [1893 c 132 § 11; RRS § 1172. Prior: Code 1881 § 1951; 1877 p 218 § 13.]

60.24.130 Sheriff as receiver—Deposit to recover possession—Costs. The sheriff of the county wherein the lien is filed shall be the receiver when one is appointed, and the superior court upon a showing made shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees collected by him in his official capacity: PROVIDED, That at any time when any property is in the custody of such sheriff under the provisions of this

chapter, and any person claiming any interest therein, may deposit with the clerk of the court in which such action is pending, a sum of money in an amount equal to the claim sued upon, together with one hundred dollars, to cover costs and interest, (unless the court shall make an order fixing a different amount to cover such costs and interest, then such an amount as the court shall fix to secure such costs and interest, which such action is being prosecuted) and shall have the right to demand and receive forthwith from such sheriff the possession and custody of such property: PROVIDED, That in no action brought under the provisions of this chapter shall costs be allowed to lien holders unless a demand has been made for payment of his lien claim before commencement of suit, unless the court shall find the claimants at time of bringing action had reasonable ground to believe that the owner or the person having control of the property upon which such lien is claimed was attempting to defraud such claimant, or prevent the collection of such lien. [1899 c 90 § 1; 1893 c 132 § 12; RRS § 1173.]

60.24.140 Pleadings by defendant—Amendments—Hearing. If the defendant or defendants appear in a suit to enforce any lien provided by this chapter he or they shall make their answer on the merits of the complaint, and any motion or demurrer against the said complaint must be filed with the answer; and no motion shall be allowed to make complaint more definite and certain, if it appear to the court that the defendant or defendants have or should have knowledge of the facts, or that it can be made more certain and definite by facts which will appear necessarily in the testimony; but the case, unless the court sustains the demurrer to the complaint, shall be heard on the merits as speedily as possible, and amendments of the pleadings, if necessary, shall be liberally allowed. [1893 c 132 § 13; RRS § 1174.]

60.24.150 Enforcement against all or part of property. Any person who shall bring a civil action to enforce the lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such civil action, has the right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining, or which he has cut on his timber land during the eight months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said logs, spars, piles or other timber, or in manufacturing said lumber or shingles during the whole or any part of the eight months mentioned in *section seven (7) of this act, or for timber cut during the whole or any part of the eight months above mentioned. And where proceedings are commenced against any lot of saw logs, spars, piles or other timber or lumber or shingles as herein provided, and some of the lienors claim liens against the specific logs, spars, piles or other timber or lumber or shingles proceeded against, and others against the same generally, to secure their claims for work and labor, the priority of the liens shall be determined as hereinbefore provided. [1893 c 132 § 14; RRS § 1175. Prior: Code 1881 § 1952; 1877 p 218 § 14.]

*Reviser's note: "section seven (7) of this act" is codified as RCW 60.24.075. Section 5 (codified as RCW 60.24.040) was probably intended.

60.24.160 Errors in claim, effect of. No mistake or error in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets or of the balance due was made with intent to defraud, or the court shall find that an innocent third party without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry, in any manner. [1893 c 132 § 15; RRS § 1176.]

60.24.170 Purchase of property subject to lien—Presumption of notice. It shall be conclusively presumed by the court that a party purchasing the property liened upon within thirty days given herein to claimants wherein to file their liens, is not an innocent third party, nor that he has become a bona fide owner of the property liened upon, unless it shall appear that he has paid full value for the said property, and has seen that the purchase money of the said property has been applied to the payment of such bona fide claims as are entitled to liens upon the said property under the provisions of this chapter, according to the priorities herein established. [1893 c 132 § 16; RRS § 1177.]

60.24.180 Joinder—Costs. Any number of persons claiming liens under this chapter may join in the affidavit in RCW 60.24.075 provided, and may join in the same action, and when separate actions are commenced the court may consolidate them. The court shall also allow as part of the costs the moneys paid for filing, making and recording the claim, and a reasonable attorney's fee for each person claiming a lien. [1901 c 23 § 1; 1893 c 132 § 17; RRS § 1178. Prior: Code 1881 § 1691; 1877 p 219 § 15.]

60.24.190 Judgment—Sale—Disposition of proceeds. In each civil action judgment must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale to the payment of each judgment, according to the priorities established in this chapter pro rata in its class according to the amount of such judgment. [1893 c 132 § 18; RRS § 1179. Prior: Code 1881 § 1954; 1877 p 219 § 16. FORMER PART OF SECTION: 1893 c 132 § 19; RRS § 1180 now codified as RCW 60.24.195.]

Sale of property on execution: Chapter 6.21 RCW.

60.24.195 Sale of property subject to lien—When. The court or judge may order any property subject to a lien as in this chapter provided to be sold by the sheriff as personal property is sold on execution either before or at the time judgment is rendered, as provided in RCW 60.24.190, and the proceeds of such sale must be paid into court to be applied as in RCW 60.24.190 directed. [1893 c 132 § 19; RRS § 1180.]

Prior: Code 1881 § 1955; 1877 p 219 § 17. Formerly RCW 60.24.190, part.]

Sale of property on execution: Chapter 6.21 RCW.

60.24.200 Damages for eloigning, injuring, destroying or removing marks, etc.—Recovery. Any person who shall eloin, injure or destroy, or who shall render difficult, uncertain or impossible of identification any saw logs, spars, piles, shingles or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for the damages to the amount secured by his lien, and it being shown to the court in the civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the said person, provided he be a party to such action, or the damages may be recovered by a civil action against such person. [1893 c 132 § 20; RRS § 1181. Prior: Code 1881 § 1956; 1877 p 219 § 18.]

Chapter 60.28 RCW

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS

Sections

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60.28.010 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration. (1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum not to exceed five percent, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or material supplier who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors

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with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: PROVIDED, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any amendments that may hereafter be made thereto: PROVIDED FURTHER, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor: PROVIDED, That the contractor may request that retainage be reduced to one hundred percent of the value of the work remaining on the project; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: PROVIDED, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed. When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(4) With the consent of the public body the contractor may submit a bond for all or any portion of the amount of

funds retained by the public body in a form acceptable to the public body. Such bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(5) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

(6) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, thirty days after completion and final acceptance of each ferry vessel, the department may release and pay in full the amounts retained in connection with the construction of such vessel subject to the provisions of RCW 60.28.020: PROVIDED, That the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on such ferry after a period of thirty days following final acceptance of such ferry; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the material suppliers and laborers filing claims.

(7) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations shall not be subject to subsections (1) through (6) of this section. [2007 c 218 § 91; 1986 c 181 § 6; 1984 c 146 § 1; 1982 c 170 § 1; 1981 c 260 § 14. Prior: 1977 ex.s. c 205 § 1; 1977 ex.s. c 166 § 5; 1975 1st ex.s. c 104 § 1; 1970 ex.s. c 38 § 1; 1969 ex.s. c 151 § 1; 1963 c 238 § 1; 1955 c 236 § 1; 1921 c 166 § 1; RRS § 10320.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Application—1992 c 233: See RCW 39.04.901.

Severability—1977 ex.s. c 166: See note following RCW 39.08.030.

60.28.011 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions. (1) Public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or

sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.020 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue and the material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the mon-

eys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.210. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or material person who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.210. [2007 c 494 § 504; 2007 c 218 § 92; 2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

Reviser's note: This section was amended by 2007 c 218 § 92 and by 2007 c 494 § 504, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.015 Recovery from retained percentage—Written notice to contractor of materials furnished.

Every person, firm, or corporation furnishing materials, supplies, or equipment to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state, or any county, city, town, district, municipality, or other public body, shall give to the contractor of the work a notice in writing, which notice shall cover the material, supplies, or equipment furnished or leased during the sixty days preceding the giving of such notice as well as all subsequent materials, supplies, or equipment furnished or leased, stating in substance and effect that such person, firm, or corporation

is and/or has furnished materials and supplies, or equipment for use thereon, with the name of the subcontractor ordering the same, and that a lien against the retained percentage may be claimed for all materials and supplies, or equipment furnished by such person, firm, or corporation for use thereon, which notice shall be given by (1) mailing the same by registered or certified mail in an envelope addressed to the contractor, or (2) by serving the same personally upon the contractor or the contractor's representative and obtaining evidence of such service in the form of a receipt or other acknowledgement signed by the contractor or the contractor's representative, and no suit or action shall be maintained in any court against the retained percentage to recover for such material, supplies, or equipment or any part thereof unless the provisions of this section have been complied with. [1986 c 314 § 5.]

60.28.020 Excess over lien claims to contractor. After the expiration of the thirty day period, and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of material suppliers and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body shall pay to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [2007 c 218 § 93; 1975 1st ex.s. c 104 § 2; 1970 ex.s. c 38 § 2; 1967 ex.s. c 26 § 23; 1955 c 236 § 2; 1921 c 166 § 2; RRS § 10321.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Application—1992 c 223: See RCW 39.04.901.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.021 Excess over lien claims paid to contractor. After the expiration of the forty-five day period for giving notice of lien provided in RCW 60.28.011(2), and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of material suppliers and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body may withhold from the remaining retained amounts for claims the public body may have against the contractor and shall pay the balance, if any, to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or

retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [2007 c 218 § 94; 1992 c 223 § 3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.030 Foreclosure of lien—Limitation of action—Release of funds. Any person, firm, or corporation filing a claim against the reserve fund shall have four months from the time of the filing thereof in which to bring an action to foreclose the lien. The lien shall be enforced by action in the superior court of the county where filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien against it: PROVIDED, That the public body shall not be required to make any detailed answer to any complaint or other pleading but need only certify to the court the name of the contractor; the work contracted to be done; the date of the contract; the date of completion and final acceptance of the work; the amount retained; the amount of taxes certified due or to become due to the state; and all claims filed with it showing respectively the dates of filing, the names of claimants, and amounts claimed. Such certification shall operate to arrest payment of so much of the funds retained as is required to discharge the taxes certified due or to become due and the claims filed in accordance with this chapter. In any action brought to enforce the lien, the claimant, if he prevails, is entitled to recover, in addition to all other costs, attorney fees in such sum as the court finds reasonable. If a claimant fails to bring action to foreclose his lien within the four months period, the reserve fund shall be discharged from the lien of his claim and the funds shall be paid to the contractor. The four months limitation shall not, however, be construed as a limitation upon the right to sue the contractor or his surety where no right of foreclosure is sought against the fund. [1979 ex.s. c 38 § 1; 1955 c 236 § 3; 1927 c 241 § 1; 1921 c 166 § 3; RRS § 10322.]

60.28.040 Tax liens—Priority of liens. The amount of all taxes, increases and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is twenty thousand dollars or more shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract, except that the employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens. The amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid. [1985 c

80 § 1; 1971 ex.s. c 299 § 1; 1955 c 236 § 4. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Severability—Effective dates—1971 ex.s. c 299: See notes following RCW 82.04.050.

60.28.050 Duties of disbursing officer upon final acceptance of contract. Upon final acceptance of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of contracts over twenty thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage. [1982 c 170 § 2; 1970 ex.s. c 38 § 3; 1967 ex.s. c 26 § 24; 1955 c 236 § 5. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Application—1992 c 223: See RCW 39.04.901.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.051 Duties of disbursing officer upon completion of contract. Upon completion of a contract, the state, county, or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of contracts over thirty-five thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he or she has received from the department of revenue a certificate that all taxes, increases, and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage. [2007 c 210 § 2; 1992 c 223 § 4.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.060 Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue. If within thirty days after receipt of notice by the department of revenue of the completion of the contract, the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the department of revenue may certify to the disbursing officer the amount of all taxes, increases and penalties due from the contractor, together with the amount of all taxes due and to become due with respect to the contract and may request payment thereof to the department of revenue in accordance with the priority provided by this chapter. The disbursing officer shall within ten days after receipt of such certificate and request pay to the department of revenue the amount of all taxes, increases and

penalties certified to be due or to become due with respect to the particular contract, and, after payment of all claims which by statute are a lien upon the retained percentage withheld by the disbursing officer, shall pay to the department of revenue the balance, if any, or so much thereof as shall be necessary to satisfy the claim of the department of revenue for the balance of all taxes, increases or penalties shown to be due by the certificate of the department of revenue. If the contractor owes no taxes imposed pursuant to Title 82 RCW, the department of revenue shall so certify to the disbursing officer. [1967 ex.s. c 26 § 25; 1955 c 236 § 6. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination. (1) If any delay in issuance of notice to proceed or in construction following an award of any public construction contract is primarily caused by acts or omissions of persons or agencies other than the contractor and a preliminary, special or permanent restraining order of a court of competent jurisdiction is issued pursuant to litigation and the appropriate public contracting body does not elect to delete the completion of the contract as provided by *RCW 60.28.010(3), the appropriate contracting body will issue a change order or force account directive to cover reasonable costs incurred by the contractor as a result of such delay. These costs shall include but not be limited to contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, bonds, professional fees, and sub-contracts, attributable to such delay plus a reasonable sum for overhead and profit.

In the event of a dispute between the contracting body and the contractor, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, under the then obtaining rules of the American Arbitration Association.

If the delay caused by litigation exceeds six months, the contractor may then elect to terminate the contract and to delete the completion of the contract and receive payment in proportion to the amount of the work completed plus the cost of the delay. Amounts retained and accumulated under RCW 60.28.010 shall be held for a period of thirty days following the election of the contractor to terminate. Election not to terminate the contract by the contractor shall not affect the accumulation of costs incurred as a result of the delay provided above.

(2) This section shall not apply to any contract awarded pursuant to an invitation for bid issued on or before July 16, 1973. [1982 c 170 § 3; 1973 1st ex.s. c 62 § 3.]

***Reviser's note:** RCW 60.28.010 was amended by 1982 c 170 § 1, changing subsection (3) to subsection (5).

Severability—1973 1st ex.s. c 62: See note following RCW 39.04.120.

Change orders due to environmental protection requirements, costs: RCW 39.04.120.

60.28.900 Severability—1955 c 236. If any section, provision or part of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect

the validity of this chapter as a whole or any section, provision or part hereof not adjudged invalid or unconstitutional. [1955 c 236 § 8.]

Chapter 60.32 RCW

LABOR LIENS ON FRANCHISES, EARNINGS, AND PROPERTY OF CERTAIN COMPANIES

Sections

60.32.010	Liens authorized.
60.32.020	Notice of lien—Contents—Filing and serving.
60.32.030	Manner of serving notice.
60.32.040	Manner of enforcing liens.
60.32.050	Receiver or assignee to pay claims first.

60.32.010 Liens authorized. Every person performing labor for any person, company or corporation, in the operation of any railway, canal or transportation company, or any water, mining or manufacturing company, sawmill, lumber or timber company, shall have a prior lien on the franchise, earnings, and on all the real and personal property of said person, company or corporation, which is used in the operation of its business, to the extent of the moneys due him from such person, company or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of his claim therefor, as hereinafter provided; and no mortgage, deed of trust or conveyance shall defeat or take precedence over said lien. [1897 c 43 § 1; RRS § 1149.]

60.32.020 Notice of lien—Contents—Filing and serving. No person shall be entitled to the lien given by RCW 60.32.010, unless he shall, within ninety days after he has ceased to perform labor for such person, company or corporation, filed for record with the county auditor of the county in which said labor was performed, or in which is located the principal office of such person, company or corporation in this state, a notice of claim, containing a statement of his demand, after deducting all just credits and offsets, the name of the person, company or corporation, and the name of the person or persons employing claimant, if known, with the statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve a copy thereof on said person, company or corporation within thirty days after the same is so filed for record.

Any number of claimants may join in the same notice for the purpose of filing and enforcing their liens, but the amount claimed by each claimant shall be separately stated. [1977 ex.s. c 176 § 1; 1897 c 43 § 2; RRS § 1150.]

60.32.030 Manner of serving notice. Service of notice, as herein required, may be made in the same manner as summons in civil actions. [1897 c 43 § 3; RRS § 1151.]

Service of summons in civil actions: RCW 4.28.080.

60.32.040 Manner of enforcing liens. Any such lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed. [1897 c 43 § 4; RRS § 1152.]

60.32.050 Receiver or assignee to pay claims first.

Whenever a receiver or assignee is appointed for any person, company or corporation, the court shall require such receiver or assignee to pay all claims for which a lien could be filed under this chapter, before the payment of any other debts or claims, other than operating expenses. [1897 c 43 § 5; RRS § 1153.]

Chapter 60.34 RCW

LIEN OF RESTAURANT, HOTEL, TAVERN, ETC., EMPLOYEES

Sections

60.34.010	Liens authorized.
60.34.020	Notice of lien—Contents—Filing and serving.
60.34.030	Manner of serving notice.
60.34.040	Manner of enforcing liens—Costs.
60.34.050	Priority of lien.

60.34.010 Liens authorized. Every person performing labor in the operation of any restaurant, hotel, tavern, or other place of business engaged in the selling of prepared foods or drinks, or any hotel service employee, shall have a lien on the earnings and on all the property of his employer used in the operation of said business to the extent of the moneys due him for labor performed within three months next preceding the filing of his claim therefor. [1953 c 205 § 1.]

60.34.020 Notice of lien—Contents—Filing and serving. The lien claimant shall within thirty days after he has ceased to perform such labor, file for record with the auditor of the county in which the labor was performed a notice of claim, containing a statement of his demand, the name of the employer and the name of the person employing him, if known, with a statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve or mail a copy thereof to said employer within said period. [1953 c 205 § 2.]

60.34.030 Manner of serving notice. Service of the notice of claim may be made in the same manner as summons in civil actions. [1953 c 205 § 3.]

Service of summons in civil actions: RCW 4.28.080.

60.34.040 Manner of enforcing liens—Costs. The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed, when said lien is upon real property, or in the same manner as provided in chapter 60.10 RCW when the lien is upon personal property. The court may allow as part of the costs of the action the money paid for filing or recording the claim and a reasonable attorney fee. [1995 c 62 § 8; 1969 c 82 § 12; 1959 c 173 § 1; 1953 c 205 § 4.]

60.34.050 Priority of lien. The lien created herein shall be preferred to any encumbrance which may attach after the commencement of the labor and is also preferred to any encumbrance which may have attached previously to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1953 c 205 § 5.]

Chapter 60.36 RCW

LIEN ON VESSELS AND EQUIPMENT

Sections

60.36.010	Liens created.
60.36.020	Actions to enforce liens.
60.36.030	Liens for handling cargo.
60.36.040	Liens for handling cargo—Priority.
60.36.050	Liens for handling cargo—Foreclosure.
60.36.060	Lien for breach of contract for towing, dunnaging, stevedoring, etc.

60.36.010 Liens created. All steamers, vessels and boats, their tackle, apparel and furniture, are liable—

(1) For service rendered on board at the request of, or under contract with their respective owners, charterers, masters, agents or consignees.

(2) For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, subcontractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020.

(3) For their wharfage and anchorage within this state.

(4) For nonperformance or malperformance of any contract for the transportation of persons or property between places within this state, or to or from places within this state, made by their respective owners, masters, agents or consignees.

(5) For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state. Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in the order of the subdivisions hereinbefore enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued. [1901 c 24 § 1; Code 1881 § 1939; 1877 p 216 § 1; RRS § 1182. Prior: 1858 p 29 § 1.]

Lien of pilot for pilotage compensation: RCW 88.16.140.

60.36.020 Actions to enforce liens. Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any superior court of this state as provided in RCW 60.10.023. [1995 c 62 § 9; 1969 c 82 § 19; Code 1881 § 1940; 1877 p 216 § 2; RRS § 1183.]

60.36.030 Liens for handling cargo. All steamers, vessels and boats, their tackle, apparel and furniture shall be held

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liable at all ports and places within this state or within the jurisdiction of the courts of this state or within the jurisdiction of the courts of the United States in said state for services rendered by stevedores, longshoremen or others engaged in the loading, unloading, stowing or dunnaging of cargo in or from any steamer, vessel or boat in any harbor or at any other place within said state, or within the jurisdiction of the courts thereof as above stated, and said steamers, vessels and boats shall further be liable as per their contracts for all services performed upon wharfs or landing places by stevedores, longshoremen or others: PROVIDED, That such services must have been so performed in and about and be connected with the loading, unloading, dunnaging or stowing of said cargo. [1901 c 75 § 1; RRS § 1184.]

60.36.040 Liens for handling cargo—Priority. Demands for wages and all sums due under contracts or otherwise for the performance of all or any of the services mentioned in RCW 60.36.030 shall constitute liens upon all steamers, vessels and boats, their tackle, apparel and furniture, and shall have priority over all other demands save and excepting the demands mentioned in RCW 60.36.010 (1), (2) and (3), to which said demands the lien hereby provided shall be subordinate: PROVIDED, That such liens shall only continue in force for the period of three years from the date when such work was done or the last services performed by such stevedores, longshoremen or others. [1901 c 75 § 2; RRS § 1185.]

60.36.050 Liens for handling cargo—Foreclosure. The liens hereby created may be foreclosed as provided in RCW 60.10.023. [1995 c 62 § 10; 1969 c 82 § 13; 1901 c 75 § 3; RRS § 1186.]

60.36.060 Lien for breach of contract for towing, dunnaging, stevedoring, etc. Whenever the owner, charterer, or any person or corporation operating, managing or controlling any steamship, vessel or boat shall wilfully fail, neglect or refuse to carry out or perform any express contract or portion thereof for the towing, loading, unloading, dunnaging or stevedoring of such steamship, vessel or boat, any person or persons, firm or corporation sustaining thereby any loss or damage which is capable of definite ascertainment shall have a lien upon such steamship, vessel or boat for said loss or damage. The rank and priority of the lien hereby created and the manner of its enforcement shall be fixed, controlled and regulated by the provisions of the existing law pertaining to liens for similar services already performed. [1903 c 149 § 1; RRS § 1187.]

Chapter 60.40 RCW

LIEN FOR ATTORNEY'S FEES

Sections

60.40.010	Lien created—Enforcement—Definition—Exception.
60.40.020	Proceedings to compel delivery of money or papers.
60.40.030	Procedure when lien is claimed.

Rules of court: *Return of files of disbarred or suspended attorney—RLD 8.1.*

60.40.010 Lien created—Enforcement—Definition—Exception. (1) An attorney has a lien for his or her compensation, whether specially agreed upon or implied, as hereinafter provided:

(a) Upon the papers of the client, which have come into the attorney's possession in the course of his or her professional employment;

(b) Upon money in the attorney's hands belonging to the client;

(c) Upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party;

(d) Upon an action, including one pursued by arbitration or mediation, and its proceeds after the commencement thereof to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement; and

(e) Upon a judgment to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice.

(2) Attorneys have the same right and power over actions to enforce their liens under subsection (1)(d) of this section and over judgments to enforce their liens under subsection (1)(e) of this section as their clients have for the amount due thereon to them.

(3) The lien created by subsection (1)(d) of this section upon an action and proceeds and the lien created by subsection (1)(e) of this section upon a judgment for money is superior to all other liens.

(4) The lien created by subsection (1)(d) of this section is not affected by settlement between the parties to the action until the lien of the attorney for fees based thereon is satisfied in full.

(5) For the purposes of this section, "proceeds" means any monetary sum received in the action. Once proceeds come into the possession of a client, such as through payment by an opposing party or another person or by distribution from the attorney's trust account or registry of the court, the term "proceeds" is limited to identifiable cash proceeds determined in accordance with RCW 62A.9A-315(b)(2). The attorney's lien continues in such identifiable cash proceeds, subject to the rights of a secured party under RCW 62A.9A-327 or a transferee under RCW 62A.9A-332.

(6) Child support liens are exempt from this section. [2004 c 73 § 2; Code 1881 § 3286; 1863 p 406 § 12; RRS § 136.]

Purpose—Intent—Application—2004 c 73: "The purpose of this act is to end double taxation of attorneys' fees obtained through judgments and settlements, whether paid by the client from the recovery or by the defendant pursuant to a statute or a contract. Through this legislation, Washington law clearly recognizes that attorneys have a property interest in their clients' cases so that the attorney's fee portion of an award or settlement may be taxed only once and against the attorney who actually receives the fee. This statute should be liberally construed to effectuate its purpose. This act is curative and remedial, and intended to ensure that Washington residents do not incur double taxation on attorneys' fees received in litigation and owed to

their attorneys. Thus, except for RCW 60.40.010(4), the statute is intended to apply retroactively." [2004 c 73 § 1.]

60.40.020 Proceedings to compel delivery of money or papers. When an attorney refuses to deliver over money or papers, to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of any judge of a court of record, to do so within a specified time, or show cause why he should not be punished for a contempt. [Code 1881 § 3287; 1863 p 406 § 13; RRS § 137.]

60.40.030 Procedure when lien is claimed. If, however, the attorney claim a lien, upon the money or papers, under the provisions of *this chapter, the court or judge may: (1) Impose as a condition of making the order, that the client give security in a form and amount to be directed, to satisfy the lien, when determined in an action; (2) summarily to inquire into the facts on which the claim of a lien is founded, and determine the same; or (3) to refer it, and upon the report, determine the same as in other cases. [Code 1881 § 3288; 1863 p 406 § 14; RRS § 138.]

*Reviser's note: "this chapter" appeared in section 3288, chapter 250 of the Code of 1881, the lien sections of which are codified as chapter 60.40 RCW.

Chapter 60.42 RCW

COMMERCIAL REAL ESTATE BROKER LIEN ACT

Sections

60.42.005	Definitions.
60.42.010	Lien upon personal property—Effective date—Notice of claim of lien—Waiver of lien rights—Court costs, attorneys' fees, and statutory interest.
60.42.020	Disputed claim—Order to show cause—Hearing.
60.42.030	Lien on net rental proceeds—Order to show cause—Hearing.
60.42.040	Priority of lien claims.
60.42.050	Deposit made pending resolution of amounts due—Recording of receipt—Release of notice of claim of lien.
60.42.060	County auditor or recorder—Duties—Fees.
60.42.070	Delivery of notice of claim of lien—Form—Time effective—Address.
60.42.900	Application.
60.42.901	Short title.

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

(1) "Commercial real estate" means a fee title interest or possessory estate in real property located in this state except an interest in real property which is (a) improved with one single-family residential unit or one multifamily structure with four or less residential units, or (b) unimproved and the maximum permitted development is one to four residential units or structures under the county or city zoning ordinances or comprehensive plan applicable to that real estate, or (c) classified as farm and agricultural land or timber land for assessment purposes pursuant to chapter 84.34 RCW, or (d) improved with single-family residential units such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be legally sold, leased, or otherwise disposed of on a unit-by-unit basis. Real estate will be consid-

ered commercial real estate if the commission agreement so provides, or if it meets the definition contained in this section on the date of the disposition.

(2) "Commission agreement" means a written instrument which meets the requirements of RCW 19.36.010 signed by the owner, or by a party duly authorized to sign on behalf of the owner, of commercial real estate, pursuant to which the owner agrees to pay a broker a real estate commission upon either the disposition or lease of commercial real estate or upon entering into an agreement for disposition or lease of commercial real estate. When a broker and owner execute multiple versions of a commission agreement regarding the same disposition of commercial real estate, the final written version of the commission agreement, which incorporates the final agreement between the broker and the owner, constitutes the "commission agreement" and shall be used to determine the amount of the lien created by this chapter.

(3) "Days" means calendar days. However, if a period ends on a day other than a business day, then the last day shall be the next business day.

(4) "Disposition" means a voluntary transfer or conveyance of commercial real estate.

(5) "Escrow closing agent" means the person or entity who receives documents and funds for recording and disbursement in completing a transaction for the disposition of commercial real estate.

(6) "Lease" means a written agreement which gives rise to a relationship of landlord and tenant, affecting commercial real estate, such that the holder of a fee simple interest or possessory estate in commercial real estate permits another to possess the commercial real estate for a period, and which meets the requirements of RCW 19.36.010, if applicable.

(7) "Net rental proceeds" means the base rent paid by the tenant under a lease, less any amounts currently due under the terms of liens which have priority over the lien created under this chapter. Base rent is the rent so designated in a lease as base rent, or a similar term, for the possession and use of the commercial real estate, but does not include separate payments made by tenants for insurance, taxes, utilities, or other expenses.

(8) "Owner" means a person or entity which is vested in record fee title or a possessory estate in commercial real estate.

(9)(a) "Owner's net proceeds" means the gross sales proceeds from the disposition of the commercial real estate described in a notice of claim of lien against proceeds pursuant to this chapter, less the following: (i) Amounts necessary to pay all encumbrances and liens which have priority over the lien created by this chapter other than those permitted to remain by the buyer; (ii) owner's closing costs, such as real estate excise tax, title insurance premiums, real estate tax and assessment proration, and escrow fees payable by the owner pursuant to an agreement with the buyer; and (iii) amounts held by a third party for use by the owner to complete an exchange of real estate which is deferred from federal income tax under section 1031 of the internal revenue code of 1986, as amended.

(b) "Owner's net proceeds" shall include any gross sales proceeds which are held by a third party for purposes of completing an exchange of real estate which is deferred from federal income tax under section 1031 of the internal revenue

code of 1986, as amended, but are subsequently not used for that purpose. "Owner's net proceeds" are personal property, upon which the lien created by this chapter attaches.

(10) "Real estate broker" or "broker" means the same as defined in *RCW 18.85.010.

(11) "Real property" means one or more parcels or tracts of land, including appurtenances or improvements. [1997 c 315 § 1.]

*Reviser's note: RCW 18.85.010 was recodified as RCW 18.85.011 pursuant to 2008 c 23 § 49, effective July 1, 2010.

60.42.010 Lien upon personal property—Effective date—Notice of claim of lien—Waiver of lien rights—Court costs, attorneys' fees, and statutory interest. (1) The lien created under this chapter is a lien upon personal property, not upon real property.

(2) A broker has a lien upon the owner's net proceeds from the disposition of commercial real estate and a lien upon the net rental proceeds from the lease of commercial real estate in the amount which the owner has agreed to pay the broker under a commission agreement. The lien under this chapter is available only to the broker named in the commission agreement, and may not be assigned voluntarily or by operation of law.

(3) Subject to the requirements of subsection (4) of this section, the lien created by this chapter becomes effective on the date of the recording of a notice of claim of lien upon proceeds pursuant to subsection (6) of this section, and is perfected by such recording. Recording must be made with the county auditor or recorder in the county or counties in which the commercial real estate is located.

(4) In the case of a disposition of commercial real estate, the lien under this chapter is not effective unless it is recorded at least thirty days prior to the date a deed conveying the commercial real estate is recorded in the office of the county auditor or recorder in the county or counties in which the commercial real estate is located. In the case of a lease of commercial real estate, the lien under this chapter is not effective unless it is recorded within ninety days after the tenant takes possession of the leased commercial real estate.

(5) The lien created by this chapter is null and void unless, within ten days of recording its notice of claim of lien against proceeds, the broker delivers a copy of the notice of claim of lien against proceeds to the owner of the commercial real estate in the manner provided in RCW 60.42.070. In the case of the disposition of commercial real estate, on or before the date the deed conveying the commercial real estate is recorded, the broker shall deliver a copy of the notice of claim of lien against proceeds to the escrow closing agent closing the disposition in the manner provided in RCW 60.42.070, if the identity of the escrow closing agent is actually known by the broker.

(6) To be effective, the notice of claim of lien against proceeds must state the following:

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

(b) The date of the commission agreement;

(c) The name of the owner of the commercial real estate;

(d) The legal description of the commercial real estate as described in the commission agreement;

(e) The amount for which the lien is claimed, which may be stated in a dollar amount or may be stated in the form of a formula for how the amount is to be determined such as a percentage of the sales price;

(f) The real estate license number of the broker; and

(g) That the lien claimant has read the claim, knows the contents, and believes the same to be true and correct, and that the claim is made pursuant to a valid commission agreement, and is not frivolous, under penalties of perjury.

A copy of the commission agreement must be attached to the recorded notice of claim of lien against proceeds. The notice of claim of lien against proceeds must recite that the information contained in the notice of claim of lien against proceeds is true and accurate to the knowledge of the signatory. The notice of claim of lien against proceeds must be acknowledged pursuant to chapter 64.08 RCW. A notice of claim of lien against proceeds substantially in the following form is sufficient:

NOTICE OF CLAIM OF LIEN AGAINST PROCEEDS
PURSUANT TO CHAPTER 60.42 RCW

Notice is hereby given that the person named below claims a lien as to owner's net proceeds or net rental proceeds, but not real property, pursuant to chapter 60.42 RCW. In support of this lien, the following information is submitted:

- 1. Name, telephone number, and address of lien claimant:
2. Washington state broker's license number of lien claimant:
3. Date of the written commission agreement on which this claim is based:
4. Name of the owner:
5. Legal description of the commercial real estate described in the commission agreement:
6. The amount for which the lien is claimed, which may be stated in a dollar amount or may be stated in the form of a formula for how the amount is to be determined such as a percentage of the sales price:
7. The undersigned lien claimant, being sworn, states: I have read the foregoing claim, know the contents, and believe the same to be true and correct, and the claim is made pursuant to a valid commission agreement, and is not frivolous, under penalty of perjury.

Signature of lien claimant
Name, Street Address, City, State of person signing
Telephone Number of person signing

State of Washington)
) ss
County of)

Subscribed and sworn to, or affirmed, before me on
... by ...

Signature
(Seal or stamp) Title
My appointment expires

(Add acknowledgment pursuant to chapter 64.08 RCW)

(7) Whenever a notice of claim of lien against proceeds is recorded and a condition or event occurs, or fails to occur, that would preclude the broker from receiving compensation under the terms of the commission agreement, including the filing of a notice of claim of lien against proceeds in a manner which does not comply with this chapter, the broker shall record, within seven days following demand by the owner, a written release of the notice of claim of lien against proceeds.

(8) Whenever the amount claimed in a notice of claim of lien against proceeds is paid to the lien claimant, the lien claimant shall promptly record a satisfaction or release of the notice of claim of lien against proceeds on written demand of the owner no later than five days after receipt of payment. In the case of a disposition of commercial real estate, the escrow closing agent is required to pay to the lien claimant the owner's net proceeds up to the amount claimed in the notice of claim of lien against proceeds. If the amount claimed in the notice of claim of lien against proceeds is to be fully or partially paid to the lien claimant by the escrow closing agent, upon such disposition, then the lien claimant shall submit a release of the notice of claim of lien against proceeds in the amount of the owner's net proceeds or the amount of the lien, whichever is smaller, to the escrow closing agent to be held in escrow pending such disposition and payment. In a suit brought by the owner to compel delivery of the release by the lien claimant, if the court determines that the delay was unjustified, the court shall, in addition to ordering the release of the notice of claim of lien, award the costs of the action including reasonable attorneys' fees to the prevailing party.

(9) An owner of commercial real estate may request that a broker waive the rights to a lien under this chapter, and such a waiver contained in the commission agreement signed by the broker is effective to waive the broker's rights to a lien under this chapter. In a suit filed by a broker to recover amounts due under a commission agreement in which the broker has waived lien rights under this chapter, if the court finds that payment is due to the broker under the commission agreement, the court, in addition to awarding normal damages, shall award to the broker court costs, reasonable attorneys' fees, and statutory interest, as provided in RCW 19.52.010, from the date the deed is recorded in the event of a disposition, or from the date the tenant takes possession in the event of a lease. [1997 c 315 § 2.]

60.42.020 Disputed claim—Order to show cause—Hearing. (1) An owner of commercial real estate subject to a recorded notice of claim of lien against proceeds under this chapter, who disputes the broker's claim in the notice of claim of lien against proceeds, may apply by motion to the superior court for the county where the commercial real estate, or some part thereof, is located for an order directing

the broker to appear before the court at a time no earlier than seven nor later than fifteen days following the date of service of the motion and order on the broker, to show cause as to why the relief requested should not be granted. The motion must state the grounds upon which relief is asked and must be supported by the affidavit of the owner setting forth a concise statement of the facts upon which the motion is based.

(2) The order to show cause must clearly state that if the broker fails to appear at the time and place noted, the notice of claim of lien against proceeds must be released, with prejudice, and the broker must be ordered to pay the costs requested by the owner, including reasonable attorneys' fees.

(3) If, following a hearing on the matter, the court determines that the owner is not a party to an agreement which will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order releasing the notice of claim of lien against proceeds and awarding costs and reasonable attorneys' fees to the owner to be paid by the broker. If the court determines that the owner is a party to an agreement which will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the broker, to be paid by the owner. Such orders are final judgments.

(4) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1997 c 315 § 3.]

60.42.030 Lien on net rental proceeds—Order to show cause—Hearing. (1) If a broker has a lien on net rental proceeds pursuant to RCW 60.42.010(2), and the broker has recorded a notice of claim of lien against proceeds and otherwise complied with the requirements of this chapter, the broker may apply by motion to the superior court for the county where the commercial real estate, or some part thereof, is located, for an order directing the owner to appear before the court at a time no earlier than seven nor later than fifteen days following the date of service of the motion and order on the owner, and show cause as to why the relief requested should not be granted. The motion must state the grounds upon which relief is asked, and must be supported by the affidavit of the broker setting forth a concise statement of the facts upon which the motion is based.

(2) The order to show cause must clearly state that if the owner fails to appear at the time and place noted, the broker shall be entitled to an order enjoining the owner from paying the net rental proceeds from such lease to any party other than the broker, and that the owner shall be ordered to pay the costs requested by the broker, including reasonable attorneys' fees.

(3) If, following a hearing on the matter, the court determines that the owner is, or was, a party to an agreement for the lease of commercial real estate, which did or will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order enjoining the owner from paying the net rental proceeds from such lease to any party other than the broker. The court shall also order the owner to pay such net rental proceeds to the broker and award costs and reasonable attorneys' fees to the broker, to be paid by the owner. If the

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court determines that the owner is not, or was not, a party to an agreement for the lease of commercial real estate, which did or will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the owner, to be paid by the broker. Such orders are final judgments.

(4) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1997 c 315 § 4.]

60.42.040 Priority of lien claims. All statutory liens, consensual liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all advances or charges made or accruing thereunder, whether voluntary or obligatory, and all modifications, extensions, renewals, and replacements thereof, recorded prior to the recording of a notice of claim of lien against proceeds have priority over a lien created under this chapter. A prior recorded lien includes, without limitation, a valid materialmen's or mechanic's lien claim that is recorded after the recording of the broker's notice of claim of lien against proceeds but which relates back to a date prior to the recording date of the broker's notice of claim of lien against proceeds. [1997 c 315 § 5.]

60.42.050 Deposit made pending resolution of amounts due—Recording of receipt—Release of notice of claim of lien. A notice of claim of lien against proceeds recorded under this chapter must be released without further act, upon the recording of a receipt showing the deposit with the superior court of the county in which the commercial real estate, or some part thereof, is located, of an amount equal to one and one-quarter times the amount of the lien claimed. The receipt shall be recorded in the office in which the notice of claim was recorded. The amount of the deposit in the superior court shall be held pending a resolution of amounts due to the broker and the owner. [1997 c 315 § 6.]

60.42.060 County auditor or recorder—Duties—Fees. The county auditor or recorder shall record the notice of claim of lien against proceeds, and any release thereof, in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of lien against proceeds for registered land need not be recorded in the Torrens register. The county auditor or recorder may not charge a higher fee for recording a notice of claim of lien against proceeds, or for a release thereof, than what the county auditor or recorder charges for other documents. [1997 c 315 § 7.]

60.42.070 Delivery of notice of claim of lien—Form—Time effective—Address. Notices to be delivered to a party under this chapter, other than service of process as required in civil actions, shall be by service of process, or by registered or certified mail, return receipt requested, or by personal or electronic delivery and obtaining evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the party to whom the notice is delivered or an affidavit of service. Delivery is effective at the time of personal service, or personal or electronic delivery, or three days fol-

lowing deposit in the mail as required by this section. Notice to a broker or owner may be given to the address of the broker or owner that is contained in the commission agreement, or such other address as is contained in a written notice from the broker or owner to the party giving the notice. If no address is provided in the commission agreement, the notice to the broker may be given to the broker's address of record with the department of licensing pursuant to chapter 18.85 RCW and notice to the owner may be given to the address of the commercial real estate. [1997 c 315 § 8.]

60.42.900 Application. This chapter applies to lien claims based on a commission agreement entered into on, or after, July 27, 1997. [1997 c 315 § 9.]

60.42.901 Short title. This chapter may be known and cited as the commercial real estate broker lien act. [1997 c 315 § 10.]

Chapter 60.44 RCW

LIEN OF DOCTORS, NURSES, HOSPITALS, AMBULANCE SERVICES

Sections

60.44.010	Liens authorized.
60.44.020	Notice of lien—Contents—Filing.
60.44.030	Record of claims.
60.44.040	Taking note—Effect on lien.
60.44.050	Settlement of damages—Effect on lien.
60.44.060	Enforcement of lien—Payment as evidence.

Lien of department of social and health services for medical care of injured recipient, payment of tort feisor or tort feisor's insurer does not discharge lien: RCW 74.09.180, 43.20B.040, and 43.20B.050.

Lien on funds withheld by employer from employee's pay: RCW 49.52.030 and 49.52.040.

60.44.010 Liens authorized. Every operator, whether private or public, of an ambulance service or of a hospital, and every duly licensed nurse, practitioner, physician, and surgeon rendering service, or transportation and care, for any person who has received a traumatic injury and which is rendered by reason thereof shall have a lien upon any claim, right of action, and/or money to which such person is entitled against any tort-feisor and/or insurer of such tort-feisor for the value of such service, together with costs and such reasonable attorney's fees as the court may allow, incurred in enforcing such lien: PROVIDED, HOWEVER, That nothing in this chapter shall apply to any claim, right of action, or money accruing under the workers' compensation act of the state of Washington, and: PROVIDED, FURTHER, That all the said liens for service rendered to any one person as a result of any one accident or event shall not exceed twenty-five percent of the amount of an award, verdict, report, decision, decree, judgment, or settlement. [1987 c 185 § 36; 1975 1st ex.s. c 250 § 1; 1937 c 69 § 1; RRS § 1209-1.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

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60.44.020 Notice of lien—Contents—Filing. No person shall be entitled to the lien given by RCW 60.44.010 unless such person shall, within twenty days after the date of such injury or receipt of transportation or care, or, if settlement has not been accomplished and payment made to such injured person, then at any time before such settlement and payment, file for record with the county auditor of the county in which said service was performed, a notice of claim stating the name and address of the person claiming the lien and whether such person claims as a practitioner, physician, nurse, ambulance service, or hospital, the name and address of the patient and place of domicile or residence, the time when and place where the alleged fault or negligence of the tort-feisor occurred, and the nature of the injury if any, the name and address of the tort-feisor, if same or any thereof are known, which claim shall be subscribed by the claimant and verified before a person authorized to administer oaths. [1975 1st ex.s. c 250 § 2; 1937 c 69 § 2; RRS § 1209-2.]

60.44.030 Record of claims. The county auditor shall record the claims mentioned in this chapter, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1999 c 233 § 6; 1937 c 69 § 3; RRS § 1209-4.]

Effective date—1999 c 233: See note following RCW 4.28.320.

60.44.040 Taking note—Effect on lien. The taking of a promissory note or other evidence of indebtedness for any services performed, as provided in this chapter, shall not discharge the lien therefor unless expressly received as a payment for such services and so specified therein. [1937 c 69 § 4; RRS § 1209-4.]

60.44.050 Settlement of damages—Effect on lien. No settlement made by and between the patient and tort feisor and/or insurer shall discharge the lien against any money due or owing by such tort feisor or insurer to the patient or relieve the tort feisor and/or insurer from liability by reason of such lien unless such settlement also provides for the payment and discharge of such lien or unless a written release or waiver of any such claim of lien, signed by the claimant, be filed in the court where any action has been commenced on such claim, or in case no action has been commenced against the tort feisor and/or insurer, then such written release or waiver shall be delivered to the tort feisor and/or insurer. [1937 c 69 § 5; RRS § 1209-5.]

60.44.060 Enforcement of lien—Payment as evidence. Such lien may be enforced by a suit at law brought by the claimant or his assignee within one year after the filing of such lien against the said tort feisor and/or insurer. In the event that such tort feisor and/or insurer shall have made payment or settlement on account of such injury, the fact of such payment shall only for the purpose of such suit be prima facie evidence of the negligence of the tort feisor and of the liability of the payer to compensate for such negligence. [1937 c 69 § 6; RRS § 1209-6.]

Chapter 60.45 RCW

**LIEN OF DEPARTMENT OF SOCIAL AND HEALTH
SERVICES FOR MEDICAL CARE FURNISHED
INJURED RECIPIENT**

Sections

60.45.010 Medical care to injured recipient—Recovery of cost against tortfeasor or tortfeasor's insurer—Lien created, filing—Payment to recipient does not discharge lien.

60.45.010 Medical care to injured recipient—Recovery of cost against tortfeasor or tortfeasor's insurer—Lien created, filing—Payment to recipient does not discharge lien. See RCW 74.09.180, 43.20B.040, and 43.20B.050.

Chapter 60.52 RCW

LIEN FOR SERVICES OF SIRE

Sections

60.52.010 Liens authorized—Filing statement.
60.52.020 Auditor's certificate—Contents—Posting.
60.52.030 Statement of lien—Filing—Duration of lien.
60.52.035 Delivery of semen by artificial insemination procedures—Lien upon female or offspring—No filing—Duration of lien—Statement of account.
60.52.040 Foreclosure of lien.
60.52.050 Auditor's fees.

60.52.010 Liens authorized—Filing statement. In order to secure to the owner or owners of sires payment for service, the following provisions are enacted: That every owner of a sire having a service fee, in order to have a lien upon the female served, and upon the get of any such sire, under the provisions of this chapter, for such service, shall file for record with the county auditor of the county where said sire is kept for service a statement, verified by oath or affirmation, to the best of his knowledge and belief, giving the name, age, description and pedigree, as well as the terms and conditions upon which such sire is advertised for service: PROVIDED, That owners of sires who are not in possession of pedigrees for such sires shall not be debarred from the benefits of this chapter. [1890 p 451 § 1; RRS § 3056.]

60.52.020 Auditor's certificate—Contents—Posting. The county auditor, upon the receipt of the statement as specified in RCW 60.52.010, duly verified by affidavit, shall issue a certificate to the owner or owners of said sire, which shall be posted by the owner in a conspicuous place where said sire may be stationed, which certificate shall state the name, age, description, pedigree and ownership of such sire, the terms and conditions upon which the said sire is advertised for service, and that the provisions of this chapter, so far as relates to the filing of the statement aforesaid, has been complied with. [1890 p 451 § 2; RRS § 3057.]

60.52.030 Statement of lien—Filing—Duration of lien. The owner or owners of any such sire receiving such certificate, by complying with RCW 60.52.010 and 60.52.020, shall obtain and have a lien upon the female served for the period of eighteen months from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: PROVIDED, Said

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owner or owners shall file for record a statement of account, verified by affidavit, with the county auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served, within ten months from the date of service or date of birth, as the case may be: PROVIDED FURTHER, That the lien upon the get of any such sire shall be a preferred lien: AND PROVIDED FURTHER, That no sale or transfer of any female animal served shall defeat the right of such lien holder. [1998 c 99 § 1; 1913 c 53 § 1; 1890 p 451 § 3; RRS § 3058.]

Effective date—1998 c 99: "This act takes effect July 1, 1998." [1998 c 99 § 3.]

60.52.035 Delivery of semen by artificial insemination procedures—Lien upon female or offspring—No filing—Duration of lien—Statement of account. When an owner of a sire, or an owner of semen from sires, provides, for the insemination of a female, reproductively viable semen from the sire, the owner of the sire, or the owner of the semen, without satisfying the requirements of RCW 60.52.010 and 60.52.020, upon delivery of the semen by artificial insemination procedures, obtains and has a lien upon the female to which the semen is delivered by artificial insemination procedures, or a lien upon the offspring of that female as the result of delivery of the semen by artificial insemination procedures. The lien upon the female survives for eighteen months from the date of the insemination procedure; the lien upon the offspring survives for one year from the date of birth of the resulting offspring. However, the owner of the sire, or the owner of the semen, must, within ten months of the date of the insemination procedure or the date of birth, file for record, with the county auditor of the county where the insemination procedure was rendered, a statement of account, verified by affidavit, indicating the amount due to the owner for the reproductively viable semen, along with a description of the female or the name and address of the person for whom the procedure was provided. The lien, whether upon the female or upon the offspring, is a preferred lien. Sale or transfer of the inseminated female or of the offspring does not defeat the right of the lien holder. [1998 c 99 § 2.]

Effective date—1998 c 99: See note following RCW 60.52.030.

60.52.040 Foreclosure of lien. Liens under this chapter may be foreclosed as provided in chapter 60.10 RCW. [1995 c 62 § 11; 1969 c 82 § 14; 1890 p 452 § 4; RRS § 3059.]

60.52.050 Auditor's fees. For filing certificate, making copy of such affidavit, and the certificate of date of such filing, the clerk of record shall be entitled to the same fees as are provided by law for similar service in regard to chattel mortgages. [1890 p 452 § 5; RRS § 3059 1/2.]

Chapter 60.56 RCW

AGISTER AND TRAINER LIENS

Sections

60.56.005 Definition of "agister."
60.56.010 Liens created.
60.56.015 Liens perfected.

- 60.56.018 Potential sale of animal to which lien is attached—Notice to lien holder and potential buyer.
 60.56.021 Violation of RCW 60.56.018—Civil action for damages—Civil fine.
 60.56.025 Lien created for care of animal seized by law enforcement officer.
 60.56.035 Expiration of lien.
 60.56.050 Enforcement of lien.

60.56.005 Definition of "agister." For purposes of this chapter "agister" means a farmer, ranchman, herder of cattle, livery and boarding stable keeper, veterinarian, or other person, to whom horses, mules, cattle, or sheep are entrusted for the purpose of feeding, herding, pasturing, training, caring for, or ranching. [1993 c 53 § 1.]

60.56.010 Liens created. Any agister shall have a lien upon the horses, mules, cattle, or sheep, and upon the proceeds or accounts receivable from such animals, for such amount that may be due for the feeding, herding, pasturing, training, caring for, and ranching of the animals, and shall be authorized to retain possession of the horses, mules, cattle, or sheep, until the amount is paid or the lien expires, whichever first occurs. The lien attaches on the date such amounts are due and payable but are unpaid. [1993 c 53 § 2; 1989 c 67 § 1; 1987 c 233 § 1; 1909 c 176 § 1; RRS § 1197.]

60.56.015 Liens perfected. An agister who holds a lien under RCW 60.56.010 shall perfect the lien by (1) posting notice of the lien in a conspicuous location on the premises where the lien holder is keeping the animal or animals, (2) providing a copy of the posted notice to the owner of the animal or animals, and (3) providing a copy of the posted notice to any lien creditor as defined in RCW 62A.9A-102(52) if the amount of the agister lien is in excess of one thousand five hundred dollars. A lien creditor may be determined through a search under RCW 62A.9A-523 and 62A.9A-526. The lien holder is entitled to collect from the buyer, the seller, or the person selling on a commission basis if there is a failure to make payment to the perfected lien holder. [2001 c 32 § 7; 1993 c 53 § 3; 1989 c 67 § 2.]

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

60.56.018 Potential sale of animal to which lien is attached—Notice to lien holder and potential buyer. A party subject to a lien under RCW 60.56.010 shall notify (1) the lien holder of a potential sale of the animal or animals to which the lien is attached, (2) a potential buyer of the existence of the unsatisfied lien against the animal or animals for sale, and (3) any lien holder of record of the potential sale of the animal or animals and of the existence of the unsatisfied lien. [1993 c 53 § 4.]

60.56.021 Violation of RCW 60.56.018—Civil action for damages—Civil fine. A person injured by a violation of RCW 60.56.018 may bring civil action in the appropriate court of jurisdiction to recover the actual damages sustained, together with the costs of the suit, including reasonable attorney fees and any other costs associated with satisfaction of the lien. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained.

If damages are awarded under this section, the court may impose on a liable party a civil fine of not more than one thousand dollars to be paid to the plaintiff. [1993 c 53 § 5.]

60.56.025 Lien created for care of animal seized by law enforcement officer. If a law enforcement officer authorizes removal of an animal pursuant to chapter 16.52 RCW, the person or entity receiving the animal and aiding in its care or restoration to health shall have a lien upon the animal for the cost of feeding, pasturing, and caring otherwise for the animal. The lien attaches on the date such costs are due and payable but are unpaid. Any such person is authorized to retain possession of the animal until such costs are paid or the lien expires, whichever first occurs. [1987 c 233 § 2.]

60.56.035 Expiration of lien. Any lien created by this chapter shall expire one hundred eighty days after it attaches, unless, within that period, an action to enforce the lien is filed pursuant to RCW 60.56.050. [1993 c 53 § 6; 1987 c 233 § 3.]

60.56.050 Enforcement of lien. Any person having a lien under the provisions of this chapter may enforce the same under chapter 60.10 RCW or, at the agister's option, by an action in any court of competent jurisdiction. If enforcement is through court proceeding, the property may be sold on execution for the purpose of satisfying the amount of the judgment and costs of sale, together with the proper costs of keeping the same up to the time of the sale. [1993 c 53 § 7; 1987 c 233 § 4; 1891 c 80 § 2; RRS § 1198. Formerly RCW 60.56.020, part.]

Chapter 60.60 RCW LIEN FOR TRANSPORTATION, STORAGE, ADVANCEMENTS, ETC.

Sections

- 60.60.010 Liens created.
 60.60.020 Livestock and perishable property—Sale of.
 60.60.030 Sale of other property.
 60.60.040 Application of proceeds.
 60.60.050 Special contract not affected.
 60.60.060 Notice, how given.

60.60.010 Liens created. Every person, firm or corporation who, as a commission merchant, carrier, wharfinger or storage warehouseman, shall make advances for freight, transportation, wharfage or storage upon the personal property of another, or shall carry or store such personal property, shall have a lien thereon, so long as the same remains in his possession, for the charges for advances, freight, transportation, wharfage or storage, and it shall be lawful for such person, firm or corporation to cause such property to be sold as is herein in this chapter provided. [1927 c 144 § 1; Code 1881 § 1980; 1863 p 421 § 11; 1860 p 288 § 11; RRS § 1191.]

60.60.020 Livestock and perishable property—Sale of. If said property consists of livestock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or consists of perishable property liable, if kept, to destruction, waste or great

depreciation, the person, firm or corporation having such lien may sell the same upon giving ten days' notice. [1927 c 144 § 2; Code 1881 § 1981; 1863 p 421 § 13; 1860 p 288 § 13; RRS § 1192.]

60.60.030 Sale of other property. All other property upon which such charges may be unpaid, due, and a lien after the same shall have remained in store uncalled for, for a period of thirty days after such charges shall have become due, may be sold by the person or persons having a lien for the payment of such charges upon giving ten days' notice: PROVIDED, That where the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of the sale. [Code 1881 § 1982; 1863 p 421 § 12; 1860 p 288 § 12; RRS § 1193.]

60.60.040 Application of proceeds. The moneys arising from sales made under the provisions of this chapter shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transportation, wharfage or storage, for whose benefit the sale shall [have] been made; the surplus, if any, shall be retained subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owner still remaining in store uncalled for, if any there be, and to the demand of the owner of the property, who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special fund for the benefit of the lawful claimant thereof. [Code 1881 § 1983; 1863 p 421 § 14; 1860 p 288 § 14; RRS § 1194.]

60.60.050 Special contract not affected. Nothing in this chapter contained shall be so construed as to alter or affect the terms of any special contract in writing, made by the parties as to the advances, affreightment, wharfage or storage; but when any such special contract shall have been made, its terms shall govern irrespective of this chapter. [Code 1881 § 1984; RRS § 1195.]

60.60.060 Notice, how given. All notices required under this chapter shall be given as is or may be by law provided in cases of sales of personal property upon execution. [Code 1881 § 1985; 1863 p 421 § 15; 1860 p 288 § 15; RRS § 1196.]

Sale of property on execution: Chapter 6.21 RCW.

Chapter 60.64 RCW

LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1915 ACT

Sections

60.64.003	"Hotel" defined.
60.64.005	Record of guests—Hotels and trailer camps.
60.64.007	Liability for loss of valuables, baggage and other property.
60.64.010	Lien on property of guest—"Guest" defined.
60.64.040	Sale—Notice—Disposition of funds.
60.64.050	Obtaining accommodations by fraud—Penalty.

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Lien of hotels, lodging and boarding houses—1890 act: Chapter 60.66 RCW.

60.64.003 "Hotel" defined. See RCW 19.48.010.

60.64.005 Record of guests—Hotels and trailer camps. See RCW 19.48.020.

60.64.007 Liability for loss of valuables, baggage and other property. See RCW 19.48.030 and 19.48.070.

60.64.010 Lien on property of guest—"Guest" defined. The keeper of any hotel, boarding house or lodging house, whether individual, partnership or corporation, has a lien upon, and may retain, all baggage, sample cases, and other property, lawfully in the possession of a guest, boarder, or lodger, brought upon the premises by such guest, boarder, or lodger, for the proper charges due from him or her, on account of his or her food, board, room rent, lodging and accommodation, and for such extras as are furnished at his or her request, and for all money and credit paid for or advanced to him or her; and for the costs of enforcing such lien; and said hotel keeper, inn keeper, lodging house keeper or boarding house keeper, shall have the right to retain and hold possession of such baggage, sample cases and other property until the amount of such charges and moneys be fully paid, and to sell such baggage, sample cases, or other property for the payment of such lien, charges and moneys in the manner provided in RCW 60.64.040; and such baggage, sample cases and property shall not be subject to attachment or execution until such lien and storage charges and the cost of satisfying such lien are fully satisfied: PROVIDED, HOWEVER, That if any baggage, sample cases, or property becoming subject to the lien herein provided for does not belong to the guest, boarder or lodger who incurred the charges or indebtedness secured thereby at the time when such charges or indebtedness shall be incurred, and if the hotel, inn, boarding house or lodging house keeper entitled to such lien receives actual notice of such fact at any time before the sale of such baggage, sample cases or property hereunder, then and in that event such baggage, sample cases and property which are subject to said lien and do not belong to said guest, boarder or lodger at the time when such charges or indebtedness shall be incurred, shall not be subject to sale in the manner herein provided, but the same may be sold in the manner provided by law for the sale of property under a writ of execution to satisfy a judgment obtained in any action brought to recover the said charges or indebtedness. A guest, within the meaning of this chapter and chapter 19.48 RCW, includes each and every person who is a member of the family of, or dependent upon, a guest, boarder or lodger, in such hotel, inn, boarding house or lodging house, and for whose support such tenant, guest, boarder or lodger is legally liable. [1929 c 216 § 4; 1915 c 190 § 5; RRS § 6864. Formerly RCW 60.64.010 through 60.64.030.]

Severability—1929 c 216: See RCW 19.48.900.

60.64.040 Sale—Notice—Disposition of funds. If such lien and all such charges and moneys are not fully paid and satisfied within sixty days from the time when such

charges and moneys, respectively, become due, the keeper of such hotel, inn, boarding house or lodging house, may then proceed to sell such baggage, sample cases and other property, or any part thereof, at public auction, after giving ten days notice of the time and place of sale by posting said notice in three public places in the city or town wherein such hotel, inn, boarding house or lodging house is located, and by mailing a notice of the time and place of sale to such guest[,] boarder or lodger at the place of residence, if any, registered by him or her on the register, if any, of said hotel, inn, boarding house or lodging house; and after satisfying the lien and paying all legal charges due from such guest, boarder or lodger, including proper charges for storage of the said baggage, sample cases or property, and any expense of selling the same that may accrue, any residue remaining shall, on demand, within one year after such sale, be paid to such guest, boarder or lodger, or his or her legal representatives: PROVIDED, HOWEVER, That should such guest, boarder or lodger fail or refuse to register from any particular town or city, or not register at all, the notice herein required to be mailed shall be addressed to the name of such guest, boarder or lodger at the city or town wherein such hotel, inn, boarding house or lodging house is located; and such sale shall be a perpetual bar to any action against said hotel, inn, boarding house or lodging house keeper for the recovery of such baggage, sample cases, or property, or of the value thereof, or for any damage arising from the failure of such guest, boarder or lodger to receive such baggage, sample cases, or property. [1929 c 216 § 5; 1915 c 190 § 6; RRS § 6865.]

60.64.050 Obtaining accommodations by fraud—Penalty. See RCW 19.48.110.

Chapter 60.66 RCW LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1890 ACT

Sections

60.66.010 Lien on property of guest.
60.66.020 Sale to satisfy lien—Notice.

Lien of hotels, lodging and boarding houses—1915 act: Chapter 60.64 RCW.

60.66.010 Lien on property of guest. Hereafter all hotel keepers, inn keepers, lodging house keepers and boarding house keepers in this state shall have a lien upon the baggage, property, or other valuables of their guests, lodgers or boarders, brought into such hotel, inn, lodging house or boarding house by such guests, lodgers or boarders, for the proper charges due from such guests, lodgers or boarders for their accommodation, board or lodging and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property or other valuables until such charges are fully paid, and to sell such baggage, property or other valuables for the payment of such charges in the manner provided in RCW 60.66.020. [1890 p 96 § 1; RRS § 1201.]

60.66.020 Sale to satisfy lien—Notice. Whenever any baggage, property or other valuables which have been retained by any hotel keeper, inn keeper, lodging house

keeper or boarding house keeper, in his possession by virtue of the provision of RCW 60.66.010, shall remain unredeemed for the period of three months after the same shall have been so retained, then it shall be lawful for such hotel keeper, inn keeper, lodging house keeper or boarding house keeper to sell such baggage, property or other valuables at public auction, after giving the owner thereof ten days' notice of the time and place of such sale, through the post office, or by advertising in some newspaper published in the county where such sale is made, or by posting notices in three conspicuous places in such county, and out of the proceeds of such sale to pay all legal charges due from the owner of such baggage, property or valuables, including proper charges for storage of the same, and the overplus, if any, shall be paid to the owner upon demand. [1890 p 96 § 2; RRS § 1202.]

Chapter 60.68 RCW

UNIFORM FEDERAL LIEN REGISTRATION ACT

(Formerly: Lien for internal revenue taxes)

Sections

60.68.005 Application of chapter.
60.68.015 Notice of federal liens.
60.68.025 Certification of federal liens.
60.68.035 Fees for recording or filing federal liens.
60.68.045 Tax lien index—Duties of county auditor—Uniform commercial code filing system—Department of licensing.
60.68.900 Uniform application of chapter.
60.68.901 Short title.
60.68.902 Effective date—1988 c 73.
60.68.903 Effective date—1992 c 133.

60.68.005 Application of chapter. This chapter applies only to federal tax liens and to other federal liens, notices of which under any act of congress or any regulation adopted pursuant thereto are required or permitted to be recorded in the same manner as notices of federal tax liens. [1988 c 73 § 1.]

60.68.015 Notice of federal liens. (1) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be recorded for record in accordance with this chapter.

(2) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be recorded in the office of the recorder of the county in which the real property subject to the liens is situated.

(3) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed with the department of licensing. [1992 c 133 § 1; 1988 c 73 § 2.]

60.68.025 Certification of federal liens. Certification of notices of liens, certificates, or other notices affecting federal liens by the United States secretary of the treasury or the secretary's delegate, or by an official or entity of the United States responsible for recording or certifying of notice of any other lien, entitles those liens to be recorded and no other attestation, certification, or acknowledgement is necessary. [1988 c 73 § 3.]

60.68.035 Fees for recording or filing federal liens.

(1) The fee for recording a lien on real estate with the county auditor shall be as set forth in RCW 36.18.010.

(2) The fee for filing liens of personal property with the department of licensing of the state of Washington shall be as determined by the department.

(3) The recording or filing officer shall bill the district directors of the internal revenue service or other appropriate federal officials on a monthly basis for fees for documents filed for record by them. [1992 c 133 § 2; 1988 c 73 § 4.]

60.68.045 Tax lien index—Duties of county auditor—Uniform commercial code filing system—Department of licensing.

(1) When a notice of a tax lien is recorded under RCW 60.68.015(2), the county auditor shall forthwith enter it in the general index showing the name and residence of the taxpayer named in the notice, the collector's serial number of the notice, the date and hour of recording, and the amount of tax and penalty assessed. The auditor shall have the ability to produce a separate tax lien index listing.

(2) When a notice of a tax lien is filed under RCW 60.68.015(3), the department of licensing shall enter it in the uniform commercial code filing system showing the name and address of the taxpayer as the debtor, and the internal revenue service as a secured party, and include the collector's serial number of the notice, the date and hour of filing, and the amount of tax and penalty assessed. [1999 c 233 § 7; 1992 c 133 § 3; 1988 c 73 § 5.]

Effective date—1999 c 233: See note following RCW 4.28.320.

60.68.900 Uniform application of chapter. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1988 c 73 § 6.]

60.68.901 Short title. This chapter may be known and cited as the uniform federal lien registration act. [1988 c 73 § 7.]

60.68.902 Effective date—1988 c 73. This chapter shall take effect July 1, 1988. [1988 c 73 § 10.]

60.68.903 Effective date—1992 c 133. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1992. [1992 c 133 § 4.]

Chapter 60.70 RCW

LIMITATIONS ON NONCONSENSUAL COMMON LAW LIENS

Sections

- 60.70.010 Intent—Definitions.
- 60.70.020 Real property common law liens unenforceable—Personal property common law liens limited.
- 60.70.030 No duty to accept filing of common law lien—Filing of a notice of invalid lien.
- 60.70.040 No duty to disclose record of common law lien.
- 60.70.050 Immunity from liability for failure to accept filing or disclose common law lien.

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60.70.060 Petition for order directing common law lien claimant to appear before court—Service of process—Filing fee—Costs and attorneys' fees.

60.70.070 Claim of lien against a federal, state, or local official or employee—Performance of duties—Validity.

60.70.010 Intent—Definitions. (1) It is the intent of this chapter to limit the circumstances in which nonconsensual common law liens shall be recognized in this state.

(2) For the purposes of this chapter:

(a) "Lien" means an encumbrance on property as security for the payment of a debt;

(b) "Nonconsensual common law lien" is a lien that:

(i) Is not provided for by a specific statute;

(ii) Does not depend upon the consent of the owner of the property affected for its existence; and

(iii) Is not a court-imposed equitable or constructive lien;

(c) "State or local official or employee" means an appointed or elected official or any employee of a state agency, board, commission, department in any branch of state government, or institution of higher education; or of a school district, political subdivision, or unit of local government of this state; and

(d) "Federal official or employee" means an employee of the government and federal agency as defined for purposes of the federal tort claims act, 28 U.S.C. Sec. 2671.

(3) Nothing in this chapter is intended to affect:

(a) Any lien provided for by statute;

(b) Any consensual liens now or hereafter recognized under the common law of this state; or

(c) The ability of courts to impose equitable or constructive liens. [1995 c 19 § 1; 1986 c 181 § 1.]

60.70.020 Real property common law liens unenforceable—Personal property common law liens limited.

Nonconsensual common law liens against real property shall not be recognized or enforceable. Nonconsensual common law liens claimed against any personal property shall not be recognized or enforceable if, at any time the lien is claimed, the claimant fails to retain actual lawfully acquired possession or exclusive control of the property. [1986 c 181 § 2.]

60.70.030 No duty to accept filing of common law lien—Filing of a notice of invalid lien.

(1) No person has a duty to accept for filing or recording any claim of lien unless the lien is authorized by statute or imposed by a court having jurisdiction over property affected by the lien, nor does any person have a duty to reject for filing or recording any claim of lien, except as provided in subsection (2) of this section.

(2) No person shall be obligated to accept for filing any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien.

(3) If a claim of lien as described in subsection (2) of this section has been accepted for filing, the recording officer shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee; the assistant attorney general representing the state agency, board, commission, department, or institution

of higher education of which the individual is an official or employee; or the attorney representing the school district, political subdivision, or unit of local government of this state of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien at his or her last known address. No recording officer or county shall be liable for the acceptance for filing of a claim of lien as described in subsection (2) of this section, nor for the acceptance for filing of a notice of invalid lien pursuant to this subsection. [1995 c 19 § 4; 1986 c 181 § 3.]

60.70.040 No duty to disclose record of common law lien. No person has a duty to disclose an instrument of record or file that attempts to give notice of a common law lien. This section does not relieve any person of any duty which otherwise may exist to disclose a claim of lien authorized by statute or imposed by order of a court having jurisdiction over property affected by the lien. [1986 c 181 § 4.]

60.70.050 Immunity from liability for failure to accept filing or disclose common law lien. A person is not liable for damages arising from a refusal to record or file or a failure to disclose any claim of a common law lien of record. [1986 c 181 § 5.]

60.70.060 Petition for order directing common law lien claimant to appear before court—Service of process—Filing fee—Costs and attorneys' fees. (1) Any person whose real or personal property is subject to a recorded claim of common law lien who believes the claim of lien is invalid, may petition the superior court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by this section should not be granted. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or his or her attorney setting forth a concise statement of the facts upon which the motion is based. The order shall be served upon the lien claimant by personal service, or, where the court determines that service by mail is likely to give actual notice, the court may order that service be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted, the claim of lien shall be stricken and released and that the lien claimant shall be ordered to pay the costs incurred by the petitioner, including reasonable attorneys' fees.

(3) The clerk of the court shall assign a cause number to the petition and obtain from the petitioner a filing fee pursuant to RCW 36.18.012.

(4) If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order striking and releasing the claim of lien and awarding costs and reasonable attorneys' fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys' fees to the lien claimant to be paid by the petitioner. [2006 c 192 § 4; 1995 c 19 § 2.]

60.70.070 Claim of lien against a federal, state, or local official or employee—Performance of duties—Validity. Any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien. [1995 c 19 § 3.]

Chapter 60.72 RCW

LANDLORD'S LIEN FOR RENT

Sections

60.72.010 Liens created—Priority—Extent—Exceptions.
60.72.040 Foreclosure of lien.

60.72.010 Liens created—Priority—Extent—Exceptions. Any person to whom rent may be due, his or her executors, administrators, or assigns, shall have a lien for such rent upon personal property which has been used or kept on the rented premises by the tenant, except property of third persons delivered to or left with the tenant for storage, repair, manufacture, or sale, or under conditional bills of sale duly filed, and such property as is exempt from execution by law. Such liens for rent shall be paramount to, and have preference over, all other liens except liens for taxes, general and special liens of labor, and liens of mortgages duly recorded prior to the tenancy. Such liens shall not be for more than two months' rent due, except that a lien for up to four months' rent due may be established when the tenant is renting a mobile home lot in a mobile home park as defined in RCW 59.20.030. No lien may be enforced for any rent or any installment thereof which has been due for more than two months at the time of the commencement of an action to foreclose such liens, except that a lien may be enforced for rent due for up to four months at the time of the commencement of an action to foreclose the lien when the tenant is renting a mobile home lot in a mobile home park as defined in RCW 59.20.030. No writing or recording shall be necessary to create such lien; and if such property be removed from the rented premises and not returned to the owner, agent, executor, administrator, or assign, the lien shall continue and be a superior lien on the property so removed for ten days from the date of its removal, and the lien may be enforced against the property wherever found. In the event the property contained in the rented premises be destroyed by fire or other ele-

ments, the lien shall extend to any money that may be received by the tenant as indemnity for the destruction of the property, nor shall the lien be lost by the sale of the property, except merchandise sold in the usual course of trade or to purchasers without notice of the tenancy. The provisions of this chapter shall not apply to, nor shall it be enforced against, the property of tenants in dwelling houses or apartments or any other place that is used exclusively as a home or residence of the tenant and his or her family. [1990 c 169 § 3; 1927 c 108 § 1; 1917 c 165 § 1; RRS § 1203-1. Formerly RCW 60.72.010, 60.72.020, 60.72.030.]

60.72.040 Foreclosure of lien. Said lien may be foreclosed as provided in chapter 60.10 RCW. [1995 c 62 § 12; 1969 c 82 § 15; 1917 c 165 § 2; RRS § 1203-2.]

Chapter 60.76 RCW

LIEN OF EMPLOYEES FOR CONTRIBUTIONS TO BENEFIT PLANS

Sections

60.76.010	Lien authorized.
60.76.020	Notice of lien—Contents—Filing and serving.
60.76.030	Manner of serving notice.
60.76.040	Manner of enforcing lien—Costs.
60.76.050	Priority of lien.

60.76.010 Lien authorized. Every employer who is required to pay contributions, by agreement or otherwise, into a fund of any employee benefit plan in order that his employee may participate therein, shall pay such contributions in the required amounts and at the stipulated time or each employee affected thereby shall have a lien on the earnings and on all property used in the operation of said employer's business to the extent of the moneys, plus any penalties, due to be paid by or on his behalf in order to qualify him for participation therein, and for any moneys expended or obligations incurred for medical, hospital, or other expenses to which he would have been entitled had such required contributions been paid. [1961 c 86 § 1.]

60.76.020 Notice of lien—Contents—Filing and serving. The lien claimant, or his representative on his behalf, or the trustee of the fund on the claimant's behalf, within sixty days after such payment becomes due shall file for record with the auditor of the county wherein the claimant is or was employed by such employer a notice of claim, containing a statement of the demand, the name of the employer and the name of the person employing the claimant, if known, with a statement of the pertinent terms and conditions of the employee benefit plan and the time when such contributions are due and were to have been paid, and shall serve or mail a copy thereof to said employer within such time. [1961 c 86 § 2.]

60.76.030 Manner of serving notice. Service of the notice of claim may be made in the same manner as summons in civil actions. [1961 c 86 § 3.]

60.76.040 Manner of enforcing lien—Costs. The lien may be enforced within the same time and in the same man-

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ner as mechanics' liens are foreclosed when said lien is upon real property, or within the same time and in the same manner as chattel liens are enforced when the lien is upon personal property. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, a reasonable attorney's fee in the superior court, court of appeals, and supreme court, and court costs. [1971 c 81 § 130; 1961 c 86 § 4.]

60.76.050 Priority of lien. The lien created herein shall be preferred to any encumbrance which may attach after the contribution payments became due and is also preferred to any encumbrance which may have attached previous to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1961 c 86 § 5.]

Chapter 60.80 RCW

LIEN FOR UNRECORDED UTILITY CHARGES

Sections

60.80.005	Definitions.
60.80.010	Seller of real property responsible for satisfying lien—Closing agent's duties and liabilities—Fee.
60.80.020	Seller's duty to inform closing agent—Written waiver—Closing agent's duties—Utility's duties—Payment of final billing.
60.80.900	Effective date—1996 c 43.

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

(1) Except as otherwise provided in this subsection (1), "charges" include: (a) All lawful charges assessed by a utility operated under chapter 35.21, 35.67, 36.36, 36.89, 36.94, or 57.08 RCW, but not evidenced by a recorded lien, recorded covenant, recorded agreement, or special assessment roll filed with the city or county treasurer or assessor, and not billed and collected with property taxes; and (b) penalties and interest, and reasonable attorneys' fees and other costs of foreclosure if foreclosure proceedings have been commenced.

(2) "Closing agent" means an escrow agent as defined in RCW 18.44.011(6) or a person exempt from licensing requirements under RCW 18.44.021, handling the escrow on the sale of the real property.

(3) "Real estate agent" means a real estate broker, real estate salesperson, associate real estate broker, or person as defined in *RCW 18.85.010 (1) through (4).

(4) "Business day" means a day the offices of the county or counties in which the utility in question provides service are open for business. [2004 c 215 § 7; 1996 c 43 § 1.]

***Reviser's note:** RCW 18.85.010 was recodified as RCW 18.85.011 pursuant to 2008 c 23 § 49; and RCW 18.85.010 was also amended by 2008 c 23 § 1, changing and/or removing the definitions in subsections (1) through (4), effective July 1, 2010.

60.80.010 Seller of real property responsible for satisfying lien—Closing agent's duties and liabilities—Fee. (1) Unless otherwise stated and acknowledged in writing by the purchaser, the seller of a fee interest in real property is responsible for satisfying, upon closing, any lien provided for

by RCW 35.21.290, 35.67.200, 36.36.045, *36.89.090, or 36.94.150.

(2) No closing agent may refuse a written request by the seller or purchaser of a fee interest in real property to administer the disbursement of closing funds necessary to satisfy unpaid charges as charges are defined in RCW 60.80.005. Except as otherwise provided in this subsection (2), a closing agent who refuses such a written request is liable to the purchaser for unpaid charges for utility services covered by the request. A closing agent is not liable if the closing agent's refusal is based on the seller's inaccurate or incomplete identification of utilities providing service to the property, or if a utility fails to provide an estimated or actual final billing, or written extension of the per diem rate, as required by RCW 60.80.020, or if disbursement of closing funds necessary to satisfy the unpaid charges would violate RCW 18.44.400.

(3) A closing agent may charge a fee for performing the services required of the closing agent by this chapter, which fee may be in addition to other fees or settlement charges collected in the course of ordinary settlement practices. [2004 c 215 § 8; 1996 c 43 § 2.]

*Reviser's note: RCW 36.89.090 was recodified as RCW 36.89.065, September 2007.

60.80.020 Seller's duty to inform closing agent—Written waiver—Closing agent's duties—Utility's duties—Payment of final billing. (1) Unless the seller and purchaser waive, in writing, the services of a closing agent in administering the disbursement of closing funds necessary to satisfy unpaid charges as charges are defined in RCW 60.80.005, the seller shall, as a provision in a written agreement for the purchase and sale of real estate, inform the closing agent for the sale of the names and addresses of all utilities, including special districts, providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, or 57.08 RCW. The provision of the information in a written agreement for the purchase and sale of real estate constitutes a written request to the closing agent to administer disbursement of closing funds necessary to satisfy unpaid charges.

Unless the seller and purchaser have waived the services of a closing agent as provided in this subsection, the closing agent shall submit a written request for a final billing to each utility identified by the seller as providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, or 57.08 RCW. Either the seller or purchaser may submit a written request for a final billing to each utility identified by the seller as providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, or 57.08 RCW.

The written request must identify the property by both legal description and address. The closing agent, seller, or purchaser may submit a written request to a utility by facsimile. In requesting final billings for utility services, the closing agent may rely upon information provided by the seller, and a closing agent or a real estate agent who is not the seller is not liable for inaccurate or incomplete information.

(2) After receiving a written request for a final billing for utility services to real property to be sold, a utility operated under chapter 35.21, 35.67, 36.36, 36.89, 36.94, or 57.08 RCW shall provide the requesting party with a written estimated or actual final billing as provided in this section. If the utility is unable to provide a written estimated or actual final

billing or written extension of the per diem rate, due to insufficient information to identify the account, the utility shall notify the requesting party in writing that the information is insufficient to identify the account.

The utility shall provide the written estimated or actual final billing, or statement that the information in the request is insufficient to identify the account, to the requesting party within seven business days of receipt of the written request if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger. A utility may provide a written estimated or actual final billing to the requesting party by facsimile.

(a) The final billing must include all outstanding charges and, in addition to the estimated or actual final amount owing as of the stated closing date, must state the average per diem rate for the utility or utilities involved, including taxes and other charges, which shall apply for up to thirty days beyond the stated closing date if the closing date is delayed.

(b) If closing is delayed beyond thirty days, a new estimated or actual final billing must be requested in writing. In lieu of furnishing a written revised final billing, the utility may extend, in writing, the number of days for which the per diem charge applies. The utility shall respond within seven business days of receipt of the written request for a new estimated or actual final billing if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger.

(c) If a utility fails to provide a written estimated or actual final billing, written extension of the per diem rate, or statement that the information in the request is insufficient to identify the account, within seven business days of receipt of a written request if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger, an unrecorded lien provided for by RCW 35.21.290, 35.67.200, 36.36.045, *36.89.090, or 36.94.150 for charges incurred prior to the closing date is extinguished, and the utility may not recover the charges from the purchaser of the property.

(d) A closing agent shall inform the seller and purchaser of all applicable estimated and actual final billings furnished by utilities.

In performing his or her duties under this chapter, a closing agent may rely upon information provided by utilities and is not liable if information provided by utilities is inaccurate or incomplete.

(3) If closing occurs no later than the last date for which per diem charges may be applied, full payment of the estimated or actual final billing plus per diem charges extinguishes a lien of the utility provided for by RCW 35.21.290, 35.67.200, 36.36.045, *36.89.090, or 36.94.150 for charges incurred prior to the closing date.

(4)(a) Except as otherwise provided in this subsection (4)(a), this section does not limit the right of a utility to recover from the purchaser of the property unpaid utility charges incurred prior to closing, if the utility did not receive a written request for a final billing or if the utility complied with subsection (2) of this section.

A utility may not recover from a purchaser unpaid utility charges incurred prior to closing in excess of an estimated final billing.

(b) This section does not limit the right of a utility to recover unpaid utility charges incurred prior to closing, including unpaid utility charges in excess of an estimated final billing, from the seller of the property, or from the person or persons who incurred the charges.

(c) If an estimated final billing is in excess of the actual final billing, unless otherwise directed in writing by the seller and purchaser, a utility shall refund any overcharge to the seller of the property by sending the refund in the seller's name to the last address provided by the seller. A utility shall refund the overcharge within fourteen business days of the date the utility receives payment for the final billing, unless a county treasurer acts in an ex officio capacity as the treasurer of a utility, in which case the utility shall refund the overcharge within thirty business days of the date the utility receives payment for the final billing. [2004 c 215 § 9; 1996 c 43 § 3.]

*Reviser's note: RCW 36.89.090 was recodified as RCW 36.89.065, September 2007.

60.80.900 Effective date—1996 c 43. This act shall take effect January 1, 1997. [1996 c 43 § 4.]

Chapter 60.84 RCW

LIEN ON DIES, MOLDS, FORMS, AND PATTERNS

Sections

60.84.005	Definitions.
60.84.010	Plastic fabricator, molder, and person conducting a plastic fabricating business has a lien—May retain possession—Notice to customer—Foreclosure by notice and sale.

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

(1) "Customer" means an individual or entity that contracts with, causes, or caused a plastic fabricator to use a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product.

(2) "Plastic fabricator," "fabricator," or "molder" means an individual or entity, including but not limited to a tool or die maker, that contracts to or uses a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product for a customer. [1996 c 235 § 3.]

60.84.010 Plastic fabricator, molder, and person conducting a plastic fabricating business has a lien—May retain possession—Notice to customer—Foreclosure by notice and sale. (1) A plastic fabricator, molder, and person conducting a plastic fabricating business has a lien, dependent on possession, on a die, mold, form, or pattern belonging to the customer for the amount owing from the customer for plastic fabrication work and for the value of materials used in the work. The fabricator may retain possession of the die, mold, form, or pattern until the charges are paid. This lien does not have priority over any security interest in the die, mold, form, or pattern that is perfected at the time the fabricator acquires the lien.

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(2) Before a lien is enforced, the fabricator must cause written notice to be delivered personally or by registered or certified mail to the last known address of the customer. The notice must state that the fabricator will exercise its lien right because of nonpayment. The notice must also state the amount of money owed and demand payment. The fabricator's name, address, and phone number must be included in the notice.

(3) If the fabricator is not paid the total due within sixty days after the notice has been received by the customer, the fabricator may foreclose the lien by notice and sale as provided in this section, if the die, mold, form, or pattern is in the fabricator's possession. The fabricator must send notice of intended sale, by registered or certified mail with return receipt requested, to the last known address of the customer. The notice must include: A description of the die, mold, form, or pattern to be sold; a statement of intent to sell the die, mold, form, or pattern at public sale; the date, time, and place of the sale; and an itemized statement of moneys owing.

If there is no return receipt or if the postal service returns the notice as undeliverable, the fabricator shall publish notice of intention to sell the die, mold, form, or pattern at public sale in a newspaper of general circulation in the county where the die, mold, form, or pattern is physically located. The publication must include: A description of the die, mold, form, or pattern; the name, address, and phone number of the customer; the name, address, and phone number of the fabricator; and the date, time, and place of the sale.

The fabricator is entitled to the amount owing plus the costs of holding, preparing for sale, and selling the die, mold, form, or pattern. The fabricator is also entitled to reasonable attorneys' fees incurred.

(4) If the sale proceeds exceed the amount owing, the excess must be paid to subsequent lien holders. Any remainder must be remitted to the customer.

(5) A public sale may not be held under this section if it is in violation of a right of a customer under federal patent or copyright law. [1996 c 235 § 4.]

Title 61

MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

Chapters

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

Banks, real estate holdings: RCW 30.04.210.
Consumer loan act: Chapter 31.04 RCW.
Corporate powers of banks and trust companies: RCW 30.08.140, 30.08.150.
Credit unions: Chapter 31.12 RCW.
Excise tax on real estate sales: Chapter 82.45 RCW.
Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.
Fraudulent conveyances: Chapter 19.40 RCW.
Insurance companies, investments: Chapter 48.13 RCW.
Interest, usury: Chapter 19.52 RCW.
Joint tenancies: Chapter 64.28 RCW.
Liens: Title 60 RCW.
Motor vehicles, certificates of ownership: Chapter 46.12 RCW.
Mutual savings banks investments: Chapter 32.20 RCW.
powers and duties: Chapters 32.08, 32.12, 32.16 RCW.
Negotiable instruments: Title 62A RCW.
Possession of real property to collect mortgaged, pledged or assigned rents and profits: RCW 7.28.230.
Property taxes: Title 84 RCW.
Real estate brokers and salespersons: Chapter 18.85 RCW.
Real property and conveyances: Title 64 RCW.
Recording master form instruments and mortgages or deeds of trust incorporating master form provisions: RCW 65.08.160.
Recording mortgages: Title 65 RCW.
Retail installment sales of goods and services: Chapter 63.14 RCW.
Savings and loan associations: Title 33 RCW.
Statute of frauds: Chapter 19.36 RCW.

Chapter 61.10 RCW MORTGAGE INSURANCE

Sections

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

61.10.010 Definitions. As used in this chapter:

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

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

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

61.10.020 Condition of residential mortgage transaction—Disclosures—Notices—Harm to borrower—Compliance with federal requirements.

(1) If a borrower is required to obtain and maintain mortgage insurance as a condition of entering into a residential mortgage transaction, the lender shall disclose to the borrower whether and under what conditions the borrower has the right to cancel the mortgage insurance in the future. This disclosure shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) This section does not apply to:

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

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

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

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

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

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

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

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

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

Chapter 61.12 RCW

FORECLOSURE OF REAL ESTATE MORTGAGES
AND PERSONAL PROPERTY LIENS

Sections

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

Community realty, encumbering: RCW 26.16.040.

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

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

Mortgagee cannot maintain action for possession: RCW 7.28.230.

Mortgaging of decedents' estates: Chapter 11.56 RCW.

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

Partition, sales on credit: RCW 7.52.290, 7.52.420.

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

Sales under execution and redemption: Chapter 6.21 RCW.

61.12.010 Encumbrances shall be by deed. See RCW 64.04.010.

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

Dated this day of, 19

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

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

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

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

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

Severability—Effective date—1989 c 343: See RCW 65.20.940 and 65.20.950.

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

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

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

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

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

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

Confirmation of sale of land: RCW 6.21.110.

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

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

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

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

Enforcement of judgments: Title 6 RCW.

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

Severability—1988 c 231: See note following RCW 6.01.050.

Property exempt from execution and attachment: RCW 6.15.010.

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

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

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

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

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

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

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

Notice of sales under execution: RCW 6.21.020.

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

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

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

61.12.150 Sale of whole property—Disposition of proceeds. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue does not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs and assigns. [Code 1881 § 617; 1877 p 128 § 621; 1869 p 147 § 571; 1854 p 208 § 416; RRS § 1128.]

61.12.170 Recording. See chapter 65.08 RCW.

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

Validating—1897 c 23: "All satisfactions of mortgages heretofore made by the assignees thereof, where the assignment was in writing, signed by the mortgagee or assignee, and where the same was recorded in the office of the auditor of the county wherein the mortgage was recorded, are hereby validated, and such satisfactions of mortgages so made shall have the same effect as if made by the mortgagees in such mortgages." [1897 c 23 § 2.]

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

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

Effective date—1999 c 233: See note following RCW 4.28.320.

Chapter 61.16 RCW

ASSIGNMENT AND SATISFACTION OF REAL ESTATE AND CHATTEL MORTGAGES

Sections

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

Effect of recording assignment of mortgage: RCW 65.08.120.

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Chapter 61.24 RCW

DEEDS OF TRUST

Sections

- 61.24.005 Definitions.
- 61.24.010 Trustee, qualifications—Successor trustee.
- 61.24.020 Deeds subject to all mortgage laws—Foreclosure—Recording and indexing—Trustee and beneficiary, separate entities, exception.
- 61.24.025 Application of federal servicemembers civil relief act to deeds of trust.

- 61.24.030 Requisites to trustee's sale.
- 61.24.040 Foreclosure and sale—Notice of sale.
- 61.24.042 Notice to guarantor—Contents—Failure to provide.
- 61.24.045 Requests for notice of sale.
- 61.24.050 Interest conveyed by trustee's deed—Sale is final if acceptance is properly recorded—Redemption precluded after sale.
- 61.24.060 Rights and remedies of trustee's sale purchaser.
- 61.24.070 Trustee's sale, who may bid at—If beneficiary is purchaser—If purchaser is not beneficiary.
- 61.24.080 Disposition of proceeds of sale—Notices—Surplus funds.
- 61.24.090 Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment—Payments tendered to trustee.
- 61.24.100 Deficiency judgments—Foreclosure—Trustee's sale—Application of chapter.
- 61.24.110 Reconveyance by trustee.
- 61.24.120 Other foreclosure provisions preserved.
- 61.24.130 Restraint of sale by trustee—Conditions—Notice.
- 61.24.135 Consumer protection act—Unfair or deceptive acts or practices.
- 61.24.140 Assignment of rents—Collecting payment of rent.

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

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

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

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

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

(4) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

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

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

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

(8) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter.

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

prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

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

(11) "Person" means any natural person, or legal or governmental entity. [1998 c 295 § 1.]

61.24.010 Trustee, qualifications—Successor trustee.

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

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

(b) Any title insurance company authorized to insure title to real property under the laws of this state, or its agents; or

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

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

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

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

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

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

(4) The trustee or successor trustee shall act impartially between the borrower, grantor, and beneficiary. [2008 c 153 § 1; 1998 c 295 § 2; 1991 c 72 § 58; 1987 c 352 § 1; 1981 c 161 § 1; 1975 1st ex.s. c 129 § 1; 1965 c 74 § 1.]

61.24.020 Deeds subject to all mortgage laws—Foreclosure—Recording and indexing—Trustee and beneficiary, separate entities, exception. Except as provided in this chapter, a deed of trust is subject to all laws relating to mortgages on real property. A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be foreclosed by trustee's sale. The county auditor shall record the deed as

a mortgage and shall index the name of the grantor as mortgagor and the names of the trustee and beneficiary as mortgagee. No person, corporation or association may be both trustee and beneficiary under the same deed of trust: PROVIDED, That any agency of the United States government may be both trustee and beneficiary under the same deed of trust. A deed of trust conveying real property that is used principally for agricultural purposes may be foreclosed as a mortgage. Pursuant to *RCW 62A.9-501(4), when a deed of trust encumbers both real and personal property, the trustee is authorized to sell all or any portion of the grantor's interest in that real and personal property at a trustee's sale. [1998 c 295 § 3; 1985 c 193 § 2; 1975 1st ex.s. c 129 § 2; 1965 c 74 § 2.]

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

Application—1985 c 193: "This act shall apply to foreclosures commenced, by the giving of a notice of default pursuant to RCW 61.24.030(6), after July 28, 1985." [1985 c 193 § 5.]

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

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

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

- (1) That the deed of trust contains a power of sale;
- (2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural purposes; provided, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;
- (3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;
- (4) That no action commenced by the beneficiary of the deed of trust is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured: PROVIDED, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was granted to secure a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;
- (5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated;
- (6) That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must maintain a street address in this state where personal service of process may be made, and the

trustee must maintain a physical presence and have telephone service at such address; and

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

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

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

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

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

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

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

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

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

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

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

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

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

Can you pay and stop the foreclosure process?

Do you dispute the failure to pay?

Can you sell your property to preserve your equity?

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

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

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

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

You may feel you need help understanding what to do. There are a number of professional resources available, including home loan counselors and attorneys, who may assist you. Many legal services are lower-cost or even free, depending on your ability to pay. If you desire legal help in understanding your options or handling this default, you may obtain a referral (at no charge) by contacting the county bar association in the county where your home is located. These legal referral services also provide information about lower-cost or free legal services for those who qualify." [2008 c 153 § 2; 2008 c 108 § 22; 1998 c 295 § 4; 1990 c 111 § 1; 1987 c 352 § 2; 1985 c 193 § 3; 1975 1st ex.s. c 129 § 3; 1965 c 74 § 3.]

Reviser's note: This section was amended by 2008 c 108 § 22 and by 2008 c 153 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2008 c 108: See RCW 19.144.005.

Application—1985 c 193: See note following RCW 61.24.020.

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

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

(a) Record a notice in the form described in RCW 61.24.040(1)(f) in the office of the auditor in each county in which the deed of trust is recorded;

(b) To the extent the trustee elects to foreclose its lien or interest, or the beneficiary elects to preserve its right to seek a deficiency judgment against a borrower or grantor under RCW 61.24.100(3)(a), and if their addresses are stated in a recorded instrument evidencing their interest, lien, or claim of lien, or an amendment thereto, or are otherwise known to the trustee, cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first-class and either certified or registered mail, return receipt requested, to the following persons or their legal representatives, if any, at such address:

(i) The borrower and grantor;

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

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

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

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

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

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

(c) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first-class and either certified or registered mail, return receipt requested, to the plaintiff or the plaintiff's attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded;

(d) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first-class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person's most recently recorded request for notice;

(e) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property;

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

NOTICE OF TRUSTEE'S SALE

I.

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

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

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

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

II.

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

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

III.

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

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

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

IV.

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

V.

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

VI.

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

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

VII.

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

VIII.

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

IX.

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

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

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

[Acknowledgment]

(2) In addition to providing the borrower and grantor the notice of sale described in RCW 61.24.040(1)(f), the trustee shall include with the copy of the notice which is mailed to the grantor, a statement to the grantor in substantially the following form:

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

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

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

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

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

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

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

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

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

NAME:
ADDRESS:
.
TELEPHONE NUMBER:

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

(3) In addition, the trustee shall cause a copy of the notice of sale described in RCW 61.24.040(1)(f) (excluding

the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the thirty-fifth and twenty-eighth day before the date of sale, and once on or between the fourteenth and seventh day before the date of sale;

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

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

(6) The trustee has no obligation to, but may, for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by (a) a public proclamation at the time and place fixed for sale in the notice of sale and if the continuance is beyond the date of sale, by giving notice of the new time and place of the sale by both first class and either certified or registered mail, return receipt requested, to the persons specified in RCW 61.24.040(1)(b) (i) and (ii) to be deposited in the mail (i) not less than four days before the new date fixed for the sale if the sale is continued for up to seven days; or (ii) not more than three days after the date of the continuance by oral proclamation if the sale is continued for more than seven days, or, alternatively, (b) by giving notice of the time and place of the postponed sale in the manner and to the persons specified in RCW 61.24.040(1) (b), (c), (d), and (e) and publishing a copy of such notice once in the newspaper(s) described in RCW 61.24.040(3), more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;

(7) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value, except that these recitals shall not affect the lien or interest of any person entitled to notice under RCW 61.24.040(1), if the trustee fails to give the required notice to such person. In such case, the lien or interest of such omitted person shall not be affected by the sale and such omitted person shall be treated as if such person was the holder of the same lien or interest and was omitted as a party defendant in a judicial foreclosure proceeding;

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

(9) If the trustee elects to foreclose the interest of any occupant or tenant of property comprised solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, the following notice shall be included as Part X of the Notice of Trustee's Sale:

X.

NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants and tenants. After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act, chapter 59.12 RCW;

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

Application—1985 c 193: See note following RCW 61.24.020.

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

61.24.045 Requests for notice of sale. Any person desiring a copy of any notice of sale described in RCW 61.24.040(1)(f) under any deed of trust, other than a person entitled to receive such a notice under RCW 61.24.040(1) (b) or (c), must, after the recordation of such deed of trust and before the recordation of the notice of sale, cause to be filed for record, in the office of the auditor of any county in which the deed of trust is recorded, a duly acknowledged request for a copy of any notice of sale. The request shall be signed and acknowledged by the person to be notified or such person's agent, attorney, or representative; shall set forth the name,

mailing address, and telephone number, if any, of the person or persons to be notified; shall identify the deed of trust by stating the names of the parties thereto, the date the deed of trust was recorded, the legal description of the property encumbered by the deed of trust, and the auditor's file number under which the deed of trust is recorded; and shall be in substantially the following form:

REQUEST FOR NOTICE

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

(Legal Description)

be sent by both first-class and either registered or certified mail, return receipt requested, to at

Dated this day of, 20.

.....
Signature

(Acknowledgment)

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

Application—1985 c 193: See note following RCW 61.24.020.

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

61.24.060 Rights and remedies of trustee's sale purchaser. The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the grantor under the deed of trust and anyone having an interest junior to the deed of trust, including occupants and tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW. [1998 c 295 § 8; 1967 c 30 § 2; 1965 c 74 § 6.]

61.24.070 Trustee's sale, who may bid at—If beneficiary is purchaser—If purchaser is not beneficiary. (1)

The trustee may not bid at the trustee's sale. Any other person, including the beneficiary, may bid at the trustee's sale.

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

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

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

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

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

61.24.090 Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment—Payments tendered to trustee. (1) At any time prior to the eleventh day before the date set by the trustee for the sale in the recorded notice of sale, or in the event the trustee continues the sale pursuant to

RCW 61.24.040(6), at any time prior to the eleventh day before the actual sale, the borrower, grantor, any guarantor, any beneficiary under a subordinate deed of trust, or any person having a subordinate lien or encumbrance of record on the trust property or any part thereof, shall be entitled to cause a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice, which in the case of a default by failure to pay, shall be by paying to the trustee:

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

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

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

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

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

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

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

(7) Any payments required under this section as a condition precedent to reinstatement of the deed of trust shall be tendered to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified

electronic transfer, or any combination thereof. [1998 c 295 § 11; 1987 c 352 § 4; 1981 c 161 § 6; 1975 1st ex.s. c 129 § 5; 1967 c 30 § 4; 1965 c 74 § 9.]

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

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

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

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

(a)(i) To the extent the fair value of the property sold at the trustee's sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee's sale, an action for a deficiency judgment against the borrower or grantor, if such person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

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

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

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

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

(5) In any action against a guarantor following a trustee's sale under a deed of trust securing a commercial loan, the

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

(6) A guarantor granting a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee's sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor's principal residence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee's sale accepted by the sheriff or trustee prior to the application of the bid to the guarantor's obligation.

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

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

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

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

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

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee's sale under a deed of trust securing a commercial loan or any guaranty of such a loan executed prior to June 11, 1998, shall be determined in accor-

dance with the laws existing prior to June 11, 1998. [1998 c 295 § 12; 1990 c 111 § 2; 1965 c 74 § 10.]

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

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

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

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

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

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

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

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

(3) If the restraining order or injunction is dissolved after the date of the trustee's sale set forth in the notice as provided

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

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

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

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

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

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

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

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

61.24.135 Consumer protection act—Unfair or deceptive acts or practices. It is an unfair or deceptive act or practice under the consumer protection act, chapter 19.86 RCW, for any person, acting alone or in concert with others, to offer, or offer to accept or accept from another, any consideration of any type not to bid, or to reduce a bid, at a sale of property conducted pursuant to a power of sale in a deed of trust. The trustee may decline to complete a sale or deliver the trustee's deed and refund the purchase price, if it appears that the bidding has been collusive or defective, or that the sale might have been void. However, it is not an unfair or deceptive act or practice for any person, including a trustee, to state that a property subject to a recorded notice of trustee's sale or subject to a sale conducted pursuant to this chapter is being sold in an "as-is" condition, or for the beneficiary to arrange to provide financing for a particular bidder or to reach any good faith agreement with the borrower,

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grantor, any guarantor, or any junior lienholder. [2008 c 153 § 6; 1998 c 295 § 15.]

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

Chapter 61.30 RCW

REAL ESTATE CONTRACT FORFEITURES

Sections

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

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

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

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

(4) "Forfeit" or "forfeiture" means to cancel the purchaser's rights under a real estate contract and to terminate all right, title, and interest in the property of the purchaser and of persons claiming by or through the purchaser, all to the extent provided in this chapter, because of a breach of one or more of the purchaser's obligations under the contract. A judicial foreclosure of a real estate contract as a mortgage shall not be considered a forfeiture under this chapter.

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

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

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

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

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

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

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

(2) The seller's commencement of an action to foreclose the contract as a mortgage shall not constitute an election of

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

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

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

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

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

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

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

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

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

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

(3) The required notices shall also be given to each person who at the time the notice of intent to forfeit is recorded has recorded in each county in which any of the property is located a request to receive the required notices, which

request (a) identifies the contract being forfeited by reference to its date, the original parties thereto, and a legal description of the property; (b) contains the name and address for notice of the person making the request; and (c) is executed and acknowledged by the requesting person.

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

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

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

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

(2) The required notices shall be given:

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

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

stated in any recorded document which entitles a person to receive the required notices unless the seller or the seller's agent or attorney giving the notice knows such address to be incorrect.

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

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

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

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

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

(c) A legal description of the property;

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

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

(f) A statement of the effect of forfeiture, including, to the extent applicable that: (i) All right, title, and interest in the property of the purchaser and, to the extent elected by the seller, of all persons claiming through the purchaser or whose interests are otherwise subordinate to the seller's interest in

the property shall be terminated; (ii) the purchaser's rights under the contract shall be canceled; (iii) all sums previously paid under the contract shall belong to and be retained by the seller or other person to whom paid and entitled thereto; (iv) all of the purchaser's rights in all improvements made to the property and in unharvested crops and timber thereon shall belong to the seller; and (v) the purchaser and all other persons occupying the property whose interests are forfeited shall be required to surrender possession of the property, improvements, and unharvested crops and timber to the seller ten days after the declaration of forfeiture is recorded;

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

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

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

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

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

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

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

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

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

(c) A legal description of the property;

(d) To the extent applicable, a statement that all the purchaser's rights under the contract are canceled and all right,

title, and interest in the property of the purchaser and of all persons claiming an interest in all or any portion of the property through the purchaser or which is otherwise subordinate to the seller's interest in the property are terminated except to the extent otherwise stated in the declaration of forfeiture as to persons or claims named, identified, or described;

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

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

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

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

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

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

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

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

persons who were given the required notices and all other persons whose interests the seller desires to forfeit. [1988 c 86 § 8; 1985 c 237 § 8.]

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

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

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

of the time for cure, then regardless of whether the tender is accepted the time for cure shall be extended for ten days from the date the seller's written notice of insufficiency is given. The seller shall not be required to extend the time for cure more than once even though more than one insufficient tender is made.

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

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

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

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

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

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

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

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

(3) The seller shall be entitled to possession of the property ten days after the declaration of forfeiture is recorded or

any longer period provided in the contract or any other agreement with the seller. The seller may proceed under chapter 59.12 RCW to obtain such possession. Any person in possession who fails to surrender possession when required shall be liable to the seller for actual damages caused by such failure and for reasonable attorneys' fees and costs of the action.

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

61.30.110 Forfeiture may be restrained or enjoined.

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

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

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

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

Except for a sale ordered incident to foreclosure of the contract as a mortgage, a public sale of the property in lieu of the forfeiture may be ordered by the court only as provided in this section. Any person entitled to cure the default may bring or join in an action seeking an order of public sale in lieu of forfeiture. No other person may bring such an action without leave of court first given for good cause shown.

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

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

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

(a) A statement that the court has directed the sheriff to sell the property described in the notice of sale and the

amount the seller is entitled to be paid from the sale proceeds as specified in the court's order;

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

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

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

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

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

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

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

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

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

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

chaser. Interests in or liens or claims of liens against the property eliminated by the sale shall attach to such surplus in the order of priority that they had attached to the property. The clerk shall not disburse the surplus except upon order of the superior court of such county, which order shall not be entered less than ten days following the deposit of the funds with the clerk.

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The seller is entitled to possession of the property and to the rents, issues, and profits thereof during the pendency of an action to set aside the forfeiture: PROVIDED, That the court may provide that possession of the property be delivered to or retained by the purchaser or some other person and

may make other provisions for the rents, issues, and profits. [1988 c 86 § 14; 1985 c 237 § 14.]

61.30.150 False swearing—Penalty—Failure to comply with chapter—Liability. (1) Whoever knowingly swears falsely to any statement required by this chapter to be sworn is guilty of perjury and shall be liable for the statutory penalties therefor.

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

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

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

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

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

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

Chapter 61.34 RCW

DISTRESSED PROPERTY CONVEYANCES

(Formerly: Equity skimming)

Sections

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61.34.120 Distressed home purchaser—Prohibited practices.
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61.34.010 Legislative findings. The legislature finds that persons are engaging in patterns of conduct which defraud innocent homeowners of their equity interest or other value in residential dwellings under the guise of a purchase of the owner's residence but which is in fact a device to convert the owner's equity interest or other value in the residence to an equity skimmer, who fails to make payments, diverts the equity or other value to the skimmer's benefit, and leaves the innocent homeowner with a resulting financial loss or debt.

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

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

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

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

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

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

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

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

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

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

(2) "Distressed home" means either:

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

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

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

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

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

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

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

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

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

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

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

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

(ix) Purchase or obtain an option to purchase the distressed homeowner's residence within twenty days of an advertised or docketed foreclosure sale;

(x) Arrange for the distressed homeowner to become a lessee or tenant entitled to continue to reside in the distressed homeowner's residence;

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

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

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

"Distressed home consultant" does not mean a financial institution, a nonprofit credit counseling service, a licensed attorney, or a person subject to chapter 19.148 RCW. "Distressed home consultant" does not include a licensed mortgage broker who, pursuant to lawful activities under chapter 19.146 RCW, procures a nonpurchase mortgage loan for the distressed homeowner from a financial institution.

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

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

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

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

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

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

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

(8) "Dwelling" means a single, duplex, triplex, or four-unit family residential building.

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

(10) "Homeowner" means a person who owns and occupies a dwelling as his or her primary residence, whether or not his or her ownership interest is encumbered by a mortgage, deed of trust, or other lien.

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

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

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

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four

months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

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

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

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

(v) An attorney-at-law;

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

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

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

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

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

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

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

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

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

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

(2) In a private right of action under chapter 19.86 RCW for a violation of this chapter, the court may double or triple the award of damages pursuant to RCW 19.86.090, subject to the statutory limit. If, however, the court determines that the defendant acted in bad faith, the limit for doubling or tripling the award of damages may be increased, but shall not exceed

one hundred thousand dollars. Any claim for damages brought under this chapter must be commenced within four years after the date of the alleged violation.

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

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

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

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

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

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

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

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

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

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

"NOTICE REQUIRED BY WASHINGTON LAW

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

. . . Name of distressed home consultant . . . or anyone working for him or her CANNOT guarantee you that he or she will be able to refinance your home or arrange for you to

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keep your home. Continue making mortgage payments until refinancing, if applicable, is approved. You should consult with an attorney before signing this contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

"NOTICE REQUIRED BY WASHINGTON LAW

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

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

61.34.100 Distressed homeowner’s right to cancel.

- (1) In addition to any other right of rescission, a distressed homeowner has the right to cancel any contract with a distressed home purchaser until midnight of the fifth business day following the day on which the distressed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the distressed homeowner has a right of redemption, whichever occurs first.
- (2) Cancellation occurs when the distressed homeowner delivers to the distressed home purchaser, by any means, a written notice of cancellation to the address specified in the contract.
- (3) A notice of cancellation provided by the distressed homeowner is not required to take the particular form as provided with the contract.
- (4) Within ten days following the receipt of a notice of cancellation under this section, the distressed home purchaser shall return without condition any original contract and any

other documents signed by the distressed homeowner. [2008 c 278 § 7.]

61.34.110 Notice of distressed homeowner’s right to cancel.

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

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

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

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

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

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

"NOTICE OF CANCELLATION

.....
(Enter date contract signed)

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

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

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

.....
(Name of purchaser)

at

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

NOT LATER THAN

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

I hereby cancel this transaction.

.....
(Date)

.....
(Seller’s signature)"

(3) The distressed home purchaser shall provide the distressed homeowner with a copy of the contract and the

attached notice of cancellation at the time the contract is executed by all parties.

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

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

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

(2) Fail to either:

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

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

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

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

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

(4) Represent, directly or indirectly, that (a) the distressed home purchaser is acting as an advisor or consultant,

(b) the distressed home purchaser is acting on behalf of or in the interests of the distressed homeowner, or (c) the distressed home purchaser is assisting the distressed homeowner to save the distressed home, buy time, or use other substantially similar language;

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

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

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

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

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

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

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

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

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

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

Title 62A

UNIFORM COMMERCIAL CODE

Articles

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

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

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

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

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

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

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

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

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

Uniform legislation commission: Chapter 43.56 RCW.

Article 1 GENERAL PROVISIONS

Sections

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

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

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

- (2) Underlying purposes and policies of this Title are
 - (a) to simplify, clarify and modernize the law governing commercial transactions;
 - (b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;
 - (c) to make uniform the law among the various jurisdictions.

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

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

(5) In this Title unless the context otherwise requires

- (a) words in the singular number include the plural, and in the plural include the singular;
- (b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. [1965 ex.s. c 157 § 1-

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102. Cf. former RCW sections: (i) RCW 22.04.580; 1913 c 99 § 57; RRS § 3643. (ii) RCW 23.80.190; 1939 c 100 § 19; RRS § 3803-119. (iii) RCW 63.04.745; 1925 ex.s. c 142 § 74; RRS § 5836-74; formerly RCW 63.04.770. (iv) RCW 81.32.521; 1961 c 14 § 81.32.521; prior: 1915 c 159 § 52; RRS § 3698; formerly RCW 81.32.610.]

Code to be liberally construed: RCW 1.12.010.

Number and gender—Interpretation: RCW 1.12.050.

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

Application of common law: RCW 4.04.010.

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

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

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

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

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

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

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

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

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

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. RCW 62A.9A-301 through 62A.9A-307. [2001 c 32 § 8; 2000 c 250 § 9A-801; 1997 c 56 § 19; 1995 c 48 § 54. Prior: 1993 c 395 § 6-102; 1993 c 230 § 2A-601; 1981 c 41 § 1; 1965 ex.s. c 157 § 1-105.]

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

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

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1993 c 230: See RCW 62A.11-110.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.1-106 Remedies to be liberally administered. (1)

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

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

62A.1-107 Waiver or renunciation of claim or right after breach.

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

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

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

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

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

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

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

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

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

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

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

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

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

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

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

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 62A.2 RCW may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

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

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title

and any other applicable rules of law. (Compare "Agreement".)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) he or she has actual knowledge of it; or

(b) he or she has received a notice or notification of it; or

(c) from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists.

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

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

(a) it comes to his or her attention; or

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

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

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

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

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

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

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

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

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

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

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation, except for lease-purchase agreements under chapter 63.19 RCW. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment

intangible, or a promissory note in a transaction that is subject to Article 9A. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9A. Except as otherwise provided in RCW 62A.2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest."

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

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

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

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

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

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

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

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed;

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

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

For purposes of this subsection (37):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the

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fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;	(1)	RCW: (i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and	(2)	None
	(3)	None
(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.	(4)	RCW: (i) 30.52.010 (ii) 62.01.191
	(5)	RCW 62.01.191
	(6)	RCW 81.32.011 ¹
	(7)	None
	(8)	None
	(9)	RCW 61.20.010
	(10)	None
(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.	(11)	RCW: (i) 63.04.040 (ii) 63.04.720
	(12)	None
	(13)	RCW 63.04.755(1)
	(14)	RCW: (i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
	(15)	RCW 63.04.755(1)
	(16)	RCW 63.04.755(1)
(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.	(17)	RCW: (i) 22.04.585(1) (ii) 63.04.060 (iii) 63.04.070 (iv) 63.04.755(1)
(40) "Surety" includes guarantor.		
(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.	(18)	None
	(19)	RCW: (i) 22.04.585(2) (ii) 23.80.220(2) (iii) 63.04.755(2) (iv) 81.32.531(2)
(42) "Term" means that portion of an agreement which relates to a particular matter.		
(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.	(20)	RCW: (i) 22.04.585(1) (ii) 62.01.191 (iii) 81.32.531(1)
(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-210, and RCW 62A.4-211) a person gives "value" for rights if he or she acquires them	(21)	None
	(22)	None
(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or	(23)	RCW 63.04.755(3)
	(24)	RCW 62.01.006(5)
	(25)	RCW 62.01.056
	(26)	None
(b) as security for or in total or partial satisfaction of a preexisting claim; or	(27)	None
	(28)	RCW: (i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
(c) by accepting delivery pursuant to a pre-existing contract for purchase; or		
(d) generally, in return for any consideration sufficient to support a simple contract.		
(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.	(29)	None
(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form. [2001 c 32 § 9; 2000 c 250 § 9A-802; 1996 c 77 § 1. Prior: 1993 c 230 § 2A-602; 1993 c 229 § 1; 1992 c 134 § 14; 1990 c 228 § 1; 1986 c 35 § 53; 1981 c 41 § 2; 1965 ex.s. c 157 § 1-201.]	(30)	RCW: (i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
Reviser's note: This table indicates the latest comparable former Washington sources of the material contained in the various subsections of RCW 62A.1-201. Complete histories of the former sections are carried in the Revised Code of Washington Disposition Tables.	(31)	None
	(32)	RCW: (i) 22.04.585(1)

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

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

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

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

Effective date—1993 c 230: See RCW 62A.11-110.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Short title—Severability—1992 c 134: See RCW 63.19.900 and 63.19.901.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.1-202 Prima facie evidence by third party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. [1965 ex.s. c 157 § 1-202.]

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

Uniform Business Records as Evidence Act: Chapter 5.45 RCW.

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

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

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

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

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

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

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

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

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

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

62A.1-206 Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (RCW 62A.2-201) nor of securities (RCW 62A.8-113) nor to security agreements (*RCW 62A.9-203). [1995 c 48 § 55; 1965 ex.s. c 157 § 1-206. Cf.

former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

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

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Statute of frauds: Chapter 19.36 RCW.

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

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

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

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

Article 2 SALES

Sections

PART 1 SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

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62A.2-103	Definitions and index of definitions.
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62A.2-105	Definitions: Transferability; "goods"; "future" goods; "lot"; "commercial unit".
62A.2-106	Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation".
62A.2-107	Goods to be severed from realty: Recording.

PART 2 FORM, FORMATION AND READJUSTMENT OF CONTRACT

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PART 1
SHORT TITLE, GENERAL CONSTRUCTION
AND SUBJECT MATTER

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

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

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

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

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

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

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

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

"Acceptance."	RCW 62A.2-606.
"Banker's credit."	RCW 62A.2-325.
"Between merchants."	RCW 62A.2-104.
"Cancellation."	RCW 62A.2-106(4).
"Commercial unit."	RCW 62A.2-105.
"Confirmed credit."	RCW 62A.2-325.
"Conforming to contract."	RCW 62A.2-106.
"Contract for sale."	RCW 62A.2-106.

"Cover."	RCW 62A.2-712.
"Entrusting."	RCW 62A.2-403.
"Financing agency."	RCW 62A.2-104.
"Future goods."	RCW 62A.2-105.
"Goods."	RCW 62A.2-105.
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"Installment contract."	RCW 62A.2-612.
"Letter of credit."	RCW 62A.2-325.
"Lot."	RCW 62A.2-105.
"Merchant."	RCW 62A.2-104.
"Overseas."	RCW 62A.2-323.
"Person in position of seller."	RCW 62A.2-707.
"Present sale."	RCW 62A.2-106.
"Sale."	RCW 62A.2-106.
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Termination."	RCW 62A.2-106.

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

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

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

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

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

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (RCW 62A.2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. [1965 ex.s. c 157 § 2-104. Cf. former RCW sections: (i) RCW 63.04.160(2), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (ii) RCW 63.04.170(c); 1925 ex.s. c 142 § 16; RRS § 5836-16. (iii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iv) RCW 63.04.720;

1925 ex.s. c 142 § 71; RRS § 5836-71. (v) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440. (vi) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

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

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

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

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

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

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

62A.2-106 Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation". (1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (RCW 62A.2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when

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they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. [1965 ex.s. c 157 § 2-106. Subd. (1) cf. former RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. Subd. (2) cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.450; 1925 ex.s. c 142 § 44; RRS § 5836-44. (iii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-107 Goods to be severed from realty: Recording. (1) A contract for the sale of minerals or the like including oil and gas or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. [1981 c 41 § 3; 1965 ex.s. c 157 § 2-107. Cf. former RCW sections: (i) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (ii) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

Effective date—1981 c 41: See RCW 62A.11-101.

PART 2 FORM, FORMATION AND READJUSTMENT OF CONTRACT

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

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not

enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (RCW 62A.2-606). [1965 ex.s c 157 § 2-201. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

Statute of frauds: RCW 19.36.010.

62A.2-202 Final written expression: Parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (RCW 62A.1-205) or by course of performance (RCW 62A.2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [1965 ex.s. c 157 § 2-202.]

62A.2-203 Seals inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such contract or offer. [1965 ex.s. c 157 § 2-203. Cf. former RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

Corporate seals—Effect of absence from instrument: RCW 64.04.105.

62A.2-204 Formation in general. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. [1965 ex.s. c 157 § 2-204. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-205 Firm offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1965 ex.s. c 157 § 2-205. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-206 Offer and acceptance in formation of contract. (1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1965 ex.s. c 157 § 2-206. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-207 Additional terms in acceptance or confirmation. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish

a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Title. [1965 ex.s. c 157 § 2-207. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-208 Course of performance or practical construction. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (RCW 62A.1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance. [1965 ex.s. c 157 § 2-208.]

62A.2-209 Modification, rescission and waiver. (1) An agreement modifying a contract within this Article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this Article (RCW 62A.2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [1965 ex.s. c 157 § 2-209.]

62A.2-210 Delegation of performance; assignment of rights. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in RCW 62A.9A-406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially

the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (RCW 62A.2-609).

(7) Notwithstanding subsections (2) and (3) of this section, an assignment that would be a breach but for the provisions of RCW 62A.9A-406 may create reasonable grounds for insecurity with respect to the due performance of the assignor (RCW 62A.2-609). [2000 c 250 § 9A-804; 1965 ex.s. c 157 § 2-210.]

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

PART 3 GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

62A.2-301 General obligations of parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. [1965 ex.s. c 157 § 2-301. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41.]

62A.2-302 Unconscionable contract or clause. (1) If the court as a matter of law finds the contract or any clause of

the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. [1965 ex.s. c 157 § 2-302.]

62A.2-303 Allocation or division of risks. Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden. [1965 ex.s. c 157 § 2-303.]

62A.2-304 Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith. [1965 ex.s. c 157 § 2-304. Cf. former RCW 63.04.100(2), (3); 1925 ex.s. c 142 § 9; RRS § 5836-9.]

62A.2-305 Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. [1965 ex.s. c 157 § 2-305. Cf. former RCW sections: (i) RCW 63.04.100; 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.110; 1925 ex.s. c 142 § 10; RRS § 5836-10. Subd. (3) cf. former RCW 63.04.120(2); 1925 ex.s. c 142 § 11; RRS § 5836-11.]

62A.2-306 Output, requirements and exclusive dealings. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such

actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale. [1965 ex.s. c 157 § 2-306.]

62A.2-307 Delivery in single lot or several lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot. [1965 ex.s. c 157 § 2-307. Cf. former RCW 63.04.460(1); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-308 Absence of specified place for delivery. Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels. [1965 ex.s. c 157 § 2-308. Subd. (a), (b) cf. former RCW 63.04.440(1); 1925 ex.s. c 142 § 43; RRS § 5836-43.]

62A.2-309 Absence of specific time provisions; notice of termination. (1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. [1965 ex.s. c 157 § 2-309. Cf. former RCW sections: (i) RCW 63.04.440(2); 1925 ex.s. c 142 § 43; RRS § 5836-43. (ii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iii) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (iv) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

62A.2-310 Open time for payment or running of credit; authority to ship under reservation. Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival

before payment is due unless such inspection is inconsistent with the terms of the contract (RCW 62A.2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period. [1965 ex.s. c 157 § 2-310. Cf. former RCW sections: (i) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (ii) RCW 63.04.470(1); 1925 ex.s. c 142 § 46; RRS § 5836-46. (iii) RCW 63.04.480(2); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

62A.2-311 Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of RCW 62A.2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of RCW 62A.2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods. [1965 ex.s. c 157 § 2-311.]

62A.2-312 Warranty of title and against infringement; buyer's obligation against infringement. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harm-

less against any such claim which arises out of compliance with the specifications. [1965 ex.s. c 157 § 2-312. Cf. former RCW 63.04.140; 1925 ex.s. c 142 § 13; RRS § 5836-13.]

62A.2-313 Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. [1965 ex.s. c 157 § 2-313. Cf. former RCW sections: (i) RCW 63.04.130; 1925 ex.s. c 142 § 12; RRS § 5836-12. (ii) RCW 63.04.150; 1925 ex.s. c 142 § 14; RRS § 5836-14. (iii) RCW 63.04.170; 1925 ex.s. c 142 § 16; RRS § 5836-16.]

Motor vehicle express warranties: Chapter 19.118 RCW.

62A.2-314 Implied warranty: Merchantability; usage of trade. (1) Unless excluded or modified (RCW 62A.2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (RCW 62A.2-316) other implied warranties may arise from course of dealing or usage of trade. [1965 ex.s. c 157 § 2-314. Cf. former RCW 63.04.160(2); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

62A.2-315 Implied warranty: Fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless

excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. [1965 ex.s. c 157 § 2-315. Cf. former RCW 63.04.160(1), (4), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

62A.2-316 Exclusion or modification of warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and

(d) in sales of livestock, including but not limited to, horses, mules, cattle, sheep, swine, goats, poultry, and rabbits, there are no implied warranties as defined in this article that the livestock are free from sickness or disease: PROVIDED, That the seller has complied with all state and federal laws and regulations that apply to animal health and disease, and the seller is not guilty of fraud, deceit or misrepresentation.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section and the provisions of RCW 62A.2-719, as now or hereafter amended, in any case where goods are purchased primarily for personal, family or household use and not for commercial or business use, disclaimers of the warranty of merchantability or fitness for particular purpose shall not be effective to limit the liability of merchant sellers except insofar as the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (RCW 62A.2-718 and RCW 62A.2-719). [1982 c 199 § 1; 1974 ex.s. c 180 § 1; 1974 ex.s. c 78 § 1; 1965 ex.s. c 157 § 2-316. Subd. (3)(b) cf. former RCW 63.04.160(3); 1925 ex.s. c 142 § 15; RRS § 5836-15. Subd. (3)(c) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-317 Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1965 ex.s. c 157 § 2-317. Cf. former RCW sections: RCW 63.04.150 through 63.04.170; 1925 ex.s. c 142 §§ 14 through 16; RRS §§ 5836-14 through 5836-16.]

62A.2-318 Third party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. [1965 ex.s. c 157 § 2-318.]

62A.2-319 F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (RCW 62A.2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (RCW 62A.2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (RCW 62A.2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing

date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (RCW 62A.2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-319.]

62A.2-320 C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-320.]

62A.2-321 C.I.F. or C.&F.: "Net landed weights"; "payment on arrival"; warranty of condition on arrival. Under a contract containing a term C.I.F. or C.&F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the

price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. [1965 ex.s. c 157 § 2-321.]

62A.2-322 Delivery "ex-ship". (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded. [1965 ex.s. c 157 § 2-322.]

62A.2-323 Form of bill of lading required in overseas shipment; "overseas". (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of RCW 62A.2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. [1965 ex.s. c 157 § 2-323.]

62A.2-324 "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but

he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (RCW 62A.2-613). [1965 ex.s. c 157 § 2-324.]

62A.2-325 "Letter of credit" term; "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. [1965 ex.s. c 157 § 2-325.]

62A.2-326 Sale on approval and sale or return; rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (RCW 62A.2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202). [2000 c 250 § 9A-805; 1965 ex.s. c 157 § 2-326. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

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

62A.2-327 Special incidents of sale on approval and sale or return. (1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense. [1965 ex.s. c 157 § 2-327. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-328 Sale by auction. (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. [1965 ex.s. c 157 § 2-328. Cf. former RCW 63.04.220; 1925 ex.s. c 142 § 21; RRS § 5836-21.]

PART 4

TITLE, CREDITORS AND GOOD FAITH PURCHASERS

62A.2-401 Passing of title; reservation for security; limited application of this section. Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (RCW 62A.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (*Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even

though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale". [1965 ex.s. c 157 § 2-401. Cf. former RCW sections: RCW 63.04.180 through 63.04.210; 1925 ex.s. c 142 §§ 17 through 20; RRS § 5836-17 through 5836-20.]

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

62A.2-402 Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (RCW 62A.2-502 and RCW 62A.2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (*Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference. [1965 ex.s. c 157 § 2-402. Subd. (2) cf. former RCW sections: (i) RCW 63.04.270; 1925 ex.s. c 142 § 26; RRS § 5836-26. (ii) RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

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

(2008 Ed.)

62A.2-403 Power to transfer; good faith purchase of goods; "entrusting". (1) A purchaser of goods acquires all title which his or her transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale".

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him or her power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (*Article 9) and Documents of Title (Article 7). [1993 c 395 § 6-103; 1967 c 114 § 8; 1965 ex.s. c 157 § 2-403. Cf. former RCW sections: (i) RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.04.210(4); 1925 ex.s. c 142 § 20; RRS § 5836-20. (iii) RCW 63.04.240; 1925 ex.s. c 142 § 23; RRS § 5836-23. (iv) RCW 63.04.250; 1925 ex.s. c 142 § 24; RRS § 5836-24. (v) RCW 63.04.260; 1925 ex.s. c 142 § 25; RRS § 5836-25. (vi) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

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

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Restoration of stolen property: RCW 10.79.050.

PART 5 PERFORMANCE

62A.2-501 Insurable interest in goods; manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

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(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. [1965 ex.s. c 157 § 2-501. Cf. former RCW sections: (i) RCW 63.04.180; 1925 ex.s. c 142 § 17; RRS § 5836-17. (ii) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-502 Buyer's right to goods on seller's insolvency. (1) Subject to subsections (2) and (3) of this section and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) In all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. [2000 c 250 § 9A-806; 1965 ex.s. c 157 § 2-502. Cf. former RCW sections: RCW 63.04.180 through 63.04.200; 1925 ex.s. c 142 §§ 17 through 19; RRS §§ 5836-17 through 5836-19.]

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

62A.2-503 Manner of seller's tender of delivery. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1)

and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of RCW 62A.2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection. [1965 ex.s. c 157 § 2-503. Cf. former RCW sections: RCW 63.04.120, 63.04.200, 63.04.210, 63.04.440, 63.04.470, and 63.04.520; 1925 ex.s. c 142 §§ 11, 19, 20, 43, 46, and 51; RRS §§ 5836-11, 5836-19, 5836-20, 5836-43, 5836-46, and 5836-51.]

62A.2-504 Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues. [1965 ex.s. c 157 § 2-504. Cf. former RCW 63.04.470; 1925 ex.s. c 142 § 46; RRS § 5836-46.]

62A.2-505 Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of RCW 62A.2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. [1965 ex.s. c 157 § 2-505. Cf. former RCW 63.04.210 (2), (3), (4); 1925 ex.s. c 142 § 20; RRS § 5836-20.]

62A.2-506 Rights of financing agency. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. [1965 ex.s. c 157 § 2-506.]

62A.2-507 Effect of seller's tender; delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. [1965 ex.s. c 157 § 2-507. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. (iii) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (iv) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-508 Cure by seller of improper tender or delivery; replacement. (1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. [1965 ex.s. c 157 § 2-508.]

62A.2-509 Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (RCW 62A.2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of RCW 62A.2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (RCW 62A.2-327) and on effect of breach on risk of loss (RCW 62A.2-510). [1965 ex.s. c 157 § 2-509. Cf. former RCW sections: (i) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19. (ii) RCW 63.04.230; 1925 ex.s. c 142 § 22; RRS § 5836-22.]

62A.2-510 Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. [1965 ex.s. c 157 § 2-510.]

62A.2-511 Tender of payment by buyer; payment by check. (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Title on the effect of an instrument on an obligation (RCW 62A.3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. [1996 c 77 § 2; 1965 ex.s. c 157 § 2-511. Cf. former RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42.]

62A.2-512 Payment by buyer before inspection. (1)

Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Title (RCW 62A.5-109(2)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his or her remedies. [1997 c 56 § 20; 1965 ex.s. c 157 § 2-512. Cf. former RCW sections: (i) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49.]

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

62A.2-513 Buyer's right to inspection of goods. (1)

Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of RCW 62A.2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. [1965 ex.s. c 157 § 2-513. Cf. former RCW 63.04.480 (2), (3); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

62A.2-514 When documents deliverable on acceptance; when on payment. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. [1965 ex.s. c 157 § 2-514. Cf. former RCW 81.32.411; 1961 c 14 § 81.32.411; prior: 1915 c 159 § 41; RRS § 3687; formerly RCW 81.32.500.]

62A.2-515 Preserving evidence of goods in dispute.

In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods

including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment. [1965 ex.s. c 157 § 2-515.]

PART 6

BREACH, REPUDIATION AND EXCUSE

62A.2-601 Buyer's rights on improper delivery. Subject to the provisions of this Article on breach in installment contracts (RCW 62A.2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (RCW 62A.2-718 and RCW 62A.2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest. [1965 ex.s. c 157 § 2-601. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (iii) RCW 63.04.700(1); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-602 Manner and effect of rightful rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (RCW 62A.2-603 and RCW 62A.2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of RCW 62A.2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (RCW 62A.2-703). [1965 ex.s. c 157 § 2-602. Cf. former RCW sections: (i) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8. (ii) RCW 63.04.510; 1925 ex.s. c 142 § 50; RRS § 5836-50.]

62A.2-603 Merchant buyer's duties as to rightfully rejected goods. (1)

Subject to any security interest in the buyer (subsection (3) of RCW 62A.2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten

to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. [1965 ex.s. c 157 § 2-603.]

62A.2-604 Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. [1965 ex.s. c 157 § 2-604.]

62A.2-605 Waiver of buyer's objections by failure to particularize. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. [1965 ex.s. c 157 § 2-605.]

62A.2-606 What constitutes acceptance of goods. (1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of RCW 62A.2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1965 ex.s. c 157 § 2-606. Cf. former RCW sections: (i) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

(2008 Ed.)

62A.2-607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of RCW 62A.2-312). [1965 ex.s. c 157 § 2-607. Subd. (1) cf. former RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. Subd. (2), (3) cf. former RCW sections: (i) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49. (ii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-608 Revocation of acceptance in whole or in part. (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in

condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. [1965 ex.s. c 157 § 2-608. Cf. former RCW 63.04.700 (1)(d), (3), (4), (5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-609 Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. [1965 ex.s. c 157 § 2-609. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(b); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-610 Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (RCW 62A.2-703 or RCW 62A.2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (RCW 62A.2-704). [1965 ex.s. c 157 § 2-610. Cf. former RCW section: (i) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.660; 1925 ex.s. c 142 § 65; RRS § 5836-65.]

62A.2-611 Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends

to perform, but must include any assurance justifiably demanded under the provisions of this Article (RCW 62A.2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1965 ex.s. c 157 § 2-611.]

62A.2-612 "Installment contract"; breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments. [1965 ex.s. c 157 § 2-612. Cf. former RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-613 Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (RCW 62A.2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller. [1965 ex.s. c 157 § 2-613. Cf. former RCW sections: (i) RCW 63.04.080; 1925 ex.s. c 142 § 7; RRS § 5836-7. (ii) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8.]

62A.2-614 Substituted performance. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the reg-

ulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. [1965 ex.s. c 157 § 2-614.]

62A.2-615 Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer. [1965 ex.s. c 157 § 2-615.]

62A.2-616 Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (RCW 62A.2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected. [1965 ex.s. c 157 § 2-616.]

PART 7 REMEDIES

62A.2-701 Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article. [1965 ex.s. c 157 § 2-701.]

62A.2-702 Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (RCW 62A.2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (RCW 62A.2-403). Successful reclamation of goods excludes all other remedies with respect to them. [1981 c 41 § 4; 1965 ex.s. c 157 § 2-702. Subd. (1) cf. former RCW sections: (i) RCW 63.04.540(1)(b); 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(c); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.580; 1925 ex.s. c 142 § 57; RRS § 5836-57. Subd. (3) cf. former RCW 63.04.755(3); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.2-703 Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (RCW 62A.2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (RCW 62A.2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (RCW 62A.2-706);

(e) recover damages for non-acceptance (RCW 62A.2-708) or in a proper case the price (RCW 62A.2-709);

(f) cancel. [1965 ex.s. c 157 § 2-703. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.620(1); 1925 ex.s. c 142 § 61; RRS § 5836-61.]

62A.2-704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable

manner. [1965 ex.s. c 157 § 2-704. Cf. former RCW sections: (i) RCW 63.04.640(3); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.650(4); 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-705 Seller's stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (RCW 62A.2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1965 ex.s. c 157 § 2-705. Cf. former RCW sections: (i) RCW 22.04.100; 1913 c 99 § 9; RRS § 3595; prior: 1891 c 134 § 7. (ii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iii) RCW 22.04.500; 1913 c 99 § 49; RRS § 3635. (iv) RCW 63.04.580 through 63.04.600; 1925 ex.s. c 142 §§ 57 through 59; RRS §§ 5836-57 through 5836-59. (v) RCW 81.32.121, 81.32.141, and 81.32.421; 1961 c 14 §§ 81.32.121, 81.32.141, and 81.32.421; prior: 1915 c 159 §§ 12, 14, and 42; RRS §§ 3658, 3660, and 3688; formerly RCW 81.32.130, 81.32.160 and 81.32.510.]

62A.2-706 Seller's resale including contract for resale. (1) Under the conditions stated in RCW 62A.2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or

of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (RCW 62A.2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of RCW 62A.2-711). [1967 c 114 § 13; 1965 ex.s. c 157 § 2-706. Cf. former RCW 63.04.610; 1925 ex.s. c 142 § 60; RRS § 5836-60.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.2-707 "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (RCW 62A.2-705) and resell (RCW 62A.2-706) and recover incidental damages (RCW 62A.2-710). [1965 ex.s. c 157 § 2-707. Cf. former RCW 63.04.530(2); 1925 ex.s. c 142 § 52; RRS § 5836-52.]

62A.2-708 Seller's damages for non-acceptance or repudiation. (1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (RCW 62A.2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. [1965 ex.s. c 157 § 2-708. Cf. former RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-709 Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (RCW 62A.2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section. [1965 ex.s. c 157 § 2-709. Cf. former RCW 63.04.640; 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-710 Seller's incidental damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach. [1965 ex.s. c 157 § 2-710. Cf. former RCW sections: (i) RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

62A.2-711 Buyer's remedies in general; buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (RCW 62A.2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (RCW 62A.2-713).

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(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this Article (RCW 62A.2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this Article (RCW 62A.2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-711. Subd. (3) cf. former RCW 63.04.700(5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-712 "Cover"; buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. [1965 ex.s. c 157 § 2-712.]

62A.2-713 Buyer's damages for non-delivery or repudiation. (1) Subject to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. [1965 ex.s. c 157 § 2-713. Cf. former RCW 63.04.680(3); 1925 ex.s. c 142 § 67; RRS § 5836-67.]

62A.2-714 Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of RCW 62A.2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

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[1965 ex.s. c 157 § 2-714. Cf. former RCW 63.04.700 (6), (7); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-715 Buyer's incidental and consequential damages. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty. [1965 ex.s. c 157 § 2-715. Subd. (2) cf. former RCW sections: (i) RCW 63.04.700(7); 1925 ex.s. c 142 § 69; RRS § 5836-69. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

62A.2-716 Buyer's right to specific performance or replevin. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver. [2000 c 250 § 9A-807; 1965 ex.s. c 157 § 2-716. Cf. former RCW 63.04.690; 1925 ex.s. c 142 § 68; RRS § 5836-68.]

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

Replevin: Chapter 7.64 RCW.

62A.2-717 Deduction of damages from the price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. [1965 ex.s. c 157 § 2-717. Cf. former RCW 63.04.700(1)(a); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-718 Liquidation or limitation of damages; deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-718.]

62A.2-719 Contractual modification or limitation of remedy. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.

(3) Limitation of consequential damages for injury to the person in the case of goods purchased primarily for personal, family or household use or of any services related thereto is invalid unless it is proved that the limitation is not unconscionable. Limitation of remedy to repair or replacement of defective parts or non-conforming goods is invalid in sales of goods primarily for personal, family or household use unless the manufacturer or seller maintains or provides within this state facilities adequate to provide reasonable and expeditious performance of repair or replacement obligations.

Limitation of other consequential damages is valid unless it is established that the limitation is unconscionable. [1974 ex.s. c 180 § 2; 1974 ex.s. c 78 § 2; 1965 ex.s. c 157 § 2-719. Subd. (1)(a) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-720 Effect of "cancellation" or "rescission" on claims for antecedent breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. [1965 ex.s. c 157 § 2-720.]

62A.2-721 Remedies for fraud. Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy. [1965 ex.s. c 157 § 2-721.]

62A.2-722 Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern. [1965 ex.s. c 157 § 2-722.]

62A.2-723 Proof of market price: Time and place. (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (RCW 62A.2-708 or RCW 62A.2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. [1965 ex.s. c 157 § 2-723.]

62A.2-724 Admissibility of market quotations. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in

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newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. [1965 ex.s. c 157 § 2-724.]

62A.2-725 Statute of limitations in contracts for sale.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Title becomes effective. [1965 ex.s. c 157 § 2-725.]

Limitation of actions—Tolling of statute: RCW 4.16.170 through 4.16.240.

Article 2A

LEASES

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PART 1
GENERAL PROVISIONS

62A.2A-101 Short title. This Article shall be known and may be cited as the Uniform Commercial Code—Leases. [1993 c 230 § 2A-101.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-102 Scope. This Article applies to any transaction, regardless of form, that creates a lease. [1993 c 230 § 2A-102.]

Effective date—1993 c 230: See RCW 62A.11-110.

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

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

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

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of

the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

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

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

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

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

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

"Accessions."	RCW 62A.2A-310(1).
"Construction mortgage."	RCW 62A.2A-309(1)(d).
"Encumbrance."	RCW 62A.2A-309(1)(e).
"Fixtures."	RCW 62A.2A-309(1)(a).
"Fixture filing."	RCW 62A.2A-309(1)(b).
"Purchase money lease."	RCW 62A.2A-309(1)(c).

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

"Account."	RCW 62A.9A-102(a)(2).
"Between merchants."	RCW 62A.2-104(3).
"Buyer."	RCW 62A.2-103(1)(a).
"Chattel paper."	RCW 62A.9A-102(a)(11).
"Consumer goods."	RCW 62A.9A-102(a)(23).
"Document."	RCW 62A.9A-102(a)(30).
"Entrusting."	RCW 62A.2-403(3).
"General intangible."	RCW 62A.9A-102(a)(42).
"Good faith."	RCW 62A.2-103(1)(b).
"Instrument."	RCW 62A.9A-102(a)(47).
"Merchant."	RCW 62A.2-104(1).
"Mortgage."	RCW 62A.9A-102(a)(55).
"Pursuant to commitment."	RCW 62A.9A-102(a)(68).
"Receipt."	RCW 62A.2-103(1)(c).

"Sale."	RCW 62A.2-106(1).
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Seller."	RCW 62A.2-103(1)(d).

(4) In addition, Article 62A.1 RCW contains general definitions and principles of construction and interpretation applicable throughout this Article. [2000 c 250 § 9A-808; 1993 c 230 § 2A-103.]

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

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-104 Leases subject to other law. (1) A lease, although subject to this Article, is also subject to any applicable:

(a) Certificate of title statute of this state (chapters 46.12 and 88.02 RCW);

(b) Certificate of title statute of another jurisdiction (RCW 62A.2A-105); or

(c) Consumer protection statute of this state.

(2) In case of conflict between this Article, other than RCW 62A.2A-105, 62A.2A-304(3), and 62A.2A-305(3), and a statute referred to in subsection (1) of this section, the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein. [1993 c 230 § 2A-104.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-105 Territorial application of article to goods covered by certificate of title. Subject to the provisions of RCW 62A.2A-304(3) and 62A.2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction. [1993 c 230 § 2A-105.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-106 Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lessee executes the lease, the choice is not enforceable.

(2) If the judicial forum or the forum for dispute resolution chosen by the parties to a consumer lease is a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lease is executed by the lessee, the choice is not enforceable. [1993 c 230 § 2A-106.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-107 Waiver or renunciation of claim or right after default. Any claim or right arising out of an alleged

default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1993 c 230 § 2A-107.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-108 Unconscionability. (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If a party claims that, or it appears to the court that, the lease contract or a clause within the contract may be unconscionable, the court shall allow a reasonable opportunity to present evidence as to the lease or clause's commercial setting, purpose, and effect to aid the court in making the determination. [1993 c 230 § 2A-108.]

Effective date—1993 c 230: See RCW 62A.11-110.

PART 2 FORMATION AND CONSTRUCTION OF LEASE CONTRACT

62A.2A-201 Statute of frauds. (1) A lease contract is not enforceable by way of action or defense unless:

(a) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars; or

(b) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b) of this section, whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) of this section beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

(a) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) A reasonable lease term. [1993 c 230 § 2A-201.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-202 Final written expression: Parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) By course of dealing or usage of trade or by course of performance; and

(2) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [1993 c 230 § 2A-202.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-203 Seals inoperative. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer. [1993 c 230 § 2A-203.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-204 Formation in general. (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy. [1993 c 230 § 2A-204.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-205 Firm offers. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1993 c 230 § 2A-205.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-206 Offer and acceptance in formation of lease contract. (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1993 c 230 § 2A-206.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-207 Course of performance or practical construction. (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of RCW 62A.2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance. [1993 c 230 § 2A-207.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-208 Modification, rescission, and waiver. (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) of this section, it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [1993 c 230 § 2A-208.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-209 Lessee under finance lease as beneficiary of supply contract. (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty

and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (RCW 62A.2A-209(1)) does not: (i) Modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law. [1993 c 230 § 2A-209.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-210 Express warranties. (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty. [1993 c 230 § 2A-210.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-211 Warranties against interference and against infringement; lessee's obligation against infringement. (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications. [1993 c 230 § 2A-211.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-212 Implied warranty of merchantability.

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) Pass without objection in the trade under the description in the lease agreement;

(b) In the case of fungible goods, are of fair average quality within the description;

(c) Are fit for the ordinary purposes for which goods of that type are used;

(d) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) Are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) Conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade. [1993 c 230 § 2A-212.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-213 Implied warranty of fitness for particular purpose.

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose. [1993 c 230 § 2A-213.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-214 Exclusion or modification of warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of RCW 62A.2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability," be by a writing, and be conspicuous. Subject to subsection (3) of this section, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of this section:

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (RCW 62A.2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person. [1993 c 230 § 2A-214.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-215 Cumulation and conflict of warranties express or implied. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1993 c 230 § 2A-215.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-216 Third party beneficiaries of express and implied warranties. A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section. [1993 c 230 § 2A-216.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-217 Identification. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(c) When the young are conceived, if the lease contract is for a lease of unborn young of animals. [1993 c 230 § 2A-217.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-218 Insurance and proceeds. (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2) of this section, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance. [1993 c 230 § 2A-218.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-219 Risk of loss. (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this Article on the effect of default on risk of loss (RCW 62A.2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier:

(i) And it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) If it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (2)(a) or (b) of this section, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery. [1993 c 230 § 2A-219.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-220 Effect of default on risk of loss. (1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time. [1993 c 230 § 2A-220.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-221 Casualty to identified goods. If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier, before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or RCW 62A.2A-219, then:

(a) If the loss is total, the lease contract is avoided; and

(b) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor. [1993 c 230 § 2A-221.]

Effective date—1993 c 230: See RCW 62A.11-110.

PART 3 EFFECT OF LEASE CONTRACT

62A.2A-301 Enforceability of lease contract. Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties. [1993 c 230 § 2A-301.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-302 Title to and possession of goods. Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent. [1993 c 230 § 2A-302.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights. (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9A, Secured Transactions, by reason of RCW 62A.9A-109(a)(3).

(2) Except as provided in subsection (3) of this section and RCW 62A.9A-407, a provision in a lease agreement which (a) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (b) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (a) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (b) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4) of this section.

(4) Subject to subsection (3) of this section and RCW 62A.9A-407:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in RCW 62A.2A-501(2);

(b) If subsection (4)(a) of this section is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (A) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (B) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous. [2001 c 32 § 10; 2000 c 250 § 9A-809; 1993 c 230 § 2A-303.]

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

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

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-304 Subsequent lease of goods by lessor. (1) Subject to RCW 62A.2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) of this section and RCW 62A.2A-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) The lessor's transferor was deceived as to the identity of the lessor;

(b) The delivery was in exchange for a check which is later dishonored;

(c) It was agreed that the transaction was to be a "cash sale"; or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute. [1993 c 230 § 2A-304.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-305 Sale or sublease of goods by lessee. (1) Subject to the provisions of RCW 62A.2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) of this section and RCW 62A.2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(a) The lessor was deceived as to the identity of the lessee;

(b) The delivery was in exchange for a check which is later dishonored; or

(c) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute. [1993 c 230 § 2A-305.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-306 Priority of certain liens arising by operation of law. (a) "**Possessory lien.**" In this section, "possessory lien" has the meaning defined in RCW 62A.9A-333.

(b) **Priority of possessory lien.** A possessory lien on goods subject to a lease contract has priority over any interest of the lessor or the lessee under the lease contract or this Article only if the lien is created by a statute that expressly so provides.

(c) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest. [2001 c 32 § 11; 1993 c 230 § 2A-306.]

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

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods. (1) Except as otherwise provided in RCW 62A.2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) of this section and in RCW 62A.2A-306 and 62A.2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in RCW 62A.9A-317, 62A.9A-321, and 62A.9A-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor. [2000 c 250 § 9A-810; 1993 c 230 § 2A-307.]

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

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-308 Special rights of creditors. (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this Article impairs the rights of creditors of a lessor if the lease contract (a) becomes enforceable, not

in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and (b) is made under circumstances which under any statute or rule of law apart from this Article would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith. [1993 c 230 § 2A-308.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-309 Lessor's and lessee's rights when goods become fixtures. (1) In this section:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) A "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of RCW 62A.9A-502 (a) and (b);

(c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) of this section but otherwise subject to subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or (b) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions, Article 62A.9A RCW. [2000 c 250 § 9A-811; 1993 c 230 § 2A-309.]

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

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-310 Lessor's and lessee's rights when goods become accessions. (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4) of this section.

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease, or disclaimed an interest in the goods as part of the whole, or the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility.

(4) Unless the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility, the interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions;

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract; or

(c) A creditor with a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under RCW 62A.9A-311(b).

(5) When under subsections (2) or (3) and (4) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (b) if necessary to enforce his or her other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation. [2000 c 250 § 9A-812; 1993 c 230 § 2A-310.]

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

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-311 Priority subject to subordination. Nothing in this Article prevents subordination by agreement by any person entitled to priority. [1993 c 230 § 2A-311.]

Effective date—1993 c 230: See RCW 62A.11-110.

(2008 Ed.)

PART 4

PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED, AND EXCUSSED

62A.2A-401 Insecurity: Adequate assurance of performance. (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he or she has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. [1993 c 230 § 2A-401.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-402 Anticipatory repudiation. If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) Make demand pursuant to RCW 62A.2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) Resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (RCW 62A.2A-524). [1993 c 230 § 2A-402.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-403 Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under RCW 62A.2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1993 c 230 § 2A-403.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-404 Substituted performance. (1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substituted performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory. [1993 c 230 § 2A-404.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-405 Excused performance. Subject to RCW 62A.2A-404 on substituted performance, the following rules apply:

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (b) and (c) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in subsection (a) of this section affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (b) of this section, of the estimated quota thus made available for the lessee. [1993 c 230 § 2A-405.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-406 Procedure on excused performance. (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under RCW 62A.2A-405, the

lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510):

(a) Terminate the lease contract (RCW 62A.2A-505(2)); or

(b) Except in a finance lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under RCW 62A.2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected. [1993 c 230 § 2A-406.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-407 Irrevocable promises: Finance leases.

(1) In the case of a finance lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1) of this section:

(a) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(b) Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods. [1993 c 230 § 2A-407.]

Effective date—1993 c 230: See RCW 62A.11-110.

PART 5

A. DEFAULT IN GENERAL

62A.2A-501 Default: Procedure. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self help or any available judicial procedure or non-judicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

(4) Except as otherwise provided in RCW 62A.1-106(1) or this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part 5 as to the goods, or under other applicable law as to both the real property and the goods in accordance with that

party's rights and remedies in respect of the real property, in which case this Part 5 does not apply. [1993 c 230 § 2A-501.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-502 Notice after default. Except as otherwise provided in this Article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement. [1993 c 230 § 2A-502.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-503 Modification or impairment of rights and remedies. (1) Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

(2) Resort to a remedy provided under this Article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Article.

(3) Consequential damages may be liquidated under RCW 62A.2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article. [1993 c 230 § 2A-503.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-504 Liquidation of damages. (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1) of this section, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (RCW 62A.2A-525 or 62A.2A-526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1) of this section; or

(b) In the absence of those terms, twenty percent of the then present value of the total rent the lessee was obligated to

pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars.

(4) A lessee's right to restitution under subsection (3) of this section is subject to offset to the extent the lessor establishes:

(a) A right to recover damages under the provisions of this Article other than subsection (1) of this section; and

(b) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract. [1993 c 230 § 2A-504.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-505 Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies. (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy. [1993 c 230 § 2A-505.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-506 Statute of limitations. (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that

have accrued before this Article becomes effective. [1993 c 230 § 2A-506.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-507 Proof of market rent: Time and place.

(1) Damages based on market rent (RCW 62A.2A-519 or 62A.2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in RCW 62A.2A-519 and 62A.2A-528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Article offered by one party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility. [1993 c 230 § 2A-507.]

Effective date—1993 c 230: See RCW 62A.11-110.

B. DEFAULT BY LESSOR

62A.2A-508 Lessee's remedies. (1) If a lessor fails to deliver the goods in conformity to the lease contract (RCW 62A.2A-509) or repudiates the lease contract (RCW 62A.2A-402), or a lessee rightfully rejects the goods (RCW 62A.2A-509) or justifiably revokes acceptance of the goods (RCW 62A.2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessor is in default under the lease contract and the lessee may:

(a) Cancel the lease contract (RCW 62A.2A-505(1));

(b) Recover so much of the rent and security as has been paid and which is just under the circumstances;

(c) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (RCW 62A.2A-518 and 62A.2A-520), or recover damages for nondelivery (RCW 62A.2A-519 and 62A.2A-520);

(d) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) If the goods have been identified, recover them (RCW 62A.2A-522); or

(b) In a proper case, obtain specific performance or replevy the goods (RCW 62A.2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in RCW 62A.2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (RCW 62A.2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to RCW 62A.2A-527(5).

(6) Subject to the provisions of RCW 62A.2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract. [1993 c 230 § 2A-508.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-509 Lessee's rights on improper delivery; rightful rejection. (1) Subject to the provisions of RCW 62A.2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor. [1993 c 230 § 2A-509.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-510 Installment lease contracts: Rejection and default. (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries. [1993 c 230 § 2A-510.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-511 Merchant lessee's duties as to rightfully rejected goods. (1) Subject to any security interest of a les-

see (RCW 62A.2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee, under subsection (1) of this section, or any other lessee (RCW 62A.2A-512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.

(3) In complying with this section or RCW 62A.2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or RCW 62A.2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article. [1993 c 230 § 2A-511.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-512 Lessee's duties as to rightfully rejected goods. (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (RCW 62A.2A-511) and subject to any security interest of a lessee (RCW 62A.2A-508(5)):

(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in RCW 62A.2A-511; but

(c) The lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) of this section is not acceptance or conversion. [1993 c 230 § 2A-512.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-513 Cure by lessor of improper tender or delivery; replacement. (1) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

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(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee. [1993 c 230 § 2A-513.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-514 Waiver of lessee's objections. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (RCW 62A.2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents. [1993 c 230 § 2A-514.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-515 Acceptance of goods. (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) The lessee fails to make an effective rejection of the goods (RCW 62A.2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1993 c 230 § 2A-515.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-516 Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (RCW 62A.2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (RCW 62A.2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (RCW 62A.2A-211). [1993 c 230 § 2A-516.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-517 Revocation of acceptance of goods. (1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them. [1993 c 230 § 2A-517.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-518 Cover; substitute goods. (1) After a default by a lessor under the lease contract of the type described in (RCW 62A.2A-508(1)), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and RCW 62A.2A-519 governs. [1993 c 230 § 2A-518.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-519 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3)), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (RCW 62A.2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the

use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty. [1993 c 230 § 2A-519.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-520 Lessee's incidental and consequential damages. (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty. [1993 c 230 § 2A-520.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-521 Lessee's right to specific performance or replevin. (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing. [1993 c 230 § 2A-521.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-522 Lessee's right to goods on lessor's insolvency. (1) Subject to subsection (2) of this section and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (RCW 62A.2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract. [1993 c 230 § 2A-522.]

Effective date—1993 c 230: See RCW 62A.11-110.

C. DEFAULT BY LESSEE

62A.2A-523 Lessor's remedies. (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the

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whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessee is in default under the lease contract and the lessor may:

(a) Cancel the lease contract (RCW 62A.2A-505(1));

(b) Proceed respecting goods not identified to the lease contract (RCW 62A.2A-524);

(c) Withhold delivery of the goods and take possession of goods previously delivered (RCW 62A.2A-525);

(d) Stop delivery of the goods by any bailee (RCW 62A.2A-526);

(e) Dispose of the goods and recover damages (RCW 62A.2A-527), or retain the goods and recover damages (RCW 62A.2A-528), or in a proper case recover rent (RCW 62A.2A-529);

(f) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2) of this section; or

(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2) of this section. [1993 c 230 § 2A-523.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-524 Lessor's right to identify goods to lease contract. (1) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor may:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) Dispose of goods (RCW 62A.2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner. [1993 c 230 § 2A-524.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-525 Lessor's right to possession of goods. (1)

If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (RCW 62A.2A-527).

(3) The lessor may proceed under subsection (2) of this section without judicial process if it can be done without breach of the peace or the lessor may proceed by action. [1993 c 230 § 2A-525.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-526 Lessor's stoppage of delivery in transit or otherwise. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1993 c 230 § 2A-526.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-527 Lessor's rights to dispose of goods. (1)

After a default by a lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (RCW 62A.2A-525 or 62A.2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith

and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and RCW 62A.2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (RCW 62A.2A-508(5)). [1993 c 230 § 2A-527.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in RCW 62A.2A-523 (1) or (3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under subsection (1)(i) of this section of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed

under RCW 62A.2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition. [1993 c 230 § 2A-528.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-529 Lessor’s action for the rent. (1) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2) of this section, the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (RCW 62A.2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee’s default; and

(b) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee’s default.

(2) Except as provided in subsection (3) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor’s control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1) of this section. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor’s recovery against the lessee for damages is governed by RCW 62A.2A-527 or 62A.2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to RCW 62A.2A-527 or 62A.2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under RCW 62A.2A-527 and 62A.2A-528. [1993 c 230 § 2A-529.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-530 Lessor’s incidental damages. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in

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stopping delivery, in the transportation, care and custody of goods after the lessee’s default, in connection with return or disposition of the goods, or otherwise resulting from the default. [1993 c 230 § 2A-530.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-531 Standing to sue third parties for injury to goods. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

- (i) Has a security interest in the goods;
- (ii) Has an insurable interest in the goods; or
- (iii) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern. [1993 c 230 § 2A-531.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-532 Lessor’s rights to residual interest. In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor’s residual interest in the goods caused by the default of the lessee. [1993 c 230 § 2A-532.]

Effective date—1993 c 230: See RCW 62A.11-110.

Article 3

NEGOTIABLE INSTRUMENTS

(Formerly: Commercial paper)

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PART 1
GENERAL PROVISIONS AND DEFINITIONS

62A.3-101 Short title. This Article may be cited as Uniform Commercial Code—Negotiable Instruments. [1993 c 229 § 3; 1965 ex.s. c 157 § 3-101.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-102 Subject matter. (a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.

(b) If there is conflict between this Article and Article 4 or 9A, Articles 4 and 9A govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency. [2001 c 32 § 12; 1993 c 229 § 4; 1965 ex.s. c 157 § 3-102. Cf. former RCW sections: (i) RCW 62.01.001(5); 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392. (ii) RCW 62.01.128; 1955 c 35 § 62.01.128; prior: 1899 c 149 § 128; RRS § 3518. (iii) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

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

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-103 Definitions. (a) In this Article:

(1) "Acceptor" means a drawee who has accepted a draft.
 (2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledged

ment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.3-409
"Accommodated party"	RCW 62A.3-419
"Accommodation party"	RCW 62A.3-419
"Alteration"	RCW 62A.3-407
"Anomalous indorsement"	RCW 62A.3-205
"Blank indorsement"	RCW 62A.3-205
"Cashier's check"	RCW 62A.3-104
"Certificate of deposit"	RCW 62A.3-104
"Certified check"	RCW 62A.3-409
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"Special indorsement"	RCW 62A.3-205
"Teller's check"	RCW 62A.3-104
"Transfer of instrument"	RCW 62A.3-203
"Traveler's check"	RCW 62A.3-104
"Value"	RCW 62A.3-303

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

"Bank"	RCW 62A.4-105
"Banking day"	RCW 62A.4-104
"Clearing house"	RCW 62A.4-104
"Collecting bank"	RCW 62A.4-105
"Depository bank"	RCW 62A.4-105
"Documentary draft"	RCW 62A.4-104
"Intermediary bank"	RCW 62A.4-105
"Item"	RCW 62A.4-104
"Payor bank"	RCW 62A.4-105
"Suspends payments"	RCW 62A.4-104

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1993 c 229 § 5; 1965 ex.s. c 157 § 3-103.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-104 Negotiable instrument. (a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except subsection (a)(1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank. [1993 c 229 § 6; 1965 ex.s. c 157 § 3-104. Cf. former RCW sections: RCW 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; 1955 c 35 §§ 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; prior: 1899 c 149 §§ 1, 5, 10, 126, 184, and 185; RRS §§ 3392, 3396, 3401, 3516, 3574, and 3575.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-105 Issue of instrument. (a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument. [1993 c 229 § 7; 1965 ex.s. c 157 § 3-105. Cf. former RCW 62.01.003; 1955 c 35 § 62.01.003; prior: 1899 c 149 § 3; RRS § 3394.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-106 Unconditional promise or order. (a) Except as provided in this section, for the purposes of RCW 62A.3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of RCW 62A.3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of RCW 62A.3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument. [1993 c 229 § 8; 1989 c 13 § 1; 1965 ex.s. c 157 § 3-106. Cf. former RCW sections: (i) RCW 62.01.002; 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-107 Instrument payable in foreign money. Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the

place of payment for the purchase of dollars on the day on which the instrument is paid. [1993 c 229 § 9; 1965 ex.s. c 157 § 3-107. Cf. former RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-108 Payable on demand or at definite time. (a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date. [1993 c 229 § 10; 1965 ex.s. c 157 § 3-108. Cf. former RCW 62.01.007; 1955 c 35 § 62.01.007; prior: 1899 c 149 § 7; RRS § 3398.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-109 Payable to bearer or to order. (a) A promise or order is payable to bearer if it:

(1) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) Does not state a payee; or

(3) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to RCW 62A.3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to RCW 62A.3-205(b). [1993 c 229 § 11; 1989 c 13 § 2; 1965 ex.s. c 157 § 3-109. Cf. former RCW sections: (i) RCW 62.01.002(3); 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.004; 1955 c 35 § 62.01.004; prior: 1899 c 149 § 4; RRS § 3395. (iii) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-110 Identification of person to whom instrument is payable. (a) The person to whom an instrument is initially payable is determined by the intent of the person,

whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively. [1993 c 229 § 12; 1965 ex.s. c 157 § 3-110. Cf. former RCW 62.01.008; 1955 c 35 § 62.01.008; prior: 1899 c 149 § 8; RRS § 3399.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-111 Place of payment. Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the

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drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker. [1993 c 229 § 13; 1965 ex.s. c 157 § 3-111. Cf. former RCW 62.01.009; 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-112 Interest. (a) Unless otherwise provided in the instrument or in RCW 19.52.010, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, then except as otherwise provided in RCW 19.52.010, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues. [1996 c 77 § 3; 1993 c 229 § 14; 1965 ex.s. c 157 § 3-112. Cf. former RCW sections: (i) 62.01.005; 1955 c 35 § 62.01.005; prior: 1899 c 149 § 5; RRS § 3396. (ii) RCW 62.01.006; 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-113 Date of instrument. (a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in RCW 62A.4-401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder. [1993 c 229 § 15; 1965 ex.s. c 157 § 3-113. Cf. former RCW 62.01.006(4); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-114 Contradictory terms of instrument. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers. [1993 c 229 § 16; 1965 ex.s. c 157 § 3-114. Cf. former RCW sections: (i) RCW 62.01.006(1); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397. (ii) RCW 62.01.011; 1955 c 35 § 62.01.011; prior: 1899 c 149 § 11; RRS § 3402. (iii) RCW 62.01.012; 1955 c 35 § 62.01.012; prior: 1899 c 149 § 12; RRS § 3403. (iv) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-115 Incomplete instrument. (a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c), if an incomplete instrument is an instrument under RCW 62A.3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under RCW 62A.3-104, but, after completion, the requirements of RCW 62A.3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under RCW 62A.3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority. [1993 c 229 § 17; 1965 ex.s. c 157 § 3-115. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (iii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-116 Joint and several liability; contribution.

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in RCW 62A.3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged. [1993 c 229 § 18; 1965 ex.s. c 157 § 3-116. Cf. former RCW 62.01.041; 1955 c 35 § 62.01.041; prior: 1899 c 149 § 41; RRS § 3432.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-117 Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation. [1993 c 229

§ 19; 1965 ex.s. c 157 § 3-117. Cf. former RCW 62.01.042; 1955 c 35 § 62.01.042; prior: 1899 c 149 § 42; RRS § 3433.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-118 Statute of limitations. (a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within six years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the cause of action accrues. [1995 c 74 § 1; 1993 c 229 § 20; 1965 ex.s. c 157 § 3-118. Cf. former RCW sections: (i) RCW 62.01.017; 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.068; 1955 c 35 § 62.01.068; prior: 1899 c 149 § 68; RRS § 3459. (iii) RCW 62.01.130; 1955 c 35 § 62.01.130; prior: 1899 c 149 § 130; RRS § 3520.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-119 Notice of right to defend action. In an action for breach of an obligation for which a third person is

answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend. [1993 c 229 § 21; 1965 ex.s. c 157 § 3-119.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 2

NEGOTIATION, TRANSFER, AND INDORSEMENT

62A.3-201 Negotiation. (a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone. [1993 c 229 § 22; 1965 ex.s. c 157 § 3-201. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-202 Negotiation subject to rescission. (a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy. [1993 c 229 § 23; 1965 ex.s. c 157 § 3-202. Cf. former RCW sections: (i) RCW 62.01.030; 1955 c 35 § 62.01.030; prior: 1899 c 149 § 30; RRS § 3421. (ii) RCW 62.01.031; 1955 c 35 § 62.01.031; prior: 1899 c 149 § 31; RRS § 3422. (iii) RCW 62.01.032; 1955 c 35 § 62.01.032; prior: 1899 c 149 § 32; RRS § 3423.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-203 Transfer of instrument; rights acquired by transfer. (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a

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holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee. [1993 c 229 § 24; 1965 ex.s. c 157 § 3-203. Cf. former RCW 62.01.043; 1955 c 35 § 62.01.043; prior: 1899 c 149 § 43; RRS § 3434.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-204 Indorsement. (a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection. [1993 c 229 § 25; 1965 ex.s. c 157 § 3-204. Cf. former RCW sections: (i) RCW 62.01.009(5); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400. (ii) RCW 62.01.033 through 62.01.036; 1955 c 35 §§ 62.01.033 through 62.01.036; prior: 1899 c 149 §§ 33 through 36; RRS §§ 3424 through 3427. (iii) RCW 62.01.040; 1955 c 35 § 62.01.040; prior: 1899 c 149 § 40; RRS § 3431.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-205 Special indorsement; blank indorsement; anomalous indorsement. (a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negoti-

ated only by the indorsement of that person. The principles stated in RCW 62A.3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated. [1993 c 229 § 26; 1965 ex.s. c 157 § 3-205. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-206 Restrictive indorsement. (a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in RCW 62A.4-201(b), or (ii) in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depository bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in subsection (c)(3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent,

trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in RCW 62A.3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section. [1993 c 229 § 27; 1965 ex.s. c 157 § 3-206. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.037; 1955 c 35 § 62.01.037; prior: 1899 c 149 § 37; RRS § 3428. (iii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430. (iv) RCW 62.01.047; 1955 c 35 § 62.01.047; prior: 1899 c 149 § 47; RRS § 3438.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-207 Reacquisition. Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder. [1993 c 229 § 28; 1965 ex.s. c 157 § 3-207. Cf. former RCW sections: (i) RCW 62.01.022; 1955 c 35 § 62.01.022; prior: 1899 c 149 § 22; RRS § 3413. (ii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iii) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 3

ENFORCEMENT OF INSTRUMENTS

62A.3-301 Person entitled to enforce instrument. "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). A person may be a person entitled to enforce the instrument

even though the person is not the owner of the instrument or is in wrongful possession of the instrument. [1993 c 229 § 29; 1965 ex.s. c 157 § 3-301. Cf. former RCW 62.01.051; 1955 c 35 § 62.01.051; prior: 1899 c 149 § 51; RRS § 3442.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-302 Holder in due course. (a) Subject to subsection (c) and RCW 62A.3-106(d), "holder in due course" means the holder of an instrument if:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in RCW 62A.3-306, and (vi) without notice that any party has a defense or claim in recoupment described in RCW 62A.3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under RCW 62A.3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions. [1993 c 229 § 30; 1965 ex.s. c 157 § 3-302. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior:

1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-303 Value and consideration. (a) An instrument is issued or transferred for value if:

(1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration. [1993 c 229 § 31; 1965 ex.s. c 157 § 3-303. Cf. former RCW sections: (i) RCW 62.01.025 through 62.01.027; 1955 c 35 §§ 62.01.025 through 62.01.027; prior: 1899 c 149 §§ 25 through 27; RRS §§ 3416 through 3418. (ii) RCW 62.01.054; 1955 c 35 § 62.01.054; prior: 1899 c 149 § 54; RRS § 3445.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-304 Overdue instrument. (a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, 90 days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal. [1993 c 229 § 32; 1965 ex.s. c 157 § 3-304. Cf. former RCW sections: (i) RCW 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; 1955 c 35 §§ 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; prior: 1899 c 149 §§ 45, 52, 53, 55, and 56; RRS §§ 3436, 3443, 3444, 3446, and 3447. (ii) RCW 62.01.0195; 1955 c 35 § 62.01.0195; prior: 1927 c 296 § 1; 1925 ex.s. c 54 § 1; RRS § 3410-1.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-305 Defenses and claims in recoupment. (a)

Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (RCW 62A.3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of

legal capacity. [1993 c 229 § 33; 1965 ex.s. c 157 § 3-305. Cf. former RCW sections: (i) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (ii) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (iii) RCW 62.01.057; 1955 c 35 § 62.01.057; prior: 1899 c 149 § 57; RRS § 3448.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-306 Claims to an instrument. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument. [1993 c 229 § 34; 1965 ex.s. c 157 § 3-306. Cf. former RCW sections: (i) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (ii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iv) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-307 Notice of breach of fiduciary duty. (a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in subsection (a)(1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a

transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person. [1993 c 229 § 35; 1965 ex.s. c 157 § 3-307. Cf. former RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-308 Proof of signatures and status as holder in due course. (a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under RCW 62A.3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under RCW 62A.3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim. [1993 c 229 § 36.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-309 Enforcement of lost, destroyed, or stolen instrument. (a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, RCW 62A.3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. [1993 c 229 § 37.]

(2008 Ed.)

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-310 Effect of instrument on obligation for which taken. (a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in subsection (b)(4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case. [1993 c 229 § 38.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-311 Accord and satisfaction by use of instrument. (a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication

contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subsection (c)(2) does not apply if the claimant is an organization that sent a statement complying with subsection (c)(1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim. [1993 c 229 § 39.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-312 Lost, destroyed, or stolen cashier's check, teller's check, or certified check. (a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable [amenable] to service of process.

(4) "Obligated bank" means the insurer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim

is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to RCW 62A.4-302(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check under this section. [1993 c 229 § 40.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 4 LIABILITY OF PARTIES

62A.3-401 Signature. (a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under RCW 62A.3-402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing. [1993 c 229 § 41; 1965 ex.s. c 157 § 3-401. Cf. former RCW 62.01.018; 1955 c 35 § 62.01.018; prior: 1899 c 149 § 18; RRS § 3409.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-402 Signature by representative. (a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If

the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person. [1993 c 229 § 42; 1965 ex.s. c 157 § 3-402. Cf. former RCW sections: (i) RCW 62.01.017(6); 1955 c 149 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.063; 1955 c 149 § 62.01.063; prior: 1899 c 149 § 63; RRS § 3454.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-403 Unauthorized signature. (a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article. [1993 c 229 § 43; 1965 ex.s. c 157 § 3-403. Cf. former RCW sections: RCW 62.01.019 through 62.01.021; 1955 c 35 §§ 62.01.019 through 62.01.021; prior: 1899 c 149 §§ 19 through 21; RRS §§ 3410 through 3412.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-404 Impostors; fictitious payees. (a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person

in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (RCW 62A.3-110 (a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss. [1993 c 229 § 44; 1965 ex.s. c 157 § 3-404. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-405 Employer's responsibility for fraudulent indorsement by employee. (a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or

takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person. [1993 c 229 § 45; 1965 ex.s. c 157 § 3-405. Cf. former RCW 62.01.009(3); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-406 Negligence contributing to forged signature or alteration of instrument. (a) A person whose failure to exercise ordinary care contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded. [1993 c 229 § 46; 1965 ex.s. c 157 § 3-406.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-407 Alteration. (a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unau-

thorized completion, according to its terms as completed. [1993 c 229 § 47; 1965 ex.s. c 157 § 3-407. Cf. former RCW sections: (i) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (ii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (iii) RCW 62.01.124; 1955 c 35 § 62.01.124; prior: 1899 c 149 § 124; RRS § 3514. (iv) RCW 62.01.125; 1955 c 35 § 62.01.125; prior: 1899 c 149 § 125; RRS § 3515.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-408 Drawee not liable on unaccepted draft. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it. [1993 c 229 § 48; 1965 ex.s. c 157 § 3-408. Cf. former RCW sections: (i) RCW 62.01.024; 1955 c 35 § 62.01.024; prior: 1899 c 149 § 24; RRS § 3415. (ii) RCW 62.01.025; 1955 c 35 § 62.01.025; prior: 1899 c 149 § 25; RRS § 3416. (iii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-409 Acceptance of draft; certified check. (a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check. [1993 c 229 § 49; 1965 ex.s. c 157 § 3-409. Cf. former RCW sections: (i) RCW 62.01.127; 1955 c 35 § 62.01.127; prior: 1899 c 149 § 127; RRS § 3517. (ii) RCW 62.01.189; 1955 c 35 § 62.01.189; prior: 1899 c 149 § 189; RRS § 3579.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-410 Acceptance varying draft. (a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged. [1993 c 229 § 50; 1965 ex.s. c 157 § 3-410. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.132 through 62.01.138; 1955 c 35 §§ 62.01.132 through 62.01.138; prior: 1899 c 149 §§ 132 through 138; RRS §§ 3522 through 3528. (iii) RCW 62.01.161 through 62.01.170; 1955 c 35 §§ 62.01.161 through 62.01.170; prior: 1899 c 149 §§ 161 through 170; RRS §§ 3551 through 3560. (iv) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-411 Refusal to pay cashier's checks, teller's checks, and certified checks. (a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law. [1993 c 229 § 51; 1965 ex.s. c 157 § 3-411. Cf. former RCW sections: (i) RCW 62.01.187; 1955 c 35 § 62.01.187; prior: 1899 c 149 § 187; RRS § 3577. (ii) RCW 62.01.188; 1955 c 35 § 62.01.188; prior: 1899 c 149 § 188; RRS § 3578.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-412 Obligation of issuer of note or cashier's check. The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under RCW 62A.3-415. [1993 c 229 § 52; 1965 ex.s. c 157 § 3-412. Cf. former RCW sections: RCW 62.01.139 through 62.01.142; 1955 c 35 §§ 62.01.139 through 62.01.142; prior: 1899 c 149 §§ 139 through 142; RRS §§ 3529 through 3532.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

(2008 Ed.)

62A.3-413 Obligation of acceptor. (a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under RCW 62A.3-414 or 62A.3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course. [1993 c 229 § 53; 1965 ex.s. c 157 § 3-413. Cf. former RCW sections: RCW 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 60 through 62; RRS §§ 3451 through 3453.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-414 Obligation of drawer. (a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under RCW 62A.3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under RCW 62A.3-415 (a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depository bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds. [1993 c 229 § 54; 1965 ex.s. c 157 § 3-414. Cf. former RCW sections: (i) RCW

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62.01.038; 1955 c 35 § 62.01.038; prior: 1899 c 149 § 38; RRS § 3429. (ii) RCW 62.01.044; 1955 c 35 § 62.01.044; prior: 1899 c 149 § 44; RRS § 3435. (iii) RCW 62.01.066 through 62.01.068; 1955 c 35 §§ 62.01.066 through 62.01.068; prior: 1899 c 149 §§ 66 through 68; RRS §§ 3457 through 3459.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-415 Obligation of indorser. (a) Subject to subsections (b), (c), (d), and (e) and to RCW 62A.3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by RCW 62A.3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depository bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged. [1993 c 229 § 55; 1965 ex.s. c 157 § 3-415. Cf. former RCW sections: (i) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (ii) RCW 62.01.029; 1955 c 35 § 62.01.029; prior: 1899 c 149 § 29; RRS § 3420. (iii) RCW 62.01.064; 1955 c 35 § 62.01.064; prior: 1899 c 149 § 64; RRS § 3455.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-416 Transfer warranties. (a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of war-

ranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 56; 1965 ex.s. c 157 § 3-416.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-417 Presentment warranties. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce

the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 57; 1965 ex.s. c 157 § 3-417. Cf. former RCW sections: (i) RCW 62.01.065; 1955 c 35 § 62.01.065; prior: 1899 c 149 § 65; RRS § 3456. (ii) RCW 62.01.066; 1955 c 35 § 62.01.066; prior: 1899 c 149 § 66; RRS § 3457. (iii) RCW 62.01.069; 1955 c 35 § 62.01.069; prior: 1899 c 149 § 69; RRS § 3460.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-418 Payment or acceptance by mistake. (a) Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to RCW 62A.4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by RCW 62A.3-417 or 62A.4-407.

(d) Notwithstanding RCW 62A.4-213, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument. [1993 c 229 § 58; 1965 ex.s. c 157 § 3-418. Cf. former RCW 62.01.062; 1955 c 35 § 62.01.062; prior: 1899 c 149 § 62; RRS § 3453.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

(2008 Ed.)

62A.3-419 Instruments signed for accommodation.

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in RCW 62A.3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party. [1993 c 229 § 59; 1965 ex.s. c 157 § 3-419. Cf. former RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-420 Conversion of instrument. (a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

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(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out. [1993 c 229 § 60.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 5 DISHONOR

62A.3-501 Presentment. (a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearinghouse rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2:00 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour. [1993 c 229 § 61; 1965 ex.s. c 157 § 3-501. Cf. former RCW sections: RCW 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; 1955 c 35 §§ 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; prior: 1899 c 149 §§ 70, 89, 118, 129, 143, 144, 150, 151, 152, 157, 158, and 186; RRS §§

3461, 3479, 3508, 3519, 3533, 3534, 3540, 3541, 3542, 3547, 3548, and 3576.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-502 Dishonor. (a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and subsection (a)(2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under RCW 62A.4-301 or 62A.4-302, or becomes accountable for the amount of the check under RCW 62A.4-302.

(2) If a draft is payable on demand and subsection (b)(1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b) (2), (3), and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by subsection (b) (2), (3), and (4).

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment; or

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under RCW 62A.3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored. [1993 c 229 § 62; 1965 ex.s. c 157 § 3-502. Cf. former RCW sections: RCW 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; 1955 c 35 §§ 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; prior: 1899 c 149 §§ 7, 70, 89, 144, 150, 152, and 186; RRS §§ 3398, 3461, 3479, 3534, 3540, 3542, and 3576.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-503 Notice of dishonor. (a) The obligation of an indorser stated in RCW 62A.3-415(a) and the obligation of a drawer stated in RCW 62A.3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under RCW 62A.3-504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to RCW 62A.3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs. [1993 c 229 § 63; 1965 ex.s. c 157 § 3-503. Cf. former RCW sections: (i) RCW 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; 1955 c 35 §§ 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; prior: 1899 c 149 §§ 71, 72, 75, 86, 144, 145, 146, 186, and 193; RRS §§ 3462, 3463, 3466, 3476, 3534, 3535, 3536, 3576, and 3583. (ii) RCW 62.01.085; 1955 c 35 § 62.01.085; prior: 1915 c 173 § 1; 1899 c 149 § 85; RRS § 3475 1/2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-504 Excused presentment and notice of dishonor. (a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate. [1993 c 229 § 64; 1965 ex.s. c 157 § 3-504. Cf. former RCW sections: RCW 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; 1955 c 35 §§ 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; prior: 1899 c 149 §§ 72, 73, 77, 78, and 145; RRS §§ 3463, 3464, 3468, 3469, and 3535.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-505 Evidence of dishonor. (a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) that purports to be a protest;

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice-consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties. [1993 c 229 § 65; 1965 ex.s. c 157 § 3-505. Cf. former RCW sections: (i) RCW 62.01.072(3); 1955 c 35 § 62.01.072; prior: 1899 c 149 § 72; RRS § 3463. (ii) RCW 62.01.074; 1955 c 35 § 62.01.074; prior: 1899 c 149 § 74; RRS § 3465. (iii) RCW 62.01.133; 1955 c 35 § 62.01.133; prior: 1899 c 149 § 133; RRS § 3523.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-512 Credit cards—As identification—In lieu of deposit. A person may not record the number of a credit card given as identification under *RCW 62A.3-501(a)(2) or given as proof of credit worthiness when payment for goods or services is made by check or draft. Nothing in this section prohibits the recording of the number of a credit card given in lieu of a deposit to secure payment in the event of a default, loss, damage, or other occurrence. [1993 c 229 § 66; 1990 c 203 § 2.]

*Reviser’s note: The reference to RCW 62A.3-501(a)(2) appears erroneous. Reference to RCW 62A.3-501(b)(2) was apparently intended.

Recovery of attorneys’ fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys’ fees; satisfaction of claim. (a) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment, the payee or person entitled to enforce the check under RCW 62A.3-301 may collect a reasonable handling fee for each instrument. If the check is not paid within fifteen days and after the person entitled to enforce the check or the person’s agent sends a notice of dishonor as provided by RCW 62A.3-520 to the drawer at the drawer’s last known address, and if the instrument does not provide for the payment of interest or collection costs and attorneys’ fees, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and cost of collection not to exceed forty dollars or the face amount of the check, whichever is less, payable to the person entitled to enforce the check. In addition, in the event of court action on the check, the court, after notice and the expiration of the fifteen days, shall award reasonable attorneys’ fees, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the person enforcing the check. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

(b)(1) Subsequent to the commencement of an action on the check (subsection (a)) but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the face amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court costs, service costs, and statutory attorneys’ fees.

(2) Nothing in this section precludes the right to commence action in a court under chapter 12.40 RCW for small claims. [2000 c 215 § 1; 1995 c 187 § 1; 1993 c 229 § 67; 1991 c 168 § 1; 1986 c 128 § 1; 1981 c 254 § 1; 1969 c 62 § 1; 1967 ex.s. c 23 § 1.]

Recovery of attorneys’ fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Savings—Severability—1967 ex.s. c 23: See notes following RCW 19.52.005.

62A.3-520 Statutory form for notice of dishonor. The notice of dishonor shall be sent by mail to the drawer at the drawer’s last known address, and the notice shall be substantially in the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to in the amount of has not been accepted for payment by, which is the drawee bank designated on your check. This check is dated, and it is numbered, No.

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is

postmarked, you may very well have to pay the following additional amounts:

- (1) Costs of collecting the amount of the check, including an attorney’s fee which will be set by the court;
- (2) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and
- (3) Three hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within fifteen days after the date this letter is post-marked.

You are advised to make your payment to at the following address:

[1993 c 229 § 68; 1991 c 168 § 2; 1986 c 128 § 2; 1981 c 254 § 2; 1969 c 62 § 2.]

Recovery of attorneys’ fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-522 Notice of dishonor—Affidavit of service by mail. In addition to sending a notice of dishonor to the drawer of the check under RCW 62A.3-520, the person sending notice shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail must be attached to a copy of the notice of dishonor and must be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

I,, hereby certify that on the day of, 20., a copy of the foregoing Notice was served on by mailing via the United States Postal Service, postage prepaid, at, Washington.

Dated:
(Signature)

The person enforcing the check shall retain the affidavit with the check but shall file a copy of the affidavit with the clerk of the court in which an action on the check is commenced. [2000 c 215 § 2; 1993 c 229 § 69; 1981 c 254 § 3.]

Recovery of attorneys’ fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-525 Consequences for failing to comply with requirements. No interest, collection costs, and attorneys’ fees, except handling fees, are recoverable on any dishonored check under the provisions of RCW 62A.3-515 where a person entitled to such recovery or any agent, employee, or assign has demanded:

- (1) Interest or collection costs in excess of that provided by RCW 62A.3-515; or
- (2) Interest or collection costs prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520; or
- (3) Attorneys’ fees either without having the fees set by the court, or prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-

515 and 62A.3-520. [2000 c 215 § 3; 1993 c 229 § 70; 1981 c 254 § 4; 1969 c 62 § 3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-530 Collection agencies—Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim. (1) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment and the check is assigned or written to a collection agency as defined in RCW 19.16.100, the collection agency may collect a reasonable handling fee for each instrument. If the collection agency or its agent provides a notice of dishonor in the form provided in RCW 62A.3-540 to the drawer and the check amount plus the reasonable handling fee are not paid within thirty-three days after providing the notice of dishonor, then, unless the instrument otherwise provides, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and a cost of collection of forty dollars or the face amount of the check, whichever is less, payable to the collection agency. In addition, in the event of court action on the check and after notice and the expiration of the thirty-three days, the court shall award reasonable attorneys' fees, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the collection agency. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

(2) Subsequent to the commencement of an action on the check under subsection (1) of this section but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the face amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court costs, service costs, and statutory attorneys' fees.

(3) Nothing in this section precludes the right to commence action in a court under chapter 12.40 RCW for small claims. [2005 c 277 § 3.]

Intent—2005 c 277: See note following RCW 28A.300.455.

62A.3-540 Collection agencies—Statutory form for notice of dishonor. (1) If a check is assigned or written to a collection agency as defined in RCW 19.16.100 and the collection agency or its agent provides a notice of dishonor, the notice of dishonor may be sent by mail to the drawer at the drawer's last known address. The collection agency may, as an alternative to providing a notice in the form described in RCW 62A.3-520, provide a notice in substantially the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to in the amount of has not been accepted for payment by, which is the drawee bank designated on your check. This check is dated, and it is numbered, No.

You are CAUTIONED that unless you pay the amount of this check and a handling fee of within thirty-three

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days after the date this letter is postmarked or personally delivered, you may very well have to pay the following additional amounts:

(a) Costs of collecting the amount of the check in the lesser of the check amount or forty dollars, plus, in the event of legal action, court costs and attorneys' fees, which will be set by the court;

(b) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and

(c) Three hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within thirty-three days after the date this letter is post-marked.

You are advised to make your payment of \$. to at the following address:

(2) The cautionary statement regarding law enforcement in subsection (1) of this section need not be included in a notice of dishonor sent by a collection agency. However, if included and whether or not the collection agency regularly refers dishonored checks to law enforcement, the cautionary statement in subsection (1) of this section shall not be construed as a threat to take any action not intended to be taken or that cannot legally be taken; nor shall it be construed to be harassing, oppressive, or abusive conduct; nor shall it be construed to be a false, deceptive, or misleading representation; nor shall it be construed to be unfair or unconscionable; nor shall it otherwise be construed to violate any law.

(3) In addition to sending a notice of dishonor to the drawer of the check under this section, the person sending notice shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail must be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

I,, hereby certify that on the day of, 20., a copy of the foregoing Notice was served on by mailing via the United States Postal Service, postage prepaid, at, Washington.

Dated:
(Signature)

(4) The person enforcing a check under this section shall file the affidavit and check, or a true copy thereof, with the clerk of the court in which an action on the check is commenced as permitted by court rule or practice. [2005 c 277 § 4.]

Intent—2005 c 277: See note following RCW 28A.300.455.

62A.3-550 Collection agencies—Consequences for failing to comply with requirements. No interest, collection costs, and attorneys' fees, except handling fees, are recoverable on any dishonored check under the provisions of RCW 62A.3-530 where a collection agency or its agent, employee, or assign has demanded:

(1) Interest or collection costs in excess of that provided by RCW 62A.3-530; or

(2) Interest or collection costs prior to the expiration of thirty-three days after the serving or mailing of the notice of dishonor, as provided by RCW 62A.3-530 or 62A.3-540; or

(3) Attorneys' fees other than statutory attorneys' fees without having the fees set by the court, or any attorneys' fees prior to thirty-three days after the serving or mailing of the notice of dishonor, as provided by RCW 62A.3-530 or 62A.3-540. [2005 c 277 § 5.]

Intent—2005 c 277: See note following RCW 28A.300.455.

PART 6 DISCHARGE AND PAYMENT

62A.3-601 Discharge and effect of discharge. (a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge. [1993 c 229 § 71; 1965 ex.s. c 157 § 3-601. Cf. former RCW sections: RCW 62.01.119 through 62.01.121; 1955 c 35 §§ 62.01.119 through 62.01.121; prior: 1899 c 149 §§ 119 through 121; RRS §§ 3509 through 3511.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-602 Payment. (a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under RCW 62A.3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) if:

(1) A claim to the instrument under RCW 62A.3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument. [1993 c 229 § 72; 1965 ex.s. c 157 § 3-602. Cf. former RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-603 Tender of payment. (a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument. [1993 c 229 § 73; 1965 ex.s. c 157 § 3-603. Cf. former RCW sections: (i) RCW 62.01.051, 62.01.088, 62.01.119, and 62.01.121; 1955 c 35 §§ 62.01.051, 62.01.088, 62.01.119, and 62.01.121; prior: 1899 c 149 §§ 51, 88, 119, and 121; RRS §§ 3442, 3478, 3509, and 3511. (ii) RCW 62.01.171 through 62.01.177; 1955 c 35 §§ 62.01.171 through 62.01.177; prior: 1899 c 149 §§ 171 through 177; RRS §§ 3561 through 3567. (iii) Subd. (3) cf. former RCW 30.20.090; 1961 c 280 § 4.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-604 Discharge by cancellation or renunciation. (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement. [1993 c 229 § 74; 1965 ex.s. c 157 § 3-604. Cf. former RCW sections: (i) RCW 62.01.070; 1955 c 35 § 62.01.070; prior: 1899 c 149 § 70; RRS § 3461. (ii) RCW 62.01.120; 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-605 Discharge of indorsers and accommodation parties. (a) In this section, the term "indorser" includes a drawer having the obligation described in RCW 62A.3-414(d).

(b) Discharge, under RCW 62A.3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party

proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f), impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under *Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) unless the person entitled to enforce the instrument knows of the accommodation or has notice under RCW 62A.3-419(c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general lan-

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guage indicating that parties waive defenses based on suretyship or impairment of collateral. [1993 c 229 § 75; 1965 ex.s. c 157 § 3-605. Cf. former RCW sections: RCW 62.01.048, 62.01.119(3), 62.01.120(2), 62.01.122, and 62.01.123; 1955 c 35 §§ 62.01.048, 62.01.119, 62.01.120, 62.01.122, and 62.01.123; prior: 1899 c 149 §§ 48, 119, 120, 122, and 123; RRS §§ 3439, 3509, 3510, 3512, and 3513.]

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

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Article 4

BANK DEPOSITS AND COLLECTIONS

Sections

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PART 4

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62A.4-401	When bank may charge customer's account.
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PART 5

COLLECTION OF DOCUMENTARY DRAFTS

- 62A.4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.
 62A.4-502 Presentment of "on arrival" drafts.
 62A.4-503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.
 62A.4-504 Privilege of presenting bank to deal with goods; security interest for expenses.

Reviser's note: Powers, duties, and functions of the department of general administration relating to financial institutions were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

PART 1

GENERAL PROVISIONS AND DEFINITIONS

62A.4-101 Short title. This Article may be cited as Uniform Commercial Code—Bank Deposits and Collections. [1993 c 229 § 77; 1965 ex.s. c 157 § 4-101.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-102 Applicability. (a) To the extent that items within this Article are also within Articles 3 and 8, they are subject to those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.

(b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. [1993 c 229 § 78; 1965 ex.s. c 157 § 4-102.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-103 Variation by agreement; measure of damages; action constituting ordinary care. (a) The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this Article is not disapproval of other procedures that may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence. [1993 c 229 § 79; 1965 ex.s. c 157 § 4-103. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1931 c 10 § 1; 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-104 Definitions and index of definitions. (a) In this Article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, except that it shall not include a Saturday, Sunday, or legal holiday;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (RCW 62A.8-102) or instructions for uncertificated securities (RCW 62A.8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in RCW 62A.3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment"	RCW 62A.4-110.
"Bank"	RCW 62A.4-105.
"Collecting bank"	RCW 62A.4-105.
"Depository bank"	RCW 62A.4-105.
"Intermediary bank"	RCW 62A.4-105.
"Payor bank"	RCW 62A.4-105.
"Presenting bank"	RCW 62A.4-105.
"Presentment notice"	RCW 62A.4-110.

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

"Acceptance"	RCW 62A.3-409.
"Alteration"	RCW 62A.3-407.
"Cashier's check"	RCW 62A.3-104.
"Certificate of deposit"	RCW 62A.3-104.
"Certified check"	RCW 62A.3-409.
"Check"	RCW 62A.3-104.
"Draft"	RCW 62A.3-104.
"Good faith"	RCW 62A.3-103.
"Holder in due course"	RCW 62A.3-302.
"Instrument"	RCW 62A.3-104.
"Notice of dishonor"	RCW 62A.3-503.
"Order"	RCW 62A.3-103.
"Ordinary care"	RCW 62A.3-103.
"Person entitled to enforce"	RCW 62A.3-301.
"Presentment"	RCW 62A.3-501.
"Promise"	RCW 62A.3-103.
"Prove"	RCW 62A.3-103.
"Teller's check"	RCW 62A.3-104.
"Unauthorized signature"	RCW 62A.3-403.

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1995 c 48 § 56; 1993 c 229 § 80; 1981 c 122 § 1; 1965 ex.s. c 157 § 4-104. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Construction—1981 c 122: "Nothing in this 1981 amendatory act shall be construed to preclude any bank from being open to the public for carrying on its banking functions on Saturdays or Sundays." [1981 c 122 § 2.] "this 1981 amendatory act" consists of the 1981 amendment to RCW 62A.4-104.

62A.4-105 "Bank"; "depository bank"; "payor bank"; "intermediary bank"; "collecting bank"; "presenting bank". In this Article:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) "Depository bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "Payor bank" means a bank that is the drawee of a draft;

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depository or payor bank;

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(5) "Collecting bank" means a bank handling the item for collection except the payor bank;

(6) "Presenting bank" means a bank presenting an item except a payor bank. [1993 c 229 § 81; 1965 ex.s. c 157 § 4-105. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-106 Payable through or payable at bank; collecting bank. (a) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is "payable at" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a codrawee or a collecting bank, the bank is a collecting bank. [1993 c 229 § 82; 1965 ex.s. c 157 § 4-106. Cf. former RCW sections: (i) RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1. (ii) RCW 30.40.030 through 30.40.050; 1955 c 33 §§ 30.40.030 through 30.40.050; prior: 1939 c 59 §§ 1 through 3; RRS §§ 3252-6 through 3252-8.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-107 Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this Article and under Article 3. [1993 c 229 § 83; 1965 ex.s. c 157 § 4-107.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-108 Time of receipt of items. (a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. [1993 c 229 § 84; 1965 ex.s. c 157 § 4-108.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-109 Delays. (a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this Title for a period not exceeding two additional banking days

without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Title or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require. [1993 c 229 § 85; 1965 ex.s. c 157 § 4-109.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-110 Electronic presentment. (a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this Article means the presentment notice unless the context otherwise indicates. [1993 c 229 § 86.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-111 Statute of limitations. An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues. [1993 c 229 § 87.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 2

COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS

62A.4-201 Status of collecting bank as agent and provisional status of credits; applicability of article; item indorsed "pay any bank". (a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this Article apply even

though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

(1) Returned to the customer initiating collection; or

(2) Specially indorsed by a bank to a person who is not a bank. [1993 c 229 § 88; 1965 ex.s. c 157 § 4-201. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-202 Responsibility for collection or return; when action timely. (a) A collecting bank must exercise ordinary care in:

(1) Presenting an item or sending it for presentment;

(2) Sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

(3) Settling for an item when the bank receives final settlement; and

(4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit. [1993 c 229 § 89; 1965 ex.s. c 157 § 4-202. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-203 Effect of instructions. Subject to Article 3 concerning conversion of instruments (RCW 62A.3-420) and restrictive indorsements (RCW 62A.3-206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor. [1993 c 229 § 90; 1965 ex.s. c 157 § 4-203. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-204 Methods of sending and presenting; sending directly to payor bank. (a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number

of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

(b) A collecting bank may send:

(1) An item directly to the payor bank;

(2) An item to a non-bank payor if authorized by its transferor; and

(3) An item other than documentary drafts to a non-bank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made. [1993 c 229 § 91; 1965 ex.s. c 157 § 4-204. Cf. former RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-205 Depository bank holder of unindorsed item. If a customer delivers an item to a depository bank for collection:

(a) The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of RCW 62A.3-302, it is a holder in due course; and

(b) The depository bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account. [1993 c 229 § 92; 1965 ex.s. c 157 § 4-205.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-206 Transfer between banks. Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank. [1993 c 229 § 93; 1965 ex.s. c 157 § 4-206.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-207 Transfer warranties. (a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) The warrantor is a person entitled to enforce the item;

(2) All signatures on the item are authentic and authorized;

(3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (RCW 62A.3-305(a)) of any party that can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in RCW

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62A.3-115 and 62A.3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 94; 1965 ex.s. c 157 § 4-207. Cf. former RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-208 Presentment warranties. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer is precluded

under RCW 62A.3-406 or 62A.4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 95; 1965 ex.s. c 157 § 4-208. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-209 Encoding and retention warranties. (a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach. [1993 c 229 § 96; 1965 ex.s. c 157 § 4-209. Cf. former RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-210 Security interest of collecting bank in items, accompanying documents and proceeds. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit

given whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9A, but:

(1) No security agreement is necessary to make the security interest enforceable RCW 62A.9A-203(b)(3)(A);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds. [2001 c 32 § 13; 2000 c 250 § 9A-813; 1993 c 229 § 97; 1965 ex.s. c 157 § 4-210.]

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

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

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-211 When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. [1993 c 229 § 98; 1965 ex.s. c 157 § 4-211. Cf. former RCW sections: (i) RCW 30.52.090; 1955 c 33 § 30.52.090; prior: 1929 c 203 § 9; RRS § 3292-9. (ii) RCW 30.52.100; 1955 c 33 § 30.52.100; prior: 1929 c 203 § 10; RRS § 3292-10.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-212 Presentment by notice of item not payable by, through, or at a bank; liability of drawer or indorser.

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under RCW 62A.3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under RCW 62A.3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts. [1993 c 229 § 99; 1965 ex.s. c 157 § 4-212. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020;

prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-213 Medium and time of settlement by bank.

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement, is:

(i) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to RCW 62A.4A-406(1) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item. [1993 c 229 § 100; 1965 ex.s. c 157 § 4-213. Cf. former RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-214 Right of charge-back or refund; liability of collecting bank; return of item. (a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the items, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If

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the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge-back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depository bank that is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (RCW 62A.4-301).

(d) The right to charge-back is not affected by:

(1) Previous use of a credit given for the item; or

(2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in a foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. [1993 c 229 § 101; 1965 ex.s. c 157 § 4-214. Cf. former RCW 30.52.130; 1955 c 33 § 30.52.130; prior: 1929 c 203 § 13; RRS § 3292-13.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Insolvency—Preferences prohibited: RCW 30.44.110.

62A.4-215 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal. (a) An item is finally paid by a payor bank when the bank has first done any of the following:

(1) Paid the item in cash;

(2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit

given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(2) If the bank is both the depository bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit. [1993 c 229 § 102.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-216 Insolvency and preference. (a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank. [1993 c 229 § 103.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

62A.4-301 Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank. (a) If a payor bank settles for a demand item (other than a documentary draft) presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

(1) Returns the item; or

(2) Sends written notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions. [1993 c 229 § 104; 1965 ex.s. c 157 § 4-301. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-302 Payor bank's responsibility for late return of item. (a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (RCW 62A.4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank. [1993 c 229 § 105; 1965 ex.s. c 157 § 4-302. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-303 When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified. (a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

- (1) The bank accepts or certifies the item;
- (2) The bank pays the item in cash;

(3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;

(4) The bank becomes accountable for the amount of the item under RCW 62A.4-302 dealing with the payor bank's responsibility for late return of items; or

(5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a) items may be accepted, paid, certified, or charged to the indicated account of its customer in any order. [1993 c 229 § 106; 1965 ex.s. c 157 § 4-303.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 4 RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

62A.4-401 When bank may charge customer's account. (a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in RCW 62A.4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in RCW 62A.4-303. A bank may not collect a fee from a customer based on the customer's giving notice to the bank of a postdating. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under RCW 62A.4-402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) The original terms of the altered item; or

(2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper. [1993 c 229 § 107; 1965 ex.s. c 157 § 4-401.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

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62A.4-402 Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.

(a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful. [1993 c 229 § 108; 1965 ex.s. c 157 § 4-402.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-403 Customer's right to stop payment; burden of proof of loss.

(a) A customer or any other person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in RCW 62A.4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop-payment order or order to close the account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under RCW 62A.4-402. [1993 c 229 § 109; 1965 ex.s. c 157 § 4-403. Cf. former RCW sections: (i) RCW 30.16.030; 1959 c 106 § 4; 1955 c 33 § 30.16.030; prior: 1923 c 114 §§ 1, part, and 2; RRS §§ 3252-1, part, and 3252-2. (ii) RCW 30.16.040; 1955 c 33 § 30.16.040; prior: 1923 c 114 §§ 1, part, and 3; RRS §§ 3252-1, part, and 3252-3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-404 Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith. [1965 ex.s. c 157 § 4-404. Cf. former RCW 30.16.050; 1955 c 33 § 30.16.050; prior: 1923 c 114 §§ 1, part, and 5; RRS §§ 3252-1, part, and 3252-5.]

62A.4-405 Death or incompetence of customer. (a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account. [1993 c 229 § 110; 1965 ex.s. c 157 § 4-405. Cf. former RCW 30.20.030; 1955 c 33 § 30.20.030; prior: 1917 c 80 § 43; RRS § 3250.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-406 Customer's duty to discover and report unauthorized signature or alteration. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or copies of items with respect to each statement of account sent to the customer. A bank may charge fees for additional items or copies of items in accordance with RCW 30.22.230. Requests for ten items or less shall be processed and completed within ten business days.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the state-

ment or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer, failed with respect to an item, to comply with the duties imposed on the customer by subsection (c) the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year, and any other customer who does not within sixty days, from the time the statement and items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature or any alteration on the face or back of the item or does not within one year from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under RCW 62A.4-208 with respect to the unauthorized signature or alteration to which the preclusion applies. [1997 c 53 § 1; 1995 c 107 § 1; 1993 c 229 § 111; 1991 sp.s. c 19 § 1; 1967 c 114 § 1; 1965 ex.s. c 157 § 4-406. Cf. former RCW 30.16.020; 1955 c 33 § 30.16.020; prior: 1917 c 80 § 45; RRS § 3252.]

Effective date—1995 c 107: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 107 § 2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Emergency—Effective date—1967 c 114: "This 1967 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and sections 1 through 11 and 13 through 16 shall take effect on June 30, 1967, and section 12 shall take effect immediately." [1967 c 114 § 17.]

62A.4-407 Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights:

(1) Of any holder in due course on the item against the drawer or maker;

(2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose. [1993 c 229 § 112; 1965 ex.s. c 157 § 4-407.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

PART 5

COLLECTION OF DOCUMENTARY DRAFTS

62A.4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor. A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. [1993 c 229 § 113; 1965 ex.s. c 157 § 4-501.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-502 Presentment of "on arrival" drafts. If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods. [1993 c 229 § 114; 1965 ex.s. c 157 § 4-502.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need. Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the rea-

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sons therefor, and must request instructions. However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses. [1993 c 229 § 115; 1965 ex.s. c 157 § 4-503. Cf. former RCW 62.01.131(3); 1955 c 35 § 62.01.131; prior: 1899 c 149 § 131; RRS § 3521.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-504 Privilege of presenting bank to deal with goods; security interest for expenses. (a) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. [1993 c 229 § 116; 1965 ex.s. c 157 § 4-504.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Article 4A

FUNDS TRANSFERS

Sections

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Reviser's note: Powers, duties, and functions of the department of general administration relating to financial institutions were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

PART 1
SUBJECT MATTER AND DEFINITIONS

62A.4A-101 Short title. This Article may be cited as the Uniform Commercial Code—Funds Transfers. [1991 sp.s. c 21 § 4A-101.]

62A.4A-102 Subject matter. Except as otherwise provided in RCW 62A.4A-108 this Article applies to funds transfers defined in RCW 62A.4A-104. [1991 sp.s. c 21 § 4A-102.]

62A.4A-103 Payment order—Definitions. (1) In this Article:

(a) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition of payment to the beneficiary other than time of payment;

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) "Beneficiary" means the person to be paid by the beneficiary's bank.

(c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) "Receiving bank" means the bank to which the sender's instruction is addressed.

(e) "Sender" means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) of this section is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank. [1991 sp.s. c 21 § 4A-103.]

62A.4A-104 Funds transfer—Definitions. In this Article:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means (a) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (b) the originator if the originator is a bank. [1991 sp.s. c 21 § 4A-104.]

62A.4A-105 Other definitions. (1) In this Article:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of the account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(8)).

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.4A-209
"Beneficiary"	RCW 62A.4A-103
"Beneficiary's bank"	RCW 62A.4A-103

"Executed"	RCW 62A.4A-301
"Execution date"	RCW 62A.4A-301
"Funds transfer"	RCW 62A.4A-104
"Funds-transfer system rule"	RCW 62A.4A-501
"Intermediary bank"	RCW 62A.4A-104
"Originator"	RCW 62A.4A-104
"Originator's bank"	RCW 62A.4A-104
"Payment by beneficiary's bank to beneficiary"	RCW 62A.4A-405
"Payment by originator to beneficiary"	RCW 62A.4A-406
"Payment by sender to receiving bank"	RCW 62A.4A-403
"Payment date"	RCW 62A.4A-401
"Payment order"	RCW 62A.4A-103
"Receiving bank"	RCW 62A.4A-103
"Security procedure"	RCW 62A.4A-201
"Sender"	RCW 62A.4A-103

(3) The following definitions in Article 4 (RCW 62A.4-101 through 62A.4-504) apply to this Article:

"Clearing house"	*section 4-104 of this act
"Item"	*section 4-104 of this act
"Suspends payments"	*section 4-104 of this act

(4) In addition to Article 1 [In addition, Article 1] (RCW 62A.1-101 through 62A.1-208) contains general definitions and principles of construction and interpretation applicable throughout this Article. [1991 sp.s. c 21 § 4A-105.]

*Reviser's note: The references to "section 4-104 of this act" are incorrect. RCW 62A.4-104 was apparently intended.

62A.4A-106 Time payment order is received. (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in RCW 62A.1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article. [1991 sp.s. c 21 § 4A-106.]

62A.4A-107 Federal reserve regulations and operating circulars. Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this

Article to the extent of the inconsistency. [1991 sp.s. c 21 § 4A-107.]

62A.4A-108 Exclusion of consumer transactions governed by federal law. This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, P.L. 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 et seq.) as amended from time to time. [1991 sp.s. c 21 § 4A-108.]

PART 2
ISSUE AND ACCEPTANCE OF PAYMENT ORDER

62A.4A-201 Security procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (1) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (2) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure. [1991 sp.s. c 21 § 4A-201.]

62A.4A-202 Authorized and verified payment orders. (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (a) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (b) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (a) the security procedure was chosen [by] the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (b)

the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name, and accepted by the bank in compliance with the security procedure chosen by the customer.

(4) The term "sender" in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1) of this section, or it is effective as the order of the customer under subsection (2) of this section.

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and RCW 62A.4A-203(1)(a), rights and obligations arising under this section or RCW 62A.4A-203 may not be varied by agreement. [1991 sp.s. c 21 § 4A-202.]

62A.4A-203 Unenforceability of certain verified payment orders. (1) If an accepted payment order is not, under RCW 62A.4A-201(1), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to RCW 62A.4A-202(2), the following rules apply.

(a) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-203.]

62A.4A-204 Refund of payment and duty of customer to report with respect unauthorized payment order. (1) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (a) not authorized and not effective as the order of the customer under RCW 62A.4A-202, or (b) not enforceable, in whole or in part, against the customer under RCW 62A.4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that

the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) of this section may be fixed by agreement as stated in RCW 62A.1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement. [1991 sp.s. c 21 § 4A-204.]

62A.4A-205 Erroneous payment orders. (1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (a) erroneously instructed payment to a beneficiary not intended by the sender, (b) erroneously instructed payment in an amount greater than the amount intended by the sender, or (c) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(i) If the sender proves that the sender or a person acting on behalf of the sender pursuant to RCW 62A.4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in (ii) and (iii) of this subsection.

(ii) If the funds transfer is completed on the basis of an erroneous payment order described in (b) or (c) of this subsection, the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(iii) If the funds transfer is completed on the basis of a payment order described in (b) of this subsection, the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If (a) the sender of an erroneous payment order described in subsection (1) of this section is not obliged to pay all or part of the order, and (b) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-205.]

62A.4A-206 Transmission of payment order through funds-transfer or other communication system. (1) If a

payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-206.]

62A.4A-207 Misdescription of beneficiary. (1) Subject to subsection (2) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If (a) a payment order described in subsection (2) of this section is accepted, (b) the originator's payment order described the beneficiary inconsistently by name and number, and (c) the beneficiary's bank pays the person identified by number as permitted by subsection (2)(a) of this section, the following rules apply:

(i) If the originator is a bank, the originator is obliged to pay its order.

(ii) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a) of this section, if the beneficiary's bank rightfully pays the person iden-

tified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3) of this section, the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover. [1991 sp.s. c 21 § 4A-207.]

62A.4A-208 Misdescription of intermediary bank or beneficiary's bank. (1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a) of this section, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in RCW 62A.4A-302(1)(a). [1991 sp.s. c 21 § 4A-208.]

62A.4A-209 Acceptance of payment order. (1) Subject to subsection (4) of this section, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4) of this section, a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) When the bank (i) pays the beneficiary as stated in RCW 62A.4A-405 (1) or (2) or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) When the bank receives payment of the entire amount of the sender's order pursuant to RCW 62A.4A-403(1) (a) or (b); or

(c) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (2)(b) or (c) of this section if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to RCW 62A.4A-211(2), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution. [1991 sp.s. c 21 § 4A-209.]

62A.4A-210 Rejection of payment order. (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission

is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (a) any means complying with the agreement is reasonable and (b) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to RCW 62A.4A-211(4) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order. [1991 sp.s. c 21 § 4A-210.]

62A.4A-211 Cancellation and amendment of payment order. (1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to subsection (1) of this section, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary

not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorneys' fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b) of this section. [1991 sp.s. c 21 § 4A-211.]

62A.4A-212 Liability and duty of receiving bank regarding unaccepted payment order. If a receiving bank fails to accept a payment order that [it] is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in RCW 62A.4A-209 and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement. [1991 sp.s. c 21 § 4A-212.]

PART 3

EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

62A.4A-301 Execution and execution date. (1) A payment order is "executed" by the receiving bank when it issues

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a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date. [1991 sp.s. c 21 § 4A-301.]

62A.4A-302 Obligations of receiving bank in execution of payment order. (1) Except as provided in subsections (2) through (4) of this section, if the receiving bank accepts a payment order pursuant to RCW 62A.4A-209(1), the bank has the following obligations in executing the order.

(a) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may (a) use any funds-transfer system if use of that system is reasonable in the circumstances, and (b) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) of this section applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first-class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's

order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender, (a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner. [1991 sp.s. c 21 § 4A-302.]

62A.4A-303 Erroneous execution of payment order.

(1) A receiving bank that (a) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (b) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(3) if (a) that subsection is otherwise satisfied and (b) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution. [1991 sp.s. c 21 § 4A-303.]

62A.4A-304 Duty of sender to report erroneously executed payment order. If the sender of a payment order that is erroneously executed as stated in RCW 62A.4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the notification from the bank was received by the sender. If the sender fails to perform that

duty, the bank is not obliged to pay interest on any amount refundable to the sender under RCW 62A.4A-402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section. [1991 sp.s. c 21 § 4A-304.]

62A.4A-305 Liability for late or improper execution or failure to execute payment order. (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of RCW 62A.4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3) of this section, additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of RCW 62A.4A-302 results in (a) noncompletion of the funds transfer, (b) failure to use an intermediary bank designated by the originator, or (c) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (1) of this section, resulting from the improper execution. Except as provided in subsection (3) of this section, additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2) of this section, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(5) Reasonable attorneys' fees are recoverable if demand for compensation under subsection (1) or (2) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) of this section and the agreement does not provide for damages, reasonable attorneys' fees are recoverable if demand for compensation under subsection (4) of this section is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) of this section may not be varied by agreement. [1991 sp.s. c 21 § 4A-305.]

PART 4
PAYMENT

62A.4A-401 Payment date. "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the

day the order is received by the beneficiary's bank. [1991 sp.s. c 21 § 4A-401.]

62A.4A-402 Obligation of sender to pay receiving bank. (1) This section is subject to RCW 62A.4A-205 and 62A.4A-207.

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to subsection (5) of this section and to RCW 62A.4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in RCW 62A.4A-204 and 62A.4A-304, interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in this subsection and an intermediary bank is obliged to refund payment as stated in subsection (4) of this section but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in RCW 62A.4A-302(1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4) of this section.

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) of this section or to receive refund under subsection (4) of this section may not be varied by agreement. [1991 sp.s. c 21 § 4A-402.]

62A.4A-403 Payment by sender to receiving bank.

(1) Payment of the sender's obligation under RCW 62A.4A-402 to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under RCW 62A.4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1) of this section, the time when payment of the sender's obligation under RCW 62A.4A-402 (2) or (3) occurs is governed by applicable principles of law that determine when an obligation is satisfied. [1991 sp.s. c 21 § 4A-403.]

62A.4A-404 Obligation of beneficiary's bank to pay and give notice to beneficiary.

(1) Subject to RCW 62A.4A-211(5), 62A.4A-405(4), and 62A.4A-405(5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means

reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorneys' fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (a) [subsection (1) of this section] may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) of this section may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer. [1991 sp.s. c 21 § 4A-404.]

62A.4A-405 Payment by beneficiary's bank to beneficiary. (1) If the beneficiary's bank credits an account of the beneficiary of a payment order payment of the bank's obligation under RCW 62A.4A-404(1) occurs when and to the extent (a) the beneficiary is notified of the right to withdraw the credit, (b) the bank lawfully applies the credit to a debt of the beneficiary, or (c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under RCW 62A.4A-404(1) occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5) of this act [section], if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (a) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (b) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (c) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under RCW 62A.4A-406.

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (a) nets obligations multilaterally among participants, and (b) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment

order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under RCW 62A.4A-406, and (iv) subject to RCW 62A.4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(3) because the funds transfer has not been completed. [1991 sp.s. c 21 § 4A-405.]

62A.4A-406 Payment by originator to beneficiary; discharge of underlying obligation. (1) Subject to RCW 62A.4A-211(5), 62A.4A-405(4), and 62A.4A-405(5), the originator of a funds transfer pays the beneficiary of the originator's payment order (a) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (b) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(2) If payment under subsection (1) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (a) the payment under subsection (1) of this section was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (b) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (c) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (d) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under RCW 62A.4A-404(1).

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2) of this section, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary. [1991 sp.s. c 21 § 4A-406.]

PART 5 MISCELLANEOUS PROVISIONS

62A.4A-501 Variation by agreement and effect of funds-transfer system rule. (1) Except as otherwise provided in this Article, the rights and obligations of a party to a

funds transfer may be varied by agreement of the affected party.

(2) "Funds-transfer system rule" means a rule of an association of banks (a) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (b) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with the Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in RCW 62A.4A-404(3), 62A.4A-405(4), and 62A.4A-507(3). [1991 sp.s. c 21 § 4A-501.]

62A.4A-502 Creditor process served on receiving bank; setoff by beneficiary's bank. (1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at the time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at the time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obligated to act with respect to the process. [1991 sp.s. c 21 § 4A-502.]

62A.4A-503 Injunction or restraining order with respect to funds transfer. For proper cause and in compliance with applicable law, a court may restrain (1) a person from issuing a payment order to initiate a funds transfer, (2) an originator's bank from executing the payment order of the originator, or (3) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer. [1991 sp.s. c 21 § 4A-503.]

62A.4A-504 Order in which items and payment orders may be charged to account; order of withdrawals from account. (1) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied. [1991 sp.s. c 21 § 4A-504.]

62A.4A-505 Preclusion of objection to debit of customer's account. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer. [1991 sp.s. c 21 § 4A-505.]

62A.4A-506 Rate of interest. (1) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (a) by agreement of the sender and receiving bank, or (b) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1) of this section, the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by three hundred sixty. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank. [1991 sp.s. c 21 § 4A-506.]

62A.4A-507 Choice of law. (1) The following rules apply unless the affected parties otherwise agree or subsection (3) of this section applies;

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in each paragraph of subsection (1) of this section have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) A funds-transfer system rule may select the law of a particular jurisdiction to govern (a) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (b) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to (a) of this subsection is binding on participating banks. A choice of law made pursuant to (b) of this subsection is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) of this section and a choice-of-law rule under subsection (3) of this section, the agreement under subsection (2) of this section prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue. [1991 sp.s. c 21 § 4A-507.]

Article 5

LETTERS OF CREDIT

Sections

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62A.5-118	Security interest of issuer or nominated person.

62A.5-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Letters of Credit. [1965 ex.s. c 157 § 5-101.]

62A.5-1013 Applicability—Transition provision. Chapter 56, Laws of 1997 applies to a letter of credit that is issued on or after July 27, 1997. Chapter 56, Laws of 1997 does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before July 27, 1997. [1997 c 56 § 1.]

62A.5-1015 Savings—Transition provision. A transaction arising out of or associated with a letter of credit that was issued before July 27, 1997, and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by chapter 56, Laws of 1997 as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law. [1997 c 56 § 2.]

62A.5-102 Definitions. (1) The definitions in this section apply throughout this Article unless the context clearly requires otherwise:

(a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(b) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(f) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in RCW 62A.5-108(5) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

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

(h) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) Upon payment;

(ii) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(j) "Letter of credit" means a definite undertaking that satisfies the requirements of RCW 62A.5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(k) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(l) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(n) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(2) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or

"Acceptance" RCW 62A.3-409

"Value" RCW 62A.3-303, RCW 62A.4-211.

(3) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article. [1997 c 56 § 3; 1965 ex.s. c 157 § 5-102.]

62A.5-103 Scope. (1) This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

(3) With the exception of this subsection, subsections (1) and (4) of this section, RCW 62A.5-102(1) (i) and (j), 62A.5-106(4), and 62A.5-114(4), and except to the extent prohibited in RCW 62A.1-102(3) and 62A.5-117(4), the effect of this Article may be varied by agreement or by a provision stated

or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary. [1997 c 56 § 4; 1965 ex.s. c 157 § 5-103.]

62A.5-104 Formal requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (1) by a signature or (2) in accordance with the agreement of the parties or the standard practice referred to in RCW 62A.5-108(5). [1997 c 56 § 5; 1965 ex.s. c 157 § 5-104.]

62A.5-105 Consideration. Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation. [1997 c 56 § 6; 1965 ex.s. c 157 § 5-105.]

62A.5-106 Issuance, amendment, cancellation, and duration. (1) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(3) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(4) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued. [1997 c 56 § 7; 1965 ex.s. c 157 § 5-106.]

62A.5-107 Confirmer, nominated person, and adviser. (1) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(3) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or

advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (3) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies. [1997 c 56 § 8; 1965 ex.s. c 157 § 5-107.]

62A.5-108 Issuer's rights and obligations. (1) Except as otherwise provided in RCW 62A.5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in RCW 62A.5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

- (a) To honor;
- (b) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or
- (c) To give notice to the presenter of discrepancies in the presentation.

(3) Except as otherwise provided in subsection (4) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(4) Failure to give the notice specified in subsection (2) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in RCW 62A.5-109(1) or expiration of the letter of credit before presentation.

(5) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

- (6) An issuer is not responsible for:
 - (a) The performance or nonperformance of the underlying contract, arrangement, or transaction;
 - (b) An act or omission of others; or
 - (c) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5) of this section.

(7) If an undertaking constituting a letter of credit under RCW 62A.5-102(1)(j) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(8) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(9) An issuer that has honored a presentation as permitted or required by this Article:

(a) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(b) Takes the documents free of claims of the beneficiary or presenter;

(c) Is precluded from asserting a right of recourse on a draft under RCW 62A.3-414 and 62A.3-415;

(d) Except as otherwise provided in RCW 62A.5-110 and 62A.5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(e) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged. [1997 c 56 § 9; 1965 ex.s. c 157 § 5-108.]

62A.5-109 Fraud and forgery. (1) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(a) The issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(b) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(2) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(a) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(b) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(c) All of the conditions to entitle a person to the relief under the law of this state have been met; and

(d) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (1)(a) of this section. [1997 c 56 § 10; 1965 ex.s. c 157 § 5-109.]

62A.5-110 Warranties. (1) If its presentation is honored, the beneficiary warrants:

(a) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in RCW 62A.5-109(1); and

(b) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(2) The warranties in subsection (1) of this section are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those Articles. [1997 c 56 § 11; 1965 ex.s. c 157 § 5-110.]

62A.5-111 Remedies. (1) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(3) If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection (1) or (2) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and (2) of this section.

(4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this Article.

(6) Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated. [1997 c 56 § 12; 1965 ex.s. c 157 § 5-111.]

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62A.5-112 Transfer of letter of credit. (1) Except as otherwise provided in RCW 62A.5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(a) The transfer would violate applicable law; or

(b) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in RCW 62A.5-108(5) or is otherwise reasonable under the circumstances. [1997 c 56 § 13; 1965 ex.s. c 157 § 5-112. Cf. former RCW sections: (i) RCW 62.01.136; 1955 c 35 § 62.01.136; prior: 1899 c 149 § 136; RRS § 3526. (ii) RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527. (iii) RCW 62.01.150; 1955 c 35 § 62.01.150; prior: 1899 c 149 § 150; RRS § 3540.]

62A.5-113 Transfer by operation of law. (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (5) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in RCW 62A.5-108(5) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) of this section has the consequences specified in RCW 62A.5-108(9) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of RCW 62A.5-109.

(5) An issuer whose rights of reimbursement are not covered by subsection (4) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (2) of this section.

(6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section. [1997 c 56 § 14; 1965 ex.s. c 157 § 5-113.]

62A.5-114 Assignment of proceeds. (1) In this section, "proceeds of a letter of credit" means the cash, check,

accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(4) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(5) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(6) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by *Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by *Article 9 or other law. [1997 c 56 § 15; 1995 c 48 § 57; 1986 c 35 § 54; 1965 ex.s. c 157 § 5-114.]

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

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.5-115 Statute of limitations. An action to enforce a right or obligation arising under this Article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. [1997 c 56 § 16; 1965 ex.s. c 157 § 5-115.]

62A.5-116 Choice of law and forum. (1) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in RCW 62A.5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(2) Unless subsection (1) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(3) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (a) this Article would govern the liability of an issuer, nominated person, or adviser under subsection (1) or (2) of this section, (b) the relevant undertaking incorporates rules of custom or practice, and (c) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in RCW 62A.5-103(3).

(4) If there is conflict between this Article and Article 3, 4, 4A, or *9, this Article governs.

(5) The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1) of this section. [1997 c 56 § 17; 1981 c 41 § 5; 1965 ex.s. c 157 § 5-116. Subd. (2)(b) cf. former RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

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

Effective date—1981 c 41: See RCW 62A.11-101.

62A.5-117 Subrogation of issuer, applicant, and nominated person. (1) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (1) of this section.

(3) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(a) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(b) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(c) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (1) and (2) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (3) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse. [1997 c 56 § 18; 1965 ex.s. c 157 § 5-117.]

62A.5-118 Security interest of issuer or nominated person. (a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to Article 9, but:

(1) A security agreement is not necessary to make the security interest enforceable under RCW 62A.9A-203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document. [2000 c 250 § 2.]

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

Article 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Sections

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62A.7-102 Definitions and index of definitions.
62A.7-103 Relation of Article to treaty, statute, tariff, classification or regulation.
62A.7-104 Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title.
62A.7-105 Construction against negative implication.

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- 62A.7-201 Who may issue a warehouse receipt; storage under government bond.
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- 62A.7-501 Form of negotiation and requirements of "due negotiation".
62A.7-502 Rights acquired by due negotiation.
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62A.7-505 Indorser not a guarantor for other parties.
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WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

- 62A.7-601 Lost and missing documents.
62A.7-602 Attachment of goods covered by a negotiable document.
62A.7-603 Conflicting claims; interpleader.

PART 1 GENERAL

62A.7-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Documents of Title. [1965 ex.s. c 157 § 7-101.]

62A.7-102 Definitions and index of definitions. (1) In this Article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article 1 (RCW 62A.1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are: "Duly negotiate". RCW 62A.7-501.

"Person entitled under the document". RCW 62A.7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale". RCW 62A.2-106.

"Overseas". RCW 62A.2-323.

"Receipt" of goods. RCW 62A.2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 7-102. Cf. former RCW sections: (i) RCW 22.04.585(1); 1913 c 99 § 58; RRS § 3644; formerly RCW 22.04.010. (ii) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (iii) RCW 81.32.011; 1961 c 14 § 81.32.011; prior: 1915 c 159 § 1; RRS § 3647; formerly RCW 81.32.020. (iv) RCW 81.32.531(1); 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-103 Relation of Article to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto. [1965 ex.s. c 157 § 7-103.]

62A.7-104 Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title. (1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. [1965 ex.s. c 157 § 7-104. Cf. former RCW sections: (i) RCW 22.04.030, 22.04.050, and 22.04.060; 1913 c 99 §§ 2, 4, and 5; RRS §§ 3588, 3590, and 3591; prior: 1891 c 134 §§ 5 and 8. (ii) RCW 22.04.040 and 22.04.080; 1913 c 99 §§ 3, 7; RRS §§

3589, 3593. (iii) RCW 63.04.280 and 63.04.310; 1925 ex.s. c 142 §§ 27 and 30; RRS §§ 5836-27 and 5836-30. (iv) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (v) RCW 81.32.021 through 81.32.051, and 81.32.081; 1961 c 14 §§ 81.32.021 through 81.32.051, and 81.32.081; prior: 1915 c 159 §§ 2 through 5, and 8; RRS §§ 3648 through 3651, and 3654; formerly RCW 81.32.030 through 81.32.060, and 81.32.090. (vi) RCW 81.32.531; 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-105 Construction against negative implication. The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable. [1965 ex.s. c 157 § 7-105.]

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

62A.7-201 Who may issue a warehouse receipt; storage under government bond. (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. [1965 ex.s. c 157 § 7-201. Cf. former RCW 22.04.020; 1913 c 99 § 1; RRS § 3587; prior: 1891 c 134 § 1.]

62A.7-202 Form of warehouse receipt; essential terms; optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written, printed, or electronic terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien

or security interest (RCW 62A.7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Title and do not impair his obligation of delivery (RCW 62A.7-403) or his duty of care (RCW 62A.7-204). Any contrary provisions shall be ineffective. [2000 c 58 § 1; 1965 ex.s. c 157 § 7-202. Cf. former RCW sections: (i) RCW 22.04.030; 1913 c 99 § 2; RRS § 3588; prior: 1891 c 134 § 8. (ii) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589.]

62A.7-203 Liability for non-receipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. [1965 ex.s. c 157 § 7-203. Cf. former RCW 22.04.210; 1913 c 99 § 20; RRS § 3606.]

62A.7-204 Duty of care; contractual limitation of warehouseman's liability. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) This section does not impair or repeal the duties of care or liabilities or penalties for breach thereof as provided in chapters 22.09 and 22.32 RCW. [1981 c 13 § 1; 1965 ex.s. c 157 § 7-204. Cf. former RCW sections: (i) RCW

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22.04.040; 1913 c 99 § 3; RRS § 3589. (ii) RCW 22.04.220; 1913 c 99 § 21; RRS § 3607.]

62A.7-205 Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. [1965 ex.s. c 157 § 7-205.]

62A.7-206 Termination of storage at warehouseman's option. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (RCW 62A.7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. [1965 ex.s. c 157 § 7-206. Cf. former RCW 22.04.350; 1913 c 99 § 34; RRS § 3620.]

62A.7-207 Goods must be kept separate; fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of over-issue a mass of fungible goods is insufficient

to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. [1965 ex.s. c 157 § 7-207. Cf. former RCW sections: (i) RCW 22.04.230; 1913 c 99 § 22; RRS § 3608; prior: 1891 c 134 § 3. (ii) RCW 22.04.240; 1913 c 99 § 23; RRS § 3609.]

62A.7-208 Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. [1965 ex.s. c 157 § 7-208. Cf. former RCW 22.04.140; 1913 c 99 § 13; RRS § 3599.]

62A.7-209 Lien of warehouseman. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt. A warehouseman's lien as provided in this chapter takes priority over all other liens and perfected or unperfected security interests.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (*Article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under RCW 62A.7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1987 c 395 § 1; 1965 ex.s. c 157 § 7-209. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

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

62A.7-210 Enforcement of warehouseman's lien. (1)

Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this Article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-210. Cf. former RCW sections: RCW 22.04.340, 22.04.360, and 22.04.370; 1913 c 99 §§ 33, 35, and 36; RRS §§ 3619, 3621, and 3622.]

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

62A.7-301 Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling. (1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

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(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. [1965 ex.s. c 157 § 7-301. Cf. former RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-302 Through bills of lading and similar documents. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. [1965 ex.s. c 157 § 7-302.]

62A.7-303 Diversion; reconsignment; change of instructions. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can

hold the bailee according to the original terms. [1965 ex.s. c 157 § 7-303.]

62A.7-304 Bills of lading in a set. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. [1965 ex.s. c 157 § 7-304. Cf. former RCW 81.32.061; 1961 c 14 § 81.32.061; prior: 1915 c 159 § 6; RRS § 3652; formerly RCW 81.32.070.]

62A.7-305 Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. [1965 ex.s. c 157 § 7-305.]

62A.7-306 Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. [1965 ex.s. c 157 § 7-306. Cf. former RCW 81.32.161; 1961 c 14 § 81.32.161; prior: 1915 c 159 § 16; RRS § 3662; formerly RCW 81.32.170.]

62A.7-307 Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for

transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1965 ex.s. c 157 § 7-307. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

62A.7-308 Enforcement of carrier's lien. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of RCW 62A.7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-308. Cf. former RCW 22.04.340; 1913 c 99 § 33; RRS § 3619.]

62A.7-309 Duty of care; contractual limitation of carrier's liability. Save as otherwise provided in RCW 81.29.010 and 81.29.020

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. [1965 ex.s. c 157 § 7-309. Cf. former RCW 81.32.031; 1961 c 14 § 81.32.031; prior: 1915 c 159 § 3; RRS § 3649; formerly RCW 81.32.040.]

Common carriers—Limitation on liability: Chapter 81.29 RCW.

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

62A.7-401 Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt. [1965 ex.s. c 157 § 7-401. Cf. former RCW sections: (i) RCW 22.04.210; 1913 c 99 § 20; RRS § 3606. (ii) RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-402 Duplicate receipt or bill; overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face. [1965 ex.s. c 157 § 7-402. Cf. former RCW sections: (i) RCW 22.04.070; 1913 c 99 § 6; RRS § 3592; prior: 1886 p 121 § 5. (ii) RCW 81.32.071; 1961 c 14 § 81.32.071; prior: 1915 c 159 § 7; RRS § 3653; formerly RCW 81.32.080.]

62A.7-403 Obligation of warehouseman or carrier to deliver; excuse. (1) The bailee must deliver the goods to a

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person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (RCW 62A.2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this Article (RCW 62A.7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under RCW 62A.7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document. [1965 ex.s. c 157 § 7-403. Cf. former RCW sections: (i) RCW 22.04.090, and 22.04.100; 1913 c 99 §§ 8 and 9; RRS §§ 3594, and 3595; prior: 1891 c 134 §§ 6, and 7. (ii) RCW 22.04.110, 22.04.130, 22.04.170, and 22.04.200; 1913 c 99 §§ 10, 12, 16, and 19; RRS §§ 3596, 3598, 3602, and 3605. (iii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iv) RCW 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1961 c 14 §§ 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1915 c 159 §§ 11 through 15, 19, and 22; RRS §§ 3657 through 3661, 3665, and 3668; formerly RCW 81.32.120 through 81.32.160, 81.32.200, and 81.32.230.]

62A.7-404 No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. [1965 ex.s. c 157 § 7-404. Cf. former RCW sections: (i) RCW 22.04.110; 1913 c 99 § 10; RRS § 3596. (ii) RCW 81.32.131; 1961 c 14 § 81.32.131; prior: 1915 c 159 § 13; RRS § 3659; formerly RCW 81.32.140.]

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING:
NEGOTIATION AND TRANSFER

62A.7-501 Form of negotiation and requirements of "due negotiation". (1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. [1965 ex.s. c 157 § 7-501. Cf. former RCW sections: (i) RCW 22.04.380 through 22.04.410, and 22.04.480; 1913 c 99 §§ 37 through 40, and 47; RRS §§ 3623 through 3626, and 3633. (ii) RCW 63.04.290, 63.04.300, 63.04.320, 63.04.330, and 63.04.390; 1925 ex.s. c 142 §§ 28, 29, 31, 32, and 38; RRS §§ 5836-28, 5836-29, 5836-31, 5836-32 and 5836-38. (iii) RCW 81.32.281 through 81.32.311, and 81.32.381; 1961 c 14 §§ 81.32.281 through 81.32.311, and 81.32.381; prior: 1915 c 159 §§ 28 through 31, and 38; RRS §§ 3674 through 3677, and 3684; formerly RCW 81.32.370 through 81.32.400, and 81.32.470.]

62A.7-502 Rights acquired by due negotiation. (1) Subject to the following section and to the provisions of RCW 62A.7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. [1965 ex.s. c 157 § 7-502. Cf. former RCW sections: (i) RCW 22.04.420, and 22.04.480 through 22.04.500; 1913 c 99 §§ 41, and 47 through 49; RRS §§ 3627, and 3633 through 3635. (ii) RCW 63.04.210(4), 63.04.260, 63.04.340, 63.04.390, and 63.04.630; 1925 ex.s. c 142 §§ 20, 25, 33, 38, and 62; RRS §§ 5836-20, 5836-25, 5836-33, 5836-38, and 5836-62. (iii) RCW 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; 1961 c 14 §§ 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; prior: 1915 c 159 §§ 32, 38, 39, 40, and 42; RRS §§ 3678, 3684, 3685, 3686, and 3688; formerly RCW 81.32.410, 81.32.470, 81.32.480, 81.32.490, and 81.32.510.]

62A.7-503 Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (RCW 62A.7-403) or with power of disposition under this Title (RCW 62A.2-403 and 62A.9A-320) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver. [2000 c 250 § 9A-814; 1965 ex.s. c 157 § 7-503. Cf. former RCW sections: (i) RCW 22.04.420; 1913 c 99 § 41; RRS § 3627. (ii) RCW 63.04.340; 1925 ex.s. c 142 § 33; RRS § 5836-33. (iii) RCW 81.32.321; 1961 c 14 § 81.32.321; prior: 1915 c 159 § 32; RRS § 3678; formerly RCW 81.32.410.]

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

62A.7-504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery. (1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under RCW 62A.7-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under RCW 62A.2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. [1965 ex.s. c 157 § 7-504. Cf. former RCW sections: (i) RCW 22.04.420(2) and 22.04.430; 1913 c 99 §§ 41 and 42; RRS §§ 3627, and 3628. (ii) RCW 63.04.350; 1925 ex.s. c 142 § 34; RRS § 5834-34. (iii) RCW 81.32.321(2) and 81.32.331; 1961 c 14 §§ 81.32.321 and 81.32.331; prior: 1915 c 159 §§ 32 and 33; RRS §§ 3678 and 3679; formerly RCW 81.32.410 and 81.32.420.]

62A.7-505 Indorser not a guarantor for other parties. The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. [1965 ex.s. c 157 § 7-505. Cf. former RCW sections: (i) RCW 22.04.460; 1913 c 99 § 45; RRS § 3631. (ii) RCW 63.04.380; 1925 ex.s. c 142 § 37; RRS § 5836-37. (iii) RCW 81.32.361; 1961 c 14 § 81.32.361; prior: 1915 c 159 § 36; RRS § 3682; formerly RCW 81.32.450.]

62A.7-506 Delivery without indorsement: Right to compel indorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied. [1965 ex.s. c 157 § 7-506. Cf. former RCW sections: (i) RCW 22.04.440; 1913 c 99 § 43; RRS § 3629. (ii) RCW 63.04.360; 1925 ex.s. c 142 § 35; RRS § 5836-35. (iii) RCW 81.32.341; 1961 c 14 § 81.32.341; prior: 1915 c 159 § 34; RRS § 3680; formerly RCW 81.32.430.]

62A.7-507 Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents. [1965 ex.s. c 157 § 7-507. Cf. former RCW sections: (i) RCW 22.04.450; 1913 c 99 § 44; RRS § 3630. (ii) RCW 63.04.370; 1925 ex.s. c 142 § 36; RRS § 5836-36. (iii) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440.]

62A.7-508 Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. [1965 ex.s. c 157 § 7-508. Cf. former RCW sections: (i) RCW 22.04.470; 1913 c 99 § 46; RRS § 3632. (ii) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

62A.7-509 Receipt or bill: When adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5). [1965 ex.s. c 157 § 7-509.]

PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

62A.7-601 Lost and missing documents. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. [1965 ex.s. c 157 § 7-601. Cf. former RCW sections: (i) RCW 22.04.150; 1913 c 99 § 14; RRS § 3600. (ii) RCW 81.32.171; 1961 c 14 § 81.32.171; prior: 1915 c 159 § 17; RRS § 3663; formerly RCW 81.32.180.]

62A.7-602 Attachment of goods covered by a negotiable document. Except where the document was originally

issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. [1965 ex.s. c 157 § 7-602. Cf. former RCW sections: (i) RCW 22.04.260; 1913 c 99 § 25; RRS § 3611. (ii) RCW 81.32.241; 1961 c 14 § 81.32.241; prior: 1915 c 159 § 24; RRS § 3670; formerly RCW 81.32.250.]

62A.7-603 Conflicting claims; interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate. [1965 ex.s. c 157 § 7-603. Cf. former RCW sections: (i) RCW 22.04.170 and 22.04.180; 1913 c 99 §§ 16 and 17; RRS §§ 3602 and 3603. (ii) RCW 81.32.201 and 81.32.211; 1961 c 14 §§ 81.32.201 and 81.32.211; prior: 1915 c 159 §§ 20 and 21; RRS §§ 3666 and 3667; formerly RCW 81.32.210 and 81.32.220.]

Article 8

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Sections

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PART 1

SHORT TITLE AND GENERAL MATTERS

62A.8-101 Short title. This Article may be cited as Uniform Commercial Code—Investment Securities. [1995 c 48 § 1; 1965 ex.s. c 157 § 8-101.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-102 Definitions. (1) In this Article:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including adoption of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of RCW 62A.8-501(2) (b) or (c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) "Financial asset," except as otherwise provided in RCW 62A.8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in RCW 62A.8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this Article and the sections in which they appear are:

Appropriate person	RCW 62A.8-107
Control	RCW 62A.8-106
Delivery	RCW 62A.8-301
Investment company security	RCW 62A.8-103
Issuer	RCW 62A.8-201
Overissue	RCW 62A.8-210
Protected purchaser	RCW 62A.8-303
Securities account	RCW 62A.8-501

(3) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(4) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule. [1995 c 48 § 2; 1986 c 35 § 1; 1973 c 98 § 1; 1965 ex.s. c 157 § 8-102. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-103 Rules for determining whether certain obligations and interests are securities or financial assets.

(1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9A-102(a)(15), is not a security or a financial asset. [2000 c 250 § 9A-815; 1995 c 48 § 3; 1986 c 35 § 2; 1965 ex.s. c 157 § 8-103. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.140.]

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

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-104 Acquisition of security or financial asset or interest therein. (1) A person acquires a security or an interest therein, under this Article, if:

(a) The person is a purchaser to whom a security is delivered pursuant to RCW 62A.8-301; or

(b) The person acquires a security entitlement to the security pursuant to RCW 62A.8-501.

(2) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5 of this Article, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in RCW 62A.8-503.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2) of this section. [1995 c 48 § 4; 1986 c 35 § 3; 1965 ex.s. c 157 § 8-104.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations—Purchase of own shares: RCW 23B.06.030 and 23B.06.310.

62A.8-105 Notice of adverse claim. (1) A person has notice of an adverse claim if:

(a) The person knows of the adverse claim;

(b) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(c) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(a) One year after a date set for presentment or surrender for redemption or exchange; or

(b) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(a) Whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under *Article 9 is not notice of an adverse claim to a financial asset. [1995 c 48 § 5; 1986 c 35 § 4; 1965 ex.s. c 157 § 8-105. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

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

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-106 Control. (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(a) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) The uncertificated security is delivered to the purchaser; or

(b) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) The purchaser becomes the entitlement holder;

(b) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(c) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3) or (4) of this section has control even if the registered owner in the case of subsection (3) of this section or the entitlement holder in the case of subsection (4) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder. [2000 c 250 § 9A-816; 1995 c 48 § 6; 1986 c 35 § 5; 1965 ex.s. c 157 § 8-106.]

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

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-107 Whether indorsement, instruction, or entitlement is effective. (1) "Appropriate person" means:

(a) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(b) With respect to an instruction, the registered owner of an uncertificated security;

(c) With respect to an entitlement order, the entitlement holder;

(d) If the person designated in (a), (b), or (c) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(e) If the person designated in (a), (b), or (c) of this subsection lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if:

(a) It is made by the appropriate person;

(b) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under RCW 62A.8-106 (3)(b) or (4)(b); or

(c) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(b) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances. [1995 c 48 § 7; 1986 c 35 § 6; 1965 ex.s. c 157 § 8-107.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-108 Warranties in direct holding. (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(a) The certificate is genuine and has not been materially altered;

(b) The transferor or indorser does not know of any fact that might impair the validity of the security;

(c) There is no adverse claim to the security;

(d) The transfer does not violate any restriction on transfer;

(e) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(f) The transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(a) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(b) The security is valid;

(c) There is no adverse claim to the security; and

(d) At the time the instruction is presented to the issuer:

(i) The purchaser will be entitled to the registration of transfer;

(ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) The transfer will not violate any restriction on transfer; and

(iv) The requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(a) The uncertificated security is valid;

(b) There is no adverse claim to the security;

(c) The transfer does not violate any restriction on transfer; and

(d) The transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer that:

(a) There is no adverse claim to the security; and

(b) The indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(a) The instruction is effective; and

(b) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7) of this section.

(9) Except as otherwise provided in subsection (7) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1) through (6) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (1) or (2) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer. [1995 c 48 § 8; 1986 c 35 § 7.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-109 Warranties in indirect holding. (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(a) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(b) There is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in RCW 62A.8-108 (1) or (2).

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in RCW 62A.8-108 (1) or (2). [1995 c 48 § 9.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-110 Applicability; choice of law. (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this section, governs:

(a) The validity of a security;

(b) The rights and duties of the issuer with respect to registration of transfer;

(c) The effectiveness of registration of transfer by the issuer;

(d) Whether the issuer owes any duties to an adverse claimant to a security; and

(e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5) of this section, governs:

(a) Acquisition of a security entitlement from the securities intermediary;

(b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection (1)(b) through (e) of this section.

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this Article, or Article 62A.9A RCW, that jurisdiction is the securities intermediary's jurisdiction.

(b) If (a) of this subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If neither (a) nor (b) of this subsection applies, and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(d) If (a), (b), and (c) of this subsection do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(e) If (a), (b), (c), and (d) of this subsection do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account. [2001 c 32 § 14; 2000 c 250 § 9A-817; 1995 c 48 § 10.]

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

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

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-111 Clearing corporation rules. A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this Title and affects another party who does not consent to the rule. [1995 c 48 § 11.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-112 Creditor's legal process. (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (4) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (4) of this section.

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the secu-

rities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (4) of this section.

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process. [1995 c 48 § 12.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-113 Statute of frauds inapplicable. A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making. [1995 c 48 § 13.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-114 Evidentiary rules concerning certificated securities. The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted. [1995 c 48 § 14.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-115 Securities intermediary and others not liable to adverse claimant. A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction,

and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim. [1995 c 48 § 15.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-116 Securities intermediary as purchaser for value. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder. [1995 c 48 § 16.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 2 ISSUE AND ISSUER

62A.8-201 Issuer. (1) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(a) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(b) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(c) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(d) Becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respect to registration of a transfer, issuer means a person on whose behalf transfer books are maintained. [1995 c 48 § 17; 1986 c 35 § 8; 1965 ex.s. c 157 § 8-201. Cf. former RCW sections: RCW 62.01.029, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.029, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 29, and 60 through 62; RRS §§ 3420, and 3451 through 3453.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations, effect of merger or consolidation: RCW 23B.11.060.

Securities Act, issuer: RCW 21.20.005(7).

62A.8-202 Issuer's responsibility and defenses; notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the

terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subsection (2)(a) of this section applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in RCW 62A.8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly. [1995 c 48 § 18; 1986 c 35 § 9; 1965 ex.s. c 157 § 8-202. Cf. former RCW sections: RCW 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 16, 23, 28, 56, 57, and 60 through 62; RRS §§ 3407, 3414, 3419, 3447, 3448, and 3451 through 3453.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-203 Staleness as notice of defect or defense. After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a

date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) Is not covered by subsection (1) of this section and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due. [1995 c 48 § 19; 1986 c 35 § 10; 1965 ex.s. c 157 § 8-203. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-204 Effect of issuer's restrictions on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) The security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) The security is uncertificated and the registered owner has been notified by the restriction. [1995 c 48 § 20; 1986 c 35 § 11; 1965 ex.s. c 157 § 8-204. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.160.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations—Stock certificates—Limitations: RCW 23B.06.250.

62A.8-205 Effect of unauthorized signature on security certificate. An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar certificates, or the immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the persons listed in subsection (1) of this section, entrusted with responsible handling of the security certificate. [1995 c 48 § 21; 1986 c 35 § 12; 1965 ex.s. c 157 § 8-205. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-206 Completion or alteration of security certificate. (1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even though the blanks are incorrectly filled in, the security certificate as completed is enforceable by a pur-

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chaser who took it for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms. [1995 c 48 § 22; 1986 c 35 § 13; 1965 ex.s. c 157 § 8-206. Cf. former RCW sections: (i) RCW 23.80.160; 1939 c 100 § 16; RRS § 3803-116; formerly RCW 23.20.170. (ii) RCW 62.01.014, 62.01.015, and 62.01.124; 1955 c 35 §§ 62.01.014, 62.01.015, and 62.01.124; prior: 1899 c 149 §§ 14, 15, and 124; RRS §§ 3405, 3406, and 3514.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-207 Rights and duties of issuer with respect to registered owners. (1) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(2) This Article does not affect the liability of the registered owner of a security for a call, assessment, or the like. [1995 c 48 § 23; 1986 c 35 § 14; 1965 ex.s. c 157 § 8-207. Cf. former RCW 23.80.020 and 23.80.030; 1939 c 100 §§ 2 and 3; RRS §§ 3803-102 and 3803-103; formerly RCW 23.20.030 and 23.20.040.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-208 Effect of signature of authenticating trustee, registrar, or transfer agent. (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(a) The certificate is genuine;

(b) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(c) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing under subsection (1) of this section does not assume responsibility for the validity of the security in other respects. [1995 c 48 § 24; 1986 c 35 § 15; 1965 ex.s. c 157 § 8-208.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-209 Issuer's lien. A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate. [1995 c 48 § 25.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-210 Overissue. (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4) of this section, the provisions of this Article which vali-

date a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand. [1995 c 48 § 26.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 3 TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

62A.8-301 Delivery. (1) Delivery of a certificated security to a purchaser occurs when:

(a) The purchaser acquires possession of the security certificate;

(b) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser. [2000 c 250 § 9A-818; 1995 c 48 § 27; 1986 c 35 § 16; 1965 ex.s. c 157 § 8-301. Cf. former RCW sections: (i) RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443. (iii) RCW 62.01.057 through 62.01.059; 1955 c 35 §§ 62.01.057 through 62.01.059; prior: 1899 c 149 §§ 57 through 59; RRS §§ 3448 through 3450.]

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

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-302 Rights of purchaser. (1) Except as otherwise provided in subsections (2) and (3) of this section, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser. [2000 c 250 § 9A-819; 1995 c 48 § 28; 1986 c 35 § 17; 1965 ex.s. c 157 § 8-302. Cf. former RCW sections: (i) RCW 23.80.230(2); 1939 c 100 § 23; RRS § 3803-123. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

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

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-303 Protected purchaser. (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(a) Gives value;

(b) Does not have notice of any adverse claim to the security; and

(c) Obtains control of the certificated or uncertificated security.

(2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim. [1995 c 48 § 29; 1986 c 35 § 18; 1965 ex.s. c 157 § 8-303.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-304 Indorsement. (1) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in RCW 62A.8-108 and not an obligation that the security will be honored by the issuer. [1995 c 48 § 30; 1986 c 35 § 19; 1965 ex.s. c 157 § 8-304. Cf. former RCW sections: RCW 62.01.037 and 62.01.056; 1955 c 35 §§ 62.01.037 and 62.01.056; prior: 1899 c 149 §§ 37 and 56; RRS §§ 3428 and 3447.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-305 Instruction. (1) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by RCW 62A.8-108 and not an obligation that the security will be honored by the issuer. [1995 c 48 § 31; 1986 c 35 § 20; 1965 ex.s. c 157 § 8-305. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-306 Effect of guaranteeing signature, indorsement, or instruction. (1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

- (a) The signature was genuine;
 - (b) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and
 - (c) The signer had legal capacity to sign.
- (2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

- (a) The signature was genuine;
- (b) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and
- (c) The signer had legal capacity to sign.

(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) of this section and also warrants that at the time the instruction is presented to the issuer:

- (a) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and
- (b) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) of this section or a special guarantor under subsection (3) of this section does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) of this section and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) of this section and also warrants the rightfulness of the transfer in all respects.

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(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor. [1995 c 48 § 32; 1986 c 35 § 21; 1965 ex.s. c 157 § 8-306. Cf. former RCW sections: (i) RCW 23.80.110 and 23.80.120; 1939 c 100 §§ 11 and 12; RRS §§ 3803-111 and 3803-112; formerly RCW 23.20.120 and 23.20.130. (ii) RCW 62.01.065 through 62.01.067, and 62.01.069; 1955 c 35 §§ 62.01.065 through 62.01.067, and 62.01.069; prior: 1899 c 149 §§ 65 through 67, and 69; RRS §§ 3456 through 3458, and 3460.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-307 Purchaser's right to requisites for registration of transfer. Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer. [1995 c 48 § 33; 1986 c 35 § 22; 1965 ex.s. c 157 § 8-307. Cf. former RCW sections: (i) RCW 23.80.090; 1939 c 100 § 9; RRS § 3803-109; formerly RCW 23.20.100. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 4 REGISTRATION

62A.8-401 Duty of issuer to register transfer. (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(a) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(b) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(c) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (RCW 62A.8-402);

(d) Any applicable law relating to the collection of taxes has been complied with;

(e) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with RCW 62A.8-204;

(f) A demand that the issuer not register transfer has not become effective under RCW 62A.8-403, or the issuer has

complied with RCW 62A.8-403(2) but no legal process or indemnity bond is obtained as provided in RCW 62A.8-403(4); and

(g) The transfer is in fact rightful or is to a protected purchaser.

(2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer. [1995 c 48 § 34; 1986 c 35 § 37; 1965 ex.s. c 157 § 8-401.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-402 Assurance that indorsement or instruction is effective. (1) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(a) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(b) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(c) If the indorsement is made or the instruction is originated by a fiduciary pursuant to RCW 62A.8-107(1) (d) or (e), appropriate evidence of appointment or incumbency;

(d) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(2) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) In this section:

(a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(b) "Appropriate evidence of appointment or incumbency" [means]:

(i) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(ii) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considered appropriate. [1995 c 48 § 35; 1986 c 35 § 38; 1965 ex.s. c 157 § 8-402.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-403 Demand that issuer not register transfer.

(1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an

address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (a) the person who initiated the demand at the address provided in the demand and (b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(i) The certificated security has been presented for registration of transfer or instruction for registration of transfer of uncertificated security has been received;

(ii) A demand that the issuer not register transfer had previously been received; and

(iii) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in subsection (2)(b)(iii) of this section may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(a) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(b) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective. [1995 c 48 § 36; 1986 c 35 § 39; 1965 ex.s. c 157 § 8-403.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-404 Wrongful registration. (1) Except as otherwise provided in RCW 62A.8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(a) Pursuant to an ineffective indorsement or instruction;

(b) After a demand that the issuer not register transfer became effective under RCW 62A.8-403(1) and the issuer did not comply with RCW 62A.8-403(2);

(c) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(d) By an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by RCW 62A.8-210.

(3) Except as otherwise provided in subsection (1) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction. [1995 c 48 § 37; 1986 c 35 § 40; 1965 ex.s. c 157 § 8-404.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-405 Replacement of lost, destroyed, or wrongfully taken security certificate. (1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(a) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(b) Files with the issuer a sufficient indemnity bond; and

(c) Satisfies any other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by RCW 62A.8-209. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from the person to whom it was issued or any person taking under that person, except a protected purchaser. [1995 c 48 § 38; 1986 c 35 § 41; 1965 ex.s. c 157 § 8-405. Cf. former RCW 23.80.170; 1939 c 100 § 17; RRS § 3803-117; formerly RCW 23.20.180.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-406 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate. If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under RCW 62A.8-404 or a claim to a new security certificate under RCW 62A.8-405. [1995 c 48 § 39; 1986 c 35 § 42; 1965 ex.s. c 157 § 8-406.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-407 Authenticating trustee, transfer agent, and registrar. A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same

obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions. [1995 c 48 § 40; 1986 c 35 § 43.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 5 SECURITY ENTITLEMENTS

62A.8-501 Securities account; acquisition of security entitlement from securities intermediary. (1) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5) of this section, a person acquires a security entitlement if a securities intermediary:

(a) Indicates by book entry that a financial asset has been credited to the person's securities account;

(b) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(c) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(3) If a condition of subsection (2) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement. [1995 c 48 § 41.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-502 Assertion of adverse claim against entitlement holder. An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under RCW 62A.8-501 for value and without notice of the adverse claim. [1995 c 48 § 42.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-503 Property interest of entitlement holder in financial asset held by securities intermediary. (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in RCW 62A.8-511.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under RCW 62A.8-505 through 62A.8-508.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(a) Insolvency proceedings have been initiated by or against the securities intermediary;

(b) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(c) The securities intermediary violated its obligations under RCW 62A.8-504 by transferring the financial asset or interest therein to the purchaser; and

(d) The purchaser is not protected under subsection (5) of this section.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(5) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under RCW 62A.8-504. [1995 c 48 § 43.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-504 Duty of securities intermediary to maintain financial asset. (1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1) of this section.

(3) A securities intermediary satisfies the duty in subsection (1) of this section if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements. [1995 c 48 § 44.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-505 Duty of securities intermediary with respect to payments and distributions. (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary. [1995 c 48 § 45.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-506 Duty of securities intermediary to exercise rights as directed by entitlement holder. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. [1995 c 48 § 46.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-507 Duty of securities intermediary to comply with entitlement order. (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages. [1995 c 48 § 47.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-508 Duty of securities intermediary to change entitlement holder's position to other form of security holding. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. [1995 c 48 § 48.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-509 Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder. (1) If the substance of a duty imposed upon a securities intermediary by RCW 62A.8-504 through 62A.8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by RCW 62A.8-504 through 62A.8-508 is subject to:

(a) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(b) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) RCW 62A.8-504 through 62A.8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule. [1995 c 48 § 49.]

Effective date—1995 c 48: See RCW 62A.11-113.

(2008 Ed.)

62A.8-510 Rights of purchaser of security entitlement from entitlement holder. (1) In a case not covered by the priority rules in Article 9A or the rules stated in subsection (3) of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under RCW 62A.8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in Article 9A, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (4) of this section, purchasers who have control rank according to priority in time of:

(a) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under RCW 62A.8-106(4)(a);

(b) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under RCW 62A.8-106(4)(b); or

(c) If the purchaser obtained control through another person under RCW 62A.8-106(4)(c), the time on which priority would be based under this subsection if the other person were the secured party.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary. [2001 c 32 § 15; 2000 c 250 § 9A-820; 1995 c 48 § 50.]

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

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

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-511 Priority among security interests and entitlement holders. (1) Except as otherwise provided in subsections (2) and (3) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement

holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders. [1995 c 48 § 51.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 6

TRANSITION PROVISIONS FOR REVISED ARTICLE 8 AND CONFORMING AMENDMENTS TO

*ARTICLES 1, 5, 9, AND 10

***Reviser's note:** (1) See 1995 c 48 §§ 54 through 71.

(2) Article 9 was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001.

62A.8-601 Savings clause. (1) Chapter 48, Laws of 1995 does not affect an action or proceeding commenced before April 17, 1995.

(2) If a security interest in a security is perfected by April 17, 1995, and the action by which the security interest was perfected would suffice to perfect a security interest under chapter 48, Laws of 1995, no further action is required to continue perfection. If a security interest in a security is perfected by April 17, 1995, but the action by which the security interest was perfected would not suffice to perfect a security interest under chapter 48, Laws of 1995, the security interest remains perfected through December 31, 1995, and continues perfected thereafter if appropriate action to perfect under chapter 48, Laws of 1995 is taken by that date. If a security interest is perfected by April 17, 1995, and the security interest can be perfected by filing under chapter 48, Laws of 1995, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect. [1995 c 48 § 53.]

Effective date—1995 c 48: See RCW 62A.11-113.

Article 9A

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

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PART 1
GENERAL PROVISIONS

62A.9A-101 Short title. This Article may be cited as the Uniform Commercial Code-Secured Transactions. [2000 c 250 § 9A-101.]

62A.9A-102 Definitions and index of definitions. (a) **Article 9A definitions.** In this Article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2)(A) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

(B) The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include (A) charters or other contracts

involving the use or hire of a vessel or (B) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual, and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to, or the death of, an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs a consumer obligation; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligation" means an obligation which:

(A) Is incurred as part of a transaction entered into primarily for personal, family, or household purposes; and

(B) Arises from an extension of credit, or commitment to extend credit, in an aggregate amount not exceeding forty thousand dollars, or is secured by personal property used or expected to be used as a principal dwelling.

"Consumer obligor" means an obligor who is an individual and who incurred a consumer obligation.

(26) "Consumer transaction" means a transaction in which (A) an individual incurs a consumer obligation, (B) a security interest secures the obligation, and (C) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in RCW 62A.7-201(2).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to RCW 62A.9A-519(a).

(37) "Filing office" means an office designated in RCW 62A.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to RCW 62A.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (A) fixtures, (B) standing timber that is to be cut and removed under a conveyance or contract for sale, (C) the unborn young of animals, (D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (E) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals

before extraction or a manufactured home converted to real property under chapter 65.20 RCW.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (A) investment property, (B) letters of credit, (C) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, (D) writings that do not contain a promise or order to pay, or (E) writings that are expressly nontransferable or nonassignable.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a manufactured home or mobile home as defined in RCW 46.04.302.

(54) [Reserved]

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under RCW 62A.9A-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (A) money, (B) money's worth in property, services, or new credit, or (C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (A) owes payment or other performance of the obligation, (B) has provided property other than the collateral to secure payment or other performance of the obligation, or (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in RCW 62A.9A-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under RCW 62A.9A-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in (63)(A) of this subsection;

(D) The spouse of an individual described in (63)(A), (B), or (C) of this subsection; or

(E) An individual who is related by blood or marriage to an individual described in (63)(A), (B), (C), or (D) of this subsection and shares the same home with the individual.

(64) "Proceeds", except as used in RCW 62A.9A-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party, which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under (A) of this subsection.

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other Articles.** The following definitions in other Articles apply to this Article:

"Applicant." RCW 62A.5-102.

"Beneficiary." RCW 62A.5-102.

"Broker." RCW 62A.8-102.

"Certificated security." RCW 62A.8-102.

"Check." RCW 62A.3-104.

"Clearing corporation." RCW 62A.8-102.

"Contract for sale." RCW 62A.2-106.

"Customer." RCW 62A.4-104.

"Entitlement holder." RCW 62A.8-102.

"Financial asset." RCW 62A.8-102.

"Holder in due course." RCW 62A.3-302.

"Issuer" with respect to a letter of credit or letter-of-credit right. RCW 62A.5-102.

"Issuer" with respect to a security. RCW 62A.8-201.

"Lease." RCW 62A.2A-103.

"Lease agreement." RCW 62A.2A-103.

"Lease contract." RCW 62A.2A-103.

"Leasehold interest." RCW 62A.2A-103.

"Lessee."	RCW 62A.2A-103.
"Lessee in ordinary course of business."	RCW 62A.2A-103.
"Lessor."	RCW 62A.2A-103.
"Lessor's residual interest."	RCW 62A.2A-103.
"Letter of credit."	RCW 62A.5-102.
"Merchant."	RCW 62A.2-104.
"Negotiable instrument."	RCW 62A.3-104.
"Nominated person."	RCW 62A.5-102.
"Note."	RCW 62A.3-104.
"Proceeds of a letter of credit."	RCW 62A.5-114.
"Prove."	RCW 62A.3-103.
"Sale."	RCW 62A.2-106.
"Securities account."	RCW 62A.8-501.
"Securities intermediary."	RCW 62A.8-102.
"Security."	RCW 62A.8-102.
"Security certificate."	RCW 62A.8-102.
"Security entitlement."	RCW 62A.8-102.
"Uncertificated security."	RCW 62A.8-102.

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [2001 c 32 § 16; 2000 c 250 § 9A-102.]

Effective date—2001 c 32: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 32 § 55.]

62A.9A-103 Purchase-money security interest; application of payments; burden of establishing. (a) **Definitions.** In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in, or the use of, the collateral, if the value is in fact so used.

(b) **Purchase-money security interest in goods.** A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) **Purchase-money security interest in software.** A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) **Consignor's inventory purchase-money security interest.** The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) **Application of payment in nonconsumer-goods transaction.** In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) **No loss of status of purchase-money security interest in nonconsumer-goods transaction.** In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) **Burden of proof in nonconsumer-goods transaction.** In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) **Nonconsumer-goods transactions; no inference.** The limitation of the rules in subsections (e), (f), and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches. [2000 c 250 § 9A-103.]

62A.9A-104 Control of deposit account. (a) **Requirements for control.** A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) **Debtor's right to direct disposition.** A secured party that has satisfied subsection (a) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account. [2001 c 32 § 17; 2000 c 250 § 9A-104.]

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

62A.9A-105 Control of electronic chattel paper. A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subsections (4), (5), and (6) of this section, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision. [2001 c 32 § 18; 2000 c 250 § 9A-105.]

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

62A.9A-106 Control of investment property. (a) **Control under RCW 62A.8-106.** A person has control of a certificated security, uncertificated security, or security entitlement as provided in RCW 62A.8-106.

(b) **Control of commodity contract.** A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) **Effect of control of securities account or commodity account.** A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account. [2000 c 250 § 9A-106.]

62A.9A-107 Control of letter-of-credit right. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under RCW 62A.5-114(3) or otherwise applicable law or practice. [2001 c 32 § 19; 2000 c 250 § 9A-107.]

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

62A.9A-108 Sufficiency of description in security agreement. (a) **Sufficiency of description.** Except as otherwise provided in subsections (c), (d), and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) **Examples of reasonable identification.** Except as otherwise provided in subsection (d) of this section, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;

(2) Category;

(3) Except as otherwise provided in subsection (e) of this section, a type of collateral defined in the Uniform Commercial Code;

(4) Quantity;

(5) Computational or allocational formula or procedure;

or

(6) Except as otherwise provided in subsection (c) of this section, any other method, if the identity of the collateral is objectively determinable.

(c) **Supergeneric description not sufficient.** A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral. However, as provided in RCW 62A.9A-504, such a description is sufficient in a financing statement.

(d) **Investment property.** Except as otherwise provided in subsection (e) of this section, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) **When description by type insufficient.** A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account. [2000 c 250 § 9A-108.]

62A.9A-109 Scope. (a) **General scope of Article.** Except as otherwise provided in subsections (c) and (d) of this section, this Article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) A consignment;

(5) A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5), as provided in RCW 62A.9A-110; and

(6) A security interest arising under RCW 62A.4-210 or 62A.5-118.

(b) **Security interest in secured obligation.** The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself

secured by a transaction or interest to which this Article does not apply.

(c) **Extent to which Article does not apply.** This Article does not apply to the extent that:

(1) A statute, regulation, or treaty of the United States preempts this Article;

(2) Another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under RCW 62A.5-114.

(d) **Inapplicability of Article.** This Article does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but RCW 62A.9A-333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary, or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but RCW 62A.9A-315 and 62A.9A-322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, but:

(A) RCW 62A.9A-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) RCW 62A.9A-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) Liens on real property in RCW 62A.9A-203 and 62A.9A-308;

(B) Fixtures in RCW 62A.9A-334;

(C) Fixture filings in RCW 62A.9A-501, 62A.9A-502, 62A.9A-512, 62A.9A-516, and 62A.9A-519; and

(D) Security agreements covering personal and real property in RCW 62A.9A-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but RCW 62A.9A-315 and 62A.9A-322 apply with respect to proceeds and priorities in proceeds;

(13) An assignment in a consumer transaction of a deposit account on which checks can be drawn, but RCW 62A.9A-315 and 62A.9A-322 apply with respect to proceeds and priorities in proceeds; or

(14) A transfer by this state or a governmental unit of this state. [2000 c 250 § 9A-109.]

62A.9A-110 Security interests arising under Article 2 or 2A. A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5) is subject to this Article. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if RCW 62A.9A-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by Article 2 or 2A; and

(4) The security interest has priority over a conflicting security interest created by the debtor. [2000 c 250 § 9A-110.]

PART 2

EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

62A.9A-201 General effectiveness of security agreement. (a) **General effectiveness.** Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) **Applicable consumer laws and other law.** A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers and (1) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (2) any consumer-protection statute or regulation.

(c) **Other applicable law controls.** In case of conflict between this Article and a rule of law, statute, or regulation described in subsection (b) of this section, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.

(d) **Further deference to other applicable law.** This Article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b) of this section; or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it. [2001 c 32 § 20; 2000 c 250 § 9A-201.]

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

62A.9A-202 Title to collateral immaterial. Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this Article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor. [2000 c 250 § 9A-202.]

62A.9A-203 Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites. (a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) Value has been given;
- (2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under RCW 62A.9A-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under RCW 62A.8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 pursuant to the debtor's security agreement.

(c) **Other UCC provisions.** Subsection (b) of this section is subject to RCW 62A.4-210 on the security interest of a collecting bank, RCW 62A.5-118 on the security interest of a letter-of-credit issuer or nominated person, RCW 62A.9A-110 on a security interest arising under Article 2 or 2A, and RCW 62A.9A-206 on security interests in investment property.

(d) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

- (1) The security agreement becomes effective to create a security interest in the person's property; or
- (2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

- (1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the

new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) **Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by RCW 62A.9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **Commodity contracts carried in commodity account.** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account. [2000 c 250 § 9A-203.]

62A.9A-204 After-acquired property; future advances. (a) **After-acquired collateral.** Except as otherwise provided in subsection (b) of this section, a security agreement may create or provide for a security interest in after-acquired collateral.

(b) **When after-acquired property clause not effective.** A security interest does not attach, under a term constituting an after-acquired property clause, to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

(2) A commercial tort claim.

(c) **Future advances and other value.** A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment. [2000 c 250 § 9A-204.]

62A.9A-205 Use or disposition of collateral permissible. (a) **When security interest not invalid or fraudulent.** A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

(A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) Collect, compromise, enforce, or otherwise deal with collateral;

(C) Accept the return of collateral or make repossessions; or

(D) Use, commingle, or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) **Requirements of possession not relaxed.** This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest

depends upon possession of the collateral by the secured party. [2000 c 250 § 9A-205.]

62A.9A-206 Security interest arising in purchase or delivery of financial asset. (a) **Security interest when person buys through securities intermediary.** A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) **Security interest secures obligation to pay for financial asset.** The security interest described in subsection (a) of this section secures the person's obligation to pay for the financial asset.

(c) **Security interest in payment against delivery transaction.** A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

(A) In the ordinary course of business, is transferred by delivery with any necessary indorsement or assignment; and

(B) Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) **Security interest secures obligation to pay for delivery.** The security interest described in subsection (c) of this section secures the obligation to make payment for the delivery. [2000 c 250 § 9A-206.]

62A.9A-207 Rights and duties of secured party having possession or control of collateral. (a) **Duty of care when secured party in possession.** Except as otherwise provided in subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) **Expenses, risks, duties, and rights when secured party in possession.** Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) **Duties and rights when secured party in possession or control.** Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) **Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply. [2000 c 250 § 9A-207.]

62A.9A-208 Additional duties of secured party having control of collateral. (a) **Applicability of section.** This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under RCW 62A.9A-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under RCW 62A.9A-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under RCW 62A.9A-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under RCW 62A.8-106(4)(b) or 62A.9A-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter-of-credit right under RCW 62A.9A-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party. [2001 c 32 § 21; 2000 c 250 § 9A-208.]

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

62A.9A-209 Duties of secured party if account debtor has been notified of assignment. (a) **Applicability of section.** Except as otherwise provided in subsection (c) of this section, this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under RCW 62A.9A-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) **Inapplicability to sales.** This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible. [2000 c 250 § 9A-209.]

62A.9A-210 Request for accounting; request regarding list of collateral or statement of account. (a) **Definitions.** In this section:

(1) "Request" means a record of a type described in (2), (3), or (4) of this subsection.

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor

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believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) **Duty to respond to requests.** Subject to subsections (c), (d), (e), and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) **Request regarding list of collateral; statement concerning type of collateral.** A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

(d) **Request regarding list of collateral; no interest claimed.** A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of, or successor to, the recipient's interest in the collateral.

(e) **Request for accounting or regarding statement of account; no interest in obligation claimed.** A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of, or successor to, the recipient's interest in the obligations.

(f) **Charges for responses.** A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response. [2000 c 250 § 9A-210.]

PART 3 PERFECTION AND PRIORITY

62A.9A-301 Law governing perfection and priority of security interests. Except as otherwise provided in RCW 62A.9A-303 through 62A.9A-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that juris-

diction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4) of this section, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral. [2001 c 32 § 22; 2000 c 250 § 9A-301.]

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

62A.9A-302 Law governing perfection and priority of agricultural liens. While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products. [2000 c 250 § 9A-302.]

62A.9A-303 Law governing perfection and priority of security interests in goods covered by a certificate of title. (a) **Applicability of section.** This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) **When goods covered by certificate of title.** Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) **Applicable law.** The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title. [2000 c 250 § 9A-303.]

62A.9A-304 Law governing perfection and priority of security interests in deposit accounts. (a) **Law of bank's jurisdiction governs.** The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) **Bank's jurisdiction.** The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this Article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither (1) nor (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If (1) through (3) of this subsection do not apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If (1) through (4) of this subsection do not apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located. [2000 c 250 § 9A-304.]

62A.9A-305 Law governing perfection and priority of security interests in investment property. (a) **Governing law: General rules.** Except as otherwise provided in subsection (c) of this section, the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in RCW 62A.8-110(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in RCW 62A.8-110(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) **Commodity intermediary's jurisdiction.** The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this Article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither (1) nor (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If (1) through (3) of this subsection do not apply, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If (1) through (4) of this subsection do not apply, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) When perfection governed by law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary. [2001 c 32 § 23; 2000 c 250 § 9A-305.]

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

62A.9A-306 Law governing perfection and priority of security interests in letter-of-credit rights. (a) **Governing law: Issuer's or nominated person's jurisdiction.** Subject to subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) **Issuer's or nominated person's jurisdiction.** For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in RCW 62A.5-116.

(c) **When section not applicable.** This section does not apply to a security interest that is perfected only under RCW 62A.9A-308(d). [2001 c 32 § 24; 2000 c 250 § 9A-306.]

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

62A.9A-307 Location of debtor. (a) **"Place of business."** In this section, "place of business" means a place where a debtor conducts its affairs.

(b) **Debtor's location: General rules.** Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) **Limitation of applicability of subsection (b).** Subsection (b) of this section applies only if a debtor's residence,

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place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this section does not apply, the debtor is located in the District of Columbia.

(d) **Continuation of location: Cessation of existence, etc.** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) **Location of registered organization organized under state law.** A registered organization that is organized under the law of a state is located in that state.

(f) **Location of registered organization organized under federal law; bank branches and agencies.** Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) In the District of Columbia, if neither (1) nor (2) of this subsection applies.

(g) **Continuation of location: Change in status of registered organization.** A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this section notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) **Location of United States.** The United States is located in the District of Columbia.

(i) **Location of foreign bank branch or agency if licensed in only one state.** A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) **Location of foreign air carrier.** A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) **Section applies only to this part.** This section applies only for purposes of this part. [2000 c 250 § 9A-307.]

62A.9A-308 When security interest or agricultural lien is perfected; continuity of perfection. (a) **Perfection of security interest.** Except as otherwise provided in this section and RCW 62A.9A-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in RCW 62A.9A-310 through 62A.9A-316

have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) **Perfection of agricultural lien.** An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in RCW 62A.9A-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) **Continuous perfection; perfection by different methods.** A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Article and is later perfected by another method under this Article, without an intermediate period when it was unperfected.

(d) **Supporting obligation.** Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) **Lien securing right to payment.** Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) **Security entitlement carried in securities account.** Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) **Commodity contract carried in commodity account.** Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account. [2000 c 250 § 9A-308.]

62A.9A-309 Security interest perfected upon attachment. The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in RCW 62A.9A-311(b) with respect to consumer goods that are subject to a statute or treaty described in RCW 62A.9A-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer more than fifty thousand dollars, or ten percent of the total amount of the assignor's outstanding accounts and payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under RCW 62A.4-210;

(8) A security interest of an issuer or nominated person arising under RCW 62A.5-118;

(9) A security interest arising in the delivery of a financial asset under RCW 62A.9A-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate. [2000 c 250 § 9A-309.]

62A.9A-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply. (a)

General rule: Perfection by filing. Except as otherwise provided in subsections (b) and (d) of this section and RCW 62A.9A-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: Filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under RCW 62A.9A-308 (d), (e), (f), or (g);

(2) That is perfected under RCW 62A.9A-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in RCW 62A.9A-311(a);

(4) In goods in possession of a bailee which is perfected under RCW 62A.9A-312(d) (1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under RCW 62A.9A-312 (e), (f), or (g);

(6) In collateral in the secured party's possession under RCW 62A.9A-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under RCW 62A.9A-313;

(8) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under RCW 62A.9A-314;

(9) In proceeds which is perfected under RCW 62A.9A-315; or

(10) That is perfected under RCW 62A.9A-316.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(d) **Further exception: Filing not necessary for handler's lien.** The filing of a financing statement is not necessary to perfect the agricultural lien of a handler on orchard crops as provided in RCW 60.11.020(3). [2000 c 250 § 9A-310.]

62A.9A-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties. (a)

Security interest subject to other law. Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining prior-

ity over the rights of a lien creditor with respect to the property preempt RCW 62A.9A-310(a);

(2) RCW 46.12.095 or 88.02.070, or chapter 65.12 RCW; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection (d) of this section, RCW 62A.9A-313, and 62A.9A-316 (d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) of this section and RCW 62A.9A-316 (d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to RCW 46.12.095 or 88.02.070, or chapter 65.12 RCW is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person. [2001 c 32 § 25; 2000 c 250 § 9A-311.]

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

62A.9A-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession. (a) **Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) **Control or possession of certain collateral.** Except as otherwise provided in RCW 62A.9A-315 (c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under RCW 62A.9A-314;

(2) And except as otherwise provided in RCW 62A.9A-308(d), a security interest in a letter-of-credit right may be perfected only by control under RCW 62A.9A-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under RCW 62A.9A-313.

(c) **Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) **Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) **Temporary perfection: New value.** A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) **Temporary perfection: Goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) **Temporary perfection: Delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) **Expiration of temporary perfection.** After the twenty-day period specified in subsection (e), (f), or (g) of this section expires, perfection depends upon compliance with this Article. [2000 c 250 § 9A-312.]

62A.9A-313 When possession by or delivery to secured party perfects security interest without filing. (a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under RCW 62A.8-301.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by

taking possession of the goods only in the circumstances described in RCW 62A.9A-316(d).

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under RCW 62A.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or RCW 62A.8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) **Effect of delivery under subsection (h); no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides. [2001 c 32 § 26; 2000 c 250 § 9A-313.]

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

62A.9A-314 Perfection by control. (a) **Perfection by control.** A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107.

(b) **Specified collateral: Time of perfection by control; continuation of perfection.** A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under RCW 62A.9A-104, 62A.9A-105, or 62A.9A-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) **Investment property: Time of perfection by control; continuation of perfection.** A security interest in investment property is perfected by control under RCW 62A.9A-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder. [2000 c 250 § 9A-314.]

62A.9A-315 Secured party's rights on disposition of collateral and in proceeds. (a) **Disposition of collateral: Continuation of security interest or agricultural lien; proceeds.** Except as otherwise provided in this Article and in RCW 62A.2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) **When commingled proceeds identifiable.** Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by RCW 62A.9A-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Article with respect to commingled property of the type involved.

(c) **Perfection of security interest in proceeds.** A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) **Continuation of perfection.** A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) A filed financing statement covers the original collateral;

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) of this section when the security interest attaches to the proceeds or within twenty days thereafter.

(e) **When perfected security interest in proceeds becomes unperfected.** If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) of this section becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under RCW 62A.9A-515 or is terminated under RCW 62A.9A-513; or

(2) The twenty-first day after the security interest attaches to the proceeds. [2000 c 250 § 9A-315.]

62A.9A-316 Continued perfection of security interest following change in governing law. (a) **General rule: Effect on perfection of change in governing law.** A security interest perfected pursuant to the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in subsection (a) of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **Goods covered by certificate of title from this state.** Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) **When subsection (d) security interest becomes unperfected against purchasers.** A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under RCW 62A.9A-311(b) or 62A.9A-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four months after the goods had become so covered.

(f) **Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) **Subsection (f) of this section security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in subsection (f) of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value. [2000 c 250 § 9A-316.]

62A.9A-317 Interests that take priority over or take free of security interest or agricultural lien. (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under RCW 62A.9A-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in RCW 62A.9A-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing. [2001 c 32 § 27; 2000 c 250 § 9A-317.]

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

62A.9A-318 No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers. (a) **Seller retains no interest.** A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) **Deemed rights of debtor if buyer's security interest unperfected.** For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold. [2000 c 250 § 9A-318.]

62A.9A-319 Rights and title of consignee with respect to creditors and purchasers. (a) **Consignee has consignor's rights.** Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) **Applicability of other law.** For purposes of determining the rights of a creditor of a consignee, law other than this Article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor. [2000 c 250 § 9A-319.]

62A.9A-320 Buyer of goods. (a) **Buyer in ordinary course of business.** Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security inter-

est created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) **Buyer of consumer goods.** Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) Without knowledge of the security interest;
- (2) For value;
- (3) Primarily for the buyer's personal, family, or household purposes; and
- (4) Before the filing of a financing statement covering the goods.

(c) **Effectiveness of filing for subsection (b) of this section.** To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by RCW 62A.9A-316 (a) and (b).

(d) **Buyer in ordinary course of business at wellhead or minehead.** A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) **Possessory security interest not affected.** Subsections (a) and (b) of this section do not affect a security interest in goods in the possession of the secured party under RCW 62A.9A-313. [2000 c 250 § 9A-320.]

62A.9A-321 Licensee of general intangible and lessee of goods in ordinary course of business. (a) **"Licensee in ordinary course of business."** In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) **Rights of licensee in ordinary course of business.** A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) **Rights of lessee in ordinary course of business.** A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence. [2000 c 250 § 9A-321.]

62A.9A-322 Priorities among conflicting security interests in and agricultural liens on same collateral. (a) **General priority rules.** Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) **Time of perfection: Proceeds and supporting obligations.** For the purposes of subsection (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) **Special priority rules: Proceeds and supporting obligations.** Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under RCW 62A.9A-327, 62A.9A-328, 62A.9A-329, 62A.9A-330, or 62A.9A-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;

(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) **First-to-file priority rule for certain collateral.** Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) **Applicability of subsection (d) of this section.** Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) **Limitations on subsections (a) through (e) of this section.** Subsections (a) through (e) of this section are subject to:

(1) Subsection (g) of this section and the other provisions of this part;

(2) RCW 62A.4-210 with respect to a security interest of a collecting bank;

(3) RCW 62A.5-118 with respect to a security interest of an issuer or nominated person; and

(4) RCW 62A.9A-110 with respect to a security interest arising under Article 2 or 2A.

(g) **Priority under agricultural lien statute.** A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides. Conflicts as to priority between and among security interests in crops and agricultural liens subject to chapter 60.11 RCW are governed by the provisions of that chapter. [2001 c 32 § 28; 2000 c 250 § 9A-322.]

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

62A.9A-323 Future advances. (a) **When priority based on time of advance.** Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under RCW 62A.9A-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

(A) Under RCW 62A.9A-309 when it attaches; or

(B) Temporarily under RCW 62A.9A-312 (e), (f), or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under RCW 62A.9A-309 or 62A.9A-312 (e), (f), or (g).

(b) **Lien creditor.** Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) **Buyer of receivables.** Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) **Buyer of goods.** Except as otherwise provided in subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) Forty-five days after the purchase.

(e) **Advances made pursuant to commitment: Priority of buyer of goods.** Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five day period.

(f) **Lessee of goods.** Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) Forty-five days after the lease contract becomes enforceable.

(g) **Advances made pursuant to commitment: Priority of lessee of goods.** Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five day period. [2000 c 250 § 9A-323.]

62A.9A-324 Priority of purchase-money security interests. (a) **General rule: Purchase-money priority.** Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in RCW 62A.9A-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) **Inventory purchase-money priority.** Subject to subsection (c) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in RCW 62A.9A-330, and, except as otherwise provided in RCW 62A.9A-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) **Holders of conflicting inventory security interests to be notified.** Subsections (b)(2) through (4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under RCW 62A.9A-312(f), before the beginning of the twenty-day period thereunder.

(d) **Livestock purchase-money priority.** Subject to subsection (e) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in RCW 62A.9A-327, a perfected security interest in their identifiable

proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) **Holders of conflicting livestock security interests to be notified.** Subsections (d)(2) through (4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under RCW 62A.9A-312(f), before the beginning of the twenty-day period thereunder.

(f) **Software purchase-money priority.** Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in RCW 62A.9A-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) **Conflicting purchase-money security interests.** If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f) of this section:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, RCW 62A.9A-322(a) applies to the qualifying security interests. [2000 c 250 § 9A-324.]

62A.9A-325 Priority of security interests in transferred collateral. (a) **Subordination of security interest in transferred collateral.** Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) **Limitation of subsection (a) of this section subordination.** Subsection (a) of this section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under RCW 62A.9A-322(a) or 62A.9A-324; or

(2) Arose solely under RCW 62A.2-711(3) or 62A.2A-508(5). [2000 c 250 § 9A-325.]

62A.9A-326 Priority of security interests created by new debtor. (a) **Subordination of security interest created by new debtor.** Subject to subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under RCW 62A.9A-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under RCW 62A.9A-508.

(b) **Priority under other provisions; multiple original debtors.** The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under RCW 62A.9A-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound. [2000 c 250 § 9A-326.]

62A.9A-327 Priority of security interests in deposit account. The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under RCW 62A.9A-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in [subsections] (3) and (4) of this section, security interests perfected by control under RCW 62A.9A-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in [subsection] (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under RCW 62A.9A-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained. [2000 c 250 § 9A-327.]

62A.9A-328 Priority of security interests in investment property. The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under RCW 62A.9A-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under RCW 62A.9A-106 rank according to priority in time of:

(a) If the collateral is a security, obtaining control;

(b) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under RCW 62A.8-106(4)(a), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under RCW 62A.8-106(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under RCW 62A.8-106(4)(c), the time on which priority would be based under this paragraph if the other person were the secured party; or

(c) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in RCW 62A.9A-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under RCW 62A.9A-313(a) and not by control under RCW 62A.9A-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under RCW 62A.9A-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by RCW 62A.9A-322 and 62A.9A-323. [2001 c 32 § 29; 2000 c 250 § 9A-328.]

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

62A.9A-329 Priority of security interests in letter-of-credit right. The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under RCW 62A.9A-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under RCW 62A.9A-314 rank according to priority in time of obtaining control. [2000 c 250 § 9A-329.]

62A.9A-330 Priority of purchaser of chattel paper or instrument. (a) **Purchaser's priority: Security interest claimed merely as proceeds.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under RCW 62A.9A-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) **Purchaser's priority: Other security interests.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under RCW 62A.9A-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) **Chattel paper purchaser's priority in proceeds.** Except as otherwise provided in RCW 62A.9A-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:

(1) RCW 62A.9A-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) **Instrument purchaser's priority.** Except as otherwise provided in RCW 62A.9A-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) **Holder of purchase-money security interest gives new value.** For purposes of subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) **Indication of assignment gives knowledge.** For purposes of subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party. [2000 c 250 § 9A-330.]

62A.9A-331 Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8. (a) **Rights under Articles 3, 7, and 8 not limited.** This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

(b) **Protection under Article 8.** This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8.

(c) **Filing not notice.** Filing under this Article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section. [2001 c 32 § 30; 2000 c 250 § 9A-331.]

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

62A.9A-332 Transfer of money; transfer of funds from deposit account. (a) **Transferee of money.** A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) **Transferee of funds from deposit account.** A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party. [2000 c 250 § 9A-332.]

62A.9A-333 Priority of certain liens arising by operation of law. (a) **"Possessory lien."** In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) **Priority of possessory lien.** A possessory lien on goods has priority over a security interest in the goods only if the lien is created by a statute that expressly so provides.

(c) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest. [2001 c 32 § 31; 2000 c 250 § 9A-333.]

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

62A.9A-334 Priority of security interests in fixtures and crops. (a) **Security interest in fixtures under this Article.** A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

(b) **Security interest in fixtures under real-property law.** This Article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) **General rule: Subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h) of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in, or is in possession of, the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use in the operation of the real property; or

(C) Replacements of domestic appliances that are consumer goods; or

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.

(f) **Priority based on consent, disclaimer, or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) **Continuation of subsection (f)(2) priority.** The priority of the security interest under subsection (f)(2) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) **Priority of construction mortgage.** A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) **Priority of security interest in crops.** A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

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(j) **Subsection (i) prevails.** Subsection (i) of this section prevails over inconsistent provisions of any other statute except RCW 60.11.050. [2001 c 32 § 32; 2000 c 250 § 9A-334.]

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

62A.9A-335 Accessions. (a) **Creation of security interest in accession.** A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) **Perfection of security interest.** If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) **Priority of security interest.** Except as otherwise provided in subsection (d) of this section, the other provisions of this part determine the priority of a security interest in an accession.

(d) **Compliance with certificate-of-title statute.** A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under RCW 62A.9A-311(b).

(e) **Removal of accession after default.** After default, subject to Part 6 of this Article, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) **Reimbursement following removal.** A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. [2000 c 250 § 9A-335.]

62A.9A-336 Commingled goods. (a) **"Commingled goods."** In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) **No security interest in commingled goods as such.** A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) **Attachment of security interest to product or mass.** If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) **Perfection of security interest.** If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) **Priority of security interest.** Except as otherwise provided in subsection (f) of this section, the other provisions of this part determine the priority of a security interest that

attaches to the product or mass under subsection (c) of this section.

(f) **Conflicting security interests in product or mass.** If more than one security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) of this section has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods. [2001 c 32 § 33; 2000 c 250 § 9A-336.]

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

62A.9A-337 Priority of security interests in goods covered by certificate of title. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under RCW 62A.9A-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest. [2000 c 250 § 9A-337.]

62A.9A-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral. [2000 c 250 § 9A-338.]

62A.9A-339 Priority subject to subordination. This Article does not preclude subordination by agreement by a person entitled to priority. [2000 c 250 § 9A-339.]

62A.9A-340 Effectiveness of right of recoupment or set-off against deposit account. (a) **Exercise of recoup-**

ment or set-off. Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) **Recoupment or set-off not affected by security interest.** Except as otherwise provided in subsection (c) of this section, the application of this Article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) **When set-off ineffective.** The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under RCW 62A.9A-104(a)(3), if the set-off is based on a claim against the debtor. [2000 c 250 § 9A-340.]

62A.9A-341 Bank's rights and duties with respect to deposit account. Except as otherwise provided in RCW 62A.9A-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party. [2000 c 250 § 9A-341.]

62A.9A-342 Bank's right to refuse to enter into or disclose existence of control agreement. This Article does not require a bank to enter into an agreement of the kind described in RCW 62A.9A-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer. [2000 c 250 § 9A-342.]

PART 4 RIGHTS OF THIRD PARTIES

62A.9A-401 Alienability of debtor's rights. (a) **Other law governs alienability; exceptions.** Except as otherwise provided in subsection (b) of this section and RCW 62A.9A-406, 62A.9A-407, 62A.9A-408, and 62A.9A-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Article.

(b) **Agreement does not prevent transfer.** An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect. [2000 c 250 § 9A-401.]

62A.9A-402 Secured party not obligated on contract of debtor or in tort. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured

party to liability in contract or tort for the debtor's acts or omissions. [2000 c 250 § 9A-402.]

62A.9A-403 Agreement not to assert defenses against assignee. (a) "**Value.**" In this section, "value" has the meaning provided in RCW 62A.3-303(a).

(b) **Agreement not to assert claim or defense.** Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- (1) For value;
- (2) In good faith;
- (3) Without notice of a claim of a property or possessory right to the property assigned; and
- (4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under RCW 62A.3-305(a).

(c) **When subsection (b) of this section not applicable.** Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under RCW 62A.3-305(b).

(d) **Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

- (1) The record has the same effect as if the record included such a statement; and
- (2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) **Other law not displaced.** Except as otherwise provided in subsection (d) of this section, this section does not displace law other than this Article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee. [2000 c 250 § 9A-403.]

62A.9A-404 Rights acquired by assignee; claims and defenses against assignee. (a) **Assignee's rights subject to terms, claims, and defenses; exceptions.** Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e) of this section, the rights of an assignee are subject to:

- (1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
- (2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(2008 Ed.)

(b) **Account debtor's claim reduces amount owed to assignee.** Subject to subsection (c) of this section, and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.

(c) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) **Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable. [2000 c 250 § 9A-404.]

62A.9A-405 Modification of assigned contract. (a) **Effect of modification on assignee.** A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d) of this section.

(b) **Applicability of subsection (a) of this section.** Subsection (a) of this section applies to the extent that:

- (1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
- (2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under RCW 62A.9A-406(a).

(c) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable. [2000 c 250 § 9A-405.]

62A.9A-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective. (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (j) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the

assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e) of this section and RCW 62A.2A-303 and 62A.9A-407, and subject to subsections (h) and (j) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) [Reserved]

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j)(1) **Inapplicability of subsection (d) of this section to certain transactions.** After July 1, 2003, subsection (d) of this section does not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW. [2003 c 87 § 1; 2001 c 32 § 34; 2000 c 250 § 9A-406.]

Effective date—2003 c 87: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 87 § 3.]

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

62A.9A-407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest. (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) **Effectiveness of certain terms.** Except as otherwise provided in RCW 62A.2A-303(7), a term described in subsection (a)(2) of this section is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) **Security interest not material impairment.** The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of RCW 62A.2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor. [2001 c 32 § 35; 2000 c 250 § 9A-407.]

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

62A.9A-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective. (a) **Term restricting assignment generally ineffective.** Except as otherwise pro-

vided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) of this section to sales of certain rights to payment.** Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) **Legal restrictions on assignment generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c) of this section.** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(2008 Ed.)

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e)(1) **Inapplicability of subsections (a) and (c) of this section to certain payment intangibles.** After July 1, 2003, subsections (a) and (c) of this section do not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW. [2003 c 87 § 2; 2000 c 250 § 9A-408.]

Effective date—2003 c 87: See note following RCW 62A.9A-406.

62A.9A-409 Restrictions on assignment of letter-of-credit rights ineffective. (a) **Term or law restricting assignment generally ineffective.** A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) **Limitation on ineffectiveness under subsection (a) of this section.** To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this Article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept

payment or other performance from the secured party. [2000 c 250 § 9A-409.]

PART 5
FILING

62A.9A-501 Filing office. (a) **Filing offices.** Except as otherwise provided in subsection (b) of this section, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The department of licensing, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) **Filing office for transmitting utilities.** The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the department of licensing. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures. [2000 c 250 § 9A-501.]

62A.9A-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement. (a) **Sufficiency of financing statement.** Subject to subsection (b) of this section, a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) **Real-property-related financing statements.** Except as otherwise provided in RCW 62A.9A-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed for record in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) **Record of mortgage as financing statement.** A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financ-

ing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) The record is recorded.

(d) **Filing before security agreement or attachment.** A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. [2000 c 250 § 9A-502.]

62A.9A-503 Name of debtor and secured party. (a) **Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:

(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) In other cases:

(A) If the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) **Additional debtor-related information.** A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(4)(B) of this section, names of partners, members, associates, or other persons comprising the debtor.

(c) **Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) **Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) **Multiple debtors and secured parties.** A financing statement may provide the name of more than one debtor and

the name of more than one secured party. [2000 c 250 § 9A-503.]

62A.9A-504 Indication of collateral. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to RCW 62A.9A-108; or

(2) An indication that the financing statement covers all assets or all personal property. [2000 c 250 § 9A-504.]

62A.9A-505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions. (a) **Use of terms other than "debtor" and "secured party."** A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in RCW 62A.9A-311(a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor."

(b) **Effect of financing statement under subsection (a) of this section.** This part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under RCW 62A.9A-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance. [2000 c 250 § 9A-505.]

62A.9A-506 Effect of errors or omissions. (a) **Minor errors and omissions.** A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) **Financing statement seriously misleading.** Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with RCW 62A.9A-503(a) is seriously misleading.

(c) **Financing statement not seriously misleading.** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with RCW 62A.9A-503(a), the name provided does not make the financing statement seriously misleading.

(d) **"Debtor's correct name."** For purposes of RCW 62A.9A-508(b), the "debtor's correct name" in subsection (c) of this section means the correct name of the new debtor. [2000 c 250 § 9A-506.]

62A.9A-507 Effect of certain events on effectiveness of financing statement. (a) **Disposition.** A filed financing statement remains effective with respect to collateral that is

sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) **Information becoming seriously misleading.** Except as otherwise provided in subsection (c) of this section and RCW 62A.9A-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under RCW 62A.9A-506.

(c) **Change in debtor's name.** If a debtor so changes its name that a filed financing statement becomes seriously misleading under RCW 62A.9A-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change. [2000 c 250 § 9A-507.]

62A.9A-508 Effectiveness of financing statement if new debtor becomes bound by security agreement. (a) **Financing statement naming original debtor.** Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) **Financing statement becoming seriously misleading.** If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under RCW 62A.9A-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under RCW 62A.9A-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under RCW 62A.9A-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) **When section not applicable.** This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under RCW 62A.9A-507(a). [2000 c 250 § 9A-508.]

62A.9A-509 Persons entitled to file a record. (a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under RCW 62A.9A-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under RCW 62A.9A-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under RCW 62A.9A-315(a)(2).

(d) **Person entitled to file certain amendments.** A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by RCW 62A.9A-513 (a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) **Multiple secured parties of record.** If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section. [2001 c 32 § 36; 2000 c 250 § 9A-509.]

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

62A.9A-510 Effectiveness of filed record. (a) **Filed record effective if authorized.** A filed record is effective only to the extent that it was filed by a person that may file it under RCW 62A.9A-509.

(b) **Authorization by one secured party of record.** A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) **Continuation statement not timely filed.** A continuation statement that is not filed within the six-month period prescribed by RCW 62A.9A-515(d) is ineffective. [2000 c 250 § 9A-510.]

62A.9A-511 Secured party of record. (a) **Secured party of record.** A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under RCW 62A.9A-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) **Amendment naming secured party of record.** If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under RCW 62A.9A-514(b), the assignee named in the amendment is a secured party of record.

(c) **Amendment deleting secured party of record.** A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person. [2000 c 250 § 9A-511.]

62A.9A-512 Amendment of financing statement. (a) **Amendment of information in financing statement.** Subject to RCW 62A.9A-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in RCW 62A.9A-501(a)(1), provides the information specified in RCW 62A.9A-502(b).

(b) **Period of effectiveness not affected.** Except as otherwise provided in RCW 62A.9A-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) **Effectiveness of amendment adding collateral.** A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) **Effectiveness of amendment adding debtor.** A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) **Certain amendments ineffective.** An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record. [2000 c 250 § 9A-512.]

62A.9A-513 Termination statement. (a) **Consumer goods.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) **Time for compliance with subsection (a) of this section.** To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

(c) **Other collateral.** In cases not governed by subsection (a) of this section, within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) **Effect of filing termination statement.** Except as otherwise provided in RCW 62A.9A-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in RCW 62A.9A-510, for purposes of RCW 62A.9A-519(g), 62A.9A-522(a), and 62A.9A-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse. [2001 c 32 § 37; 2000 c 250 § 9A-513.]

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

62A.9A-514 Assignment of powers of secured party of record. (a) **Assignment reflected on initial financing statement.** Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) **Assignment of filed financing statement.** Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(2008 Ed.)

(c) **Assignment of record of mortgage.** An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under RCW 62A.9A-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than the Uniform Commercial Code. [2000 c 250 § 9A-514.]

62A.9A-515 Duration and effectiveness of financing statement; effect of lapsed financing statement. (a) **Five-year effectiveness.** Except as otherwise provided in subsections (b), (e), (f), and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) [Reserved]

(c) **Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **When continuation statement may be filed.** A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the thirty-year period specified in subsection (b) of this section, whichever is applicable.

(e) **Effect of filing continuation statement.** Except as otherwise provided in RCW 62A.9A-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) **Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) **Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under RCW 62A.9A-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property. [2000 c 250 § 9A-515.]

62A.9A-516 What constitutes filing; effectiveness of filing. (a) **What constitutes filing.** Except as otherwise provided in subsection (b) of this section, communication of a

record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered or, in the case of a filing office described in RCW 62A.9A-501(a)(1), an amount equal to the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or correction statement, the record:

(i) Does not identify the initial financing statement as required by RCW 62A.9A-512 or 62A.9A-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under RCW 62A.9A-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) In the case of a record filed or recorded in the filing office described in RCW 62A.9A-501(a)(1), the record does not provide a name for the debtor or a sufficient description of the real property to which the record relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the debtor is an individual or an organization; or

(C) If the financing statement indicates that the debtor is an organization, provide:

(i) A type of organization for the debtor;

(ii) A jurisdiction of organization for the debtor; or

(iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under RCW 62A.9A-514(a) or an amendment filed under RCW 62A.9A-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by RCW 62A.9A-515(d).

(c) **Rules applicable to subsection (b) of this section.** For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by RCW 62A.9A-512, 62A.9A-514, or 62A.9A-518, is an initial financing statement.

(d) **Refusal to accept record; record effective as filed record.** A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files. [2001 c 32 § 38; 2000 c 250 § 9A-516.]

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

62A.9A-517 Effect of indexing errors. The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record. [2000 c 250 § 9A-517.]

62A.9A-518 Claim concerning inaccurate or wrongfully filed record. (a) **Correction statement.** A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) **Sufficiency of correction statement.** A correction statement must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) **Record not affected by correction statement.** The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record. [2000 c 250 § 9A-518.]

62A.9A-519 Numbering, maintaining, and indexing records; communicating information provided in records. (a) **Filing office duties.** For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d), and (e) of this section.

(b) **File number.** A file number assigned after January 1, 2002, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) **Indexing: General.** Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the

initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) **Indexing: Real-property-related financing statement.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) **Indexing: Real-property-related assignment.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under RCW 62A.9A-514(a) or an amendment filed under RCW 62A.9A-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) **Retrieval and association capability.** The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) **Removal of debtor's name.** The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under RCW 62A.9A-515 with respect to all secured parties of record.

(h) **Timeliness of filing office performance.** The filing office shall perform the acts required by subsections (a) through (e) of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

(i) **Inapplicability to real-property-related filing office.** Subsections (b) and (h) of this section do not apply to a filing office described in RCW 62A.9A-501(a)(1). [2000 c 250 § 9A-519.]

62A.9A-520 Acceptance and refusal to accept record.

(a) **Mandatory refusal to accept record.** The filing office described in RCW 62A.9A-501(a)(2) shall refuse to accept a record for filing for a reason set forth in RCW 62A.9A-516(b). A filing office described in RCW 62A.9A-501(a)(1) shall refuse to accept a record for filing for a reason set forth in RCW 62A.9A-516(b) (1) through (4) and any filing office may refuse to accept a record for filing only for a reason set forth in RCW 62A.9A-516(b).

(b) **Communication concerning refusal.** If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in RCW 62A.9A-501(a)(2), in no event more than two business days after the filing office receives the record.

(c) **When filed financing statement effective.** A filed financing statement satisfying RCW 62A.9A-502 (a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a) of this section. However, RCW 62A.9A-338 applies to a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) **Separate application to multiple debtors.** If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately. [2001 c 32 § 39; 2000 c 250 § 9A-520.]

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

62A.9A-521 Uniform form of written financing statement and amendment. (a) **Initial financing statement form.** A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in RCW 62A.9A-516(b):

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID #: ADD'L INFO RE 1e. TYPE OF 1f. JURISDICTION OF 1g. ORGANIZATIONAL
SSN OR EIN ORGANIZATION ORGANIZATION ORGANIZATION ID #, If any

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names
2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: ADD'L INFO RE 2e. TYPE OF 2f. JURISDICTION OF 2g. ORGANIZATIONAL
SSN OR EIN ORGANIZATION ORGANIZATION ORGANIZATION ID #, If any

☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)
3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR
☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2
[Additional Fee] [optional]

8. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names
11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11d. TAX ID #: ADD'L INFO RE 11e. TYPE OF 11f. JURISDICTION OF 11g. ORGANIZATIONAL
SSN OR EIN ORGANIZATION ORGANIZATION ORGANIZATION ID #, If any

☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)
12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or 16. Additional collateral description:
☐ as-extracted collateral, or is filed as a ☐ fixture filing.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.
- 9a. ORGANIZATION'S NAME
- OR
- 9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX
10. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 07/29/98)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE #
(same as item 1a on Amendment form)
12. NAME OF PARTY AUTHORIZING THIS AMENDMENT
(same as item 9 on Amendment form)
- 12a. ORGANIZATION'S NAME
- OR
- 12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX
13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

NATIONAL UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC3Ad) (REV. 07/29/98)

[2000 c 250 § 9A-521.]

62A.9A-522 Maintenance and destruction of records.

(a) **Post-lapse maintenance and retrieval of information.** The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under RCW 62A.9A-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) **Destruction of written records.** Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this section. [2000 c 250 § 9A-522.]

62A.9A-523 Information from filing office; sale or license of records. (a) **Acknowledgment of filing written record.** If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to RCW 62A.9A-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to RCW 62A.9A-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) **Acknowledgment of filing other record.** If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to RCW 62A.9A-519(a)(1); and

(3) The date and time of the filing of the record.

(c) **Communication of requested information.** The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) Designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(B) Has not lapsed under RCW 62A.9A-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under RCW 62A.9A-515 and a record of which is maintained by the filing office under RCW 62A.9A-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) **Medium for communicating information.** In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(e) **Timeliness of filing office performance.** The filing office described in RCW 62A.9A-501(a)(2) shall perform the acts required by subsections (a) through (d) of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) **Public availability of records.** At least weekly, the filing office described in RCW 62A.9A-501(a)(2) shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office. If information provided pursuant to this section includes a list of individuals, disclosure of the list is specifically authorized. [2001 c 32 § 40; 2000 c 250 § 9A-523.]

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

62A.9A-524 Delay by filing office. Delay by the filing office beyond a time limit prescribed by this part is excused if:

- (1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and
- (2) The filing office exercises reasonable diligence under the circumstances. [2000 c 250 § 9A-524.]

62A.9A-525 Fees. (Expires July 1, 2015.) (a) **Filing with department of licensing.** Except as otherwise provided in subsection (b) or (e) of this section, the fee for filing and indexing a record under this part is the fee set by department of licensing rule pursuant to subsection (f) of this section. Without limitation, different fees may be charged for:

- (1) A record that is communicated in writing and consists of one or two pages;
- (2) A record that is communicated in writing and consists of more than two pages, which fee may be a multiple of the fee described in (1) of this subsection; and
- (3) A record that is communicated by another medium authorized by department of licensing rule, which fee may be a fraction of the fee described in (1) of this subsection.

(b) **Filing with other filing offices.** Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part that is filed in a filing office described in RCW 62A.9A-501(a)(1) is the fee that would otherwise be applicable to the recording of a mortgage in that filing office, as set forth in RCW 36.18.010.

(c) **Number of names.** The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) **Response to information request.** The fee for responding to a request for information from a filing office, including for issuing a certificate showing, or otherwise communicating, whether there is on file any financing statement naming a particular debtor, is the fee set by department of licensing rule pursuant to subsection (f) of this section; provided however, if the request is to a filing office described in RCW 62A.9A-501(a)(1) and that office charges a different fee, then that different fee shall apply instead. Without limitation, different fees may be charged:

- (1) If the request is communicated in writing;
- (2) If the request is communicated by another medium authorized by filing-office rule; and
- (3) If the request is for expedited service.

(e) **Record of mortgage.** This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financ-

ing statement covering as-extracted collateral or timber to be cut under RCW 62A.9A-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) **Filing office rules.** (1) The department of licensing shall by rule set the fees called for in this section for filing with, and obtaining information from, the department of licensing. The director shall set fees at a sufficient level to defray the costs of administering the program. All receipts from fees collected under this title, except fees for services covered under RCW 62A.9A-501(a)(1), shall be deposited to the uniform commercial code fund in the state treasury. Moneys in the fund may be spent only after appropriation and may be used only to administer the uniform commercial code program.

(2) In addition to fees on filings authorized under this section, the department of licensing shall impose a surcharge of eight dollars per filing for paper filings and a surcharge of three dollars per filing for electronic filings. The department shall deposit the proceeds from these surcharges in the financial fraud and identity theft crimes investigation and prosecution account created in RCW 43.330.300.

(g) **Transition.** This section continues the fee-setting authority conferred on the department of licensing by former *RCW 62A.9-409 and nothing herein shall invalidate fees set by the department of licensing under the authority of former *RCW 62A.9-409. [2008 c 290 § 2; 2000 c 250 § 9A-525.]

*Reviser's note: RCW 62A.9-409 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

Expiration date—2008 c 290: See note following RCW 43.330.300.

62A.9A-525 Fees. (Effective July 1, 2015.) (a) **Filing with department of licensing.** Except as otherwise provided in subsection (b) or (e) of this section, the fee for filing and indexing a record under this part is the fee set by department of licensing rule pursuant to subsection (f) of this section. Without limitation, different fees may be charged for:

- (1) A record that is communicated in writing and consists of one or two pages;
- (2) A record that is communicated in writing and consists of more than two pages, which fee may be a multiple of the fee described in (1) of this subsection; and
- (3) A record that is communicated by another medium authorized by department of licensing rule, which fee may be a fraction of the fee described in (1) of this subsection.

(b) **Filing with other filing offices.** Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part that is filed in a filing office described in RCW 62A.9A-501(a)(1) is the fee that would otherwise be applicable to the recording of a mortgage in that filing office, as set forth in RCW 36.18.010.

(c) **Number of names.** The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) **Response to information request.** The fee for responding to a request for information from a filing office, including for issuing a certificate showing, or otherwise communicating, whether there is on file any financing statement naming a particular debtor, is the fee set by department of licensing rule pursuant to subsection (f) of this section; provided however, if the request is to a filing office described in

RCW 62A.9A-501(a)(1) and that office charges a different fee, then that different fee shall apply instead. Without limitation, different fees may be charged:

- (1) If the request is communicated in writing;
- (2) If the request is communicated by another medium authorized by filing-office rule; and
- (3) If the request is for expedited service.

(e) **Record of mortgage.** This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under RCW 62A.9A-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) **Filing office rules.** The department of licensing shall by rule set the fees called for in this section for filing with, and obtaining information from, the department of licensing. The director shall set fees at a sufficient level to defray the costs of administering the program. All receipts from fees collected under this title, except fees for services covered under RCW 62A.9A-501(a)(1), shall be deposited to the uniform commercial code fund in the state treasury. Moneys in the fund may be spent only after appropriation and may be used only to administer the uniform commercial code program.

(g) **Transition.** This section continues the fee-setting authority conferred on the department of licensing by former *RCW 62A.9-409 and nothing herein shall invalidate fees set by the department of licensing under the authority of former *RCW 62A.9-409. [2000 c 250 § 9A-525.]

*Reviser's note: RCW 62A.9-409 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

62A.9A-526 Filing-office rules. (a) **Adoption of filing-office rules.** The department of licensing shall adopt and publish rules to implement this Article. The filing-office rules must be:

- (1) Consistent with this Article; and
- (2) Adopted and published in accordance with chapter 34.05 RCW.

(b) **Harmonization of rules.** To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the department of licensing, so far as is consistent with the purposes, policies, and provisions of this Article, in adopting, amending, and repealing filing-office rules, shall:

- (1) Consult with filing offices in other jurisdictions that enact substantially this part; and
- (2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and
- (3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part. [2000 c 250 § 9A-526.]

62A.9A-527 Duty to report. The department of licensing shall report annually on or before December 31st to the

governor on the operation of the filing office. [2000 c 250 § 9A-527.]

PART 6 DEFAULT

62A.9A-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes. (a) **Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise provided in RCW 62A.9A-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) **Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 has the rights and duties provided in RCW 62A.9A-207.

(c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) of this section and RCW 62A.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) The date of perfection of the security interest or agricultural lien in the collateral;
- (2) The date of filing a financing statement covering the collateral; or
- (3) Any date specified in a statute under which the agricultural lien was created.

(f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in RCW 62A.9A-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(h) **Enforcement restrictions.** All rights and remedies provided in this part with respect to promissory notes or an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, are subject to RCW 62A.9A-408 to the extent applicable. [2000 c 250 § 9A-601.]

62A.9A-602 Waiver and variance of rights and duties. Except as otherwise provided in RCW 62A.9A-624, to the extent that they give rights to an obligor (other than a

secondary obligor) or a debtor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

- (1) RCW 62A.9A-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;
- (2) RCW 62A.9A-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
- (3) RCW 62A.9A-607(c), which deals with collection and enforcement of collateral;
- (4) RCW 62A.9A-608(a) and 62A.9A-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
- (5) RCW 62A.9A-608(a) and 62A.9A-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) RCW 62A.9A-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
- (7) RCW 62A.9A-610(b), 62A.9A-611, 62A.9A-613, and 62A.9A-614, which deal with disposition of collateral;
- (8) [Reserved]
- (9) RCW 62A.9A-616, which deals with explanation of the calculation of a surplus or deficiency;
- (10) RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622, which deal with acceptance of collateral in satisfaction of obligation;
- (11) RCW 62A.9A-623, which deals with redemption of collateral;
- (12) RCW 62A.9A-624, which deals with permissible waivers; and
- (13) RCW 62A.9A-625 and 62A.9A-626, which deal with the secured party's liability for failure to comply with this Article. [2000 c 250 § 9A-602.]

62A.9A-603 Agreement on standards concerning rights and duties. (a) **Agreed standards.** The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in RCW 62A.9A-602 if the standards are not manifestly unreasonable.

(b) **Agreed standards inapplicable to breach of peace.** Subsection (a) of this section does not apply to the duty under RCW 62A.9A-609 to refrain from breaching the peace. [2000 c 250 § 9A-603.]

62A.9A-604 Procedure if security agreement covers real property, fixtures, or manufactured home. (a) **Enforcement: Personal and real property.** If a security agreement covers both personal and real property, a secured party may proceed:

- (1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or
- (2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) **Enforcement: Fixtures.** Subject to subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

- (1) Under this part; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) **Removal of fixtures or manufactured home.** Subject to the other provisions of this part, if a secured party holding a security interest in fixtures or a manufactured home has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) **Injury caused by removal.** A secured party that removes collateral consisting of fixtures or a manufactured home shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. [2000 c 250 § 9A-604.]

62A.9A-605 Unknown debtor or secondary obligor. A secured party does not owe a duty based on its status as secured party:

- (1) To a person that is a debtor or obligor, unless the secured party knows:
 - (A) That the person is a debtor or obligor;
 - (B) The identity of the person; and
 - (C) How to communicate with the person; or
- (2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (A) That the person is a debtor; and
 - (B) The identity of the person. [2000 c 250 § 9A-605.]

62A.9A-606 Time of default for agricultural lien. For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created. [2000 c 250 § 9A-606.]

62A.9A-607 Collection and enforcement by secured party. (a) **Collection and enforcement generally.** If so agreed, and in any event after default, a secured party:

- (1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
- (2) May take any proceeds to which the secured party is entitled under RCW 62A.9A-315;
- (3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
- (4) If it holds a security interest in a deposit account perfected by control under RCW 62A.9A-104(a)(1), may apply

the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under RCW 62A.9A-104(a) (2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) **Nonjudicial enforcement of mortgage.** If necessary to enable a secured party to exercise, under subsection (a)(3) of this section, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded the secured party's sworn affidavit stating that:

(1) Default has occurred under the security agreement that creates or provides for a security interest in the obligations secured by the mortgage;

(2) A copy of the security agreement is attached to the affidavit; and

(3) The secured party is entitled to enforce the mortgage nonjudicially.

If the secured party's affidavit and attached copy of the security agreement in the form prescribed by chapter 65.04 RCW are presented with the applicable fee to the office in which a record of the mortgage is recorded, the affidavit and attached copy of the security agreement shall be recorded pursuant to RCW 65.04.030(3).

(c) **Commercially reasonable collection and enforcement.** A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) **Expenses of collection and enforcement.** A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorneys' fees and legal expenses incurred by the secured party.

(e) **Duties to secured party not affected.** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party. [2000 c 250 § 9A-607.]

62A.9A-608 Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

(a) **Application of proceeds, surplus, and deficiency if obligation secured.** If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under RCW 62A.9A-607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under (1)(C) of this subsection.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under RCW 62A.9A-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency. [2001 c 32 § 41; 2000 c 250 § 9A-608.]

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

62A.9A-609 Secured party's right to take possession after default. (a) **Possession; rendering equipment unusable; disposition on debtor's premises.** After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under RCW 62A.9A-610.

(b) **Judicial and nonjudicial process.** A secured party may proceed under subsection (a) of this section:

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) **Assembly of collateral.** If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. [2000 c 250 § 9A-609.]

62A.9A-610 Disposition of collateral after default.

(a) **Disposition after default.** After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) **Commercially reasonable disposition.** Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) **Purchase by secured party.** A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) **Warranties on disposition.** A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) **Disclaimer of warranties.** A secured party may disclaim or modify warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) **Record sufficient to disclaim warranties.** A record is sufficient to disclaim under subsection (e) of this section all warranties included under subsection (d) of this section if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import. [2000 c 250 § 9A-610.]

62A.9A-611 Notification before disposition of collateral. (a) **"Notification date."** In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) **Notification of disposition required.** Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under RCW 62A.9A-610 shall send to the persons specified in subsection (c) of this section a reasonable authenticated notification of disposition.

(c) **Persons to be notified.** To comply with subsection (b) of this section, the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(B) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in RCW 62A.9A-311(a).

(d) **Subsection (b) of this section inapplicable: Perishable collateral; recognized market.** Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) **Compliance with subsection (c)(3)(A) of this section.** A secured party complies with the requirement for notification prescribed by subsection (c)(3)(A) of this section if:

(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(A) of this section; and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral. [2000 c 250 § 9A-611.]

62A.9A-612 Timeliness of notification before disposition of collateral. (a) **Reasonable time is question of fact.** Except as otherwise provided in subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) **Ten-day period sufficient in nonconsumer transaction.** In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition. [2000 c 250 § 9A-612.]

62A.9A-613 Contents and form of notification before disposition of collateral: General. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in subsection (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in subsection (1) of this section are sufficient, even if the notification includes:

(A) Information not specified by subsection (1) of this section; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in RCW 62A.9A-614(3), when completed, each provides sufficient information:

**NOTIFICATION OF DISPOSITION
OF COLLATERAL**

To: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, *as applicable*] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: _____

Time: _____

Place: _____

[For a private disposition:]

We will sell [or lease or license, *as applicable*] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] [for a charge of \$_____]. You may request an accounting by calling us at [telephone number].

[2001 c 32 § 42; 2000 c 250 § 9A-613.]

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

62A.9A-614 Contents and form of notification before disposition of collateral: Consumer-goods transaction. In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in RCW 62A.9A-613(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under RCW 62A.9A-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

[Title 62A RCW—page 158]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will charge you \$ _____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

(4) A notification in the form of [subsection] (3) of this section is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of [subsection] (3) of this section is sufficient, even if it includes errors in information not required by [subsection] (1) of this section, unless the error is misleading with respect to rights arising under this Article.

(6) If a notification under this section is not in the form of [subsection] (3) of this section, law other than this Article determines the effect of including information not required by [subsection] (1) of this section. [2000 c 250 § 9A-614.]

62A.9A-615 Application of proceeds of disposition; liability for deficiency and right to surplus. (a) **Application of proceeds.** A secured party shall apply or pay over for application the cash proceeds of disposition under RCW 62A.9A-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) **Proof of subordinate interest.** If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3) of this section.

(c) **Application of noncash proceeds.** A secured party need not apply or pay over for application noncash proceeds of disposition under RCW 62A.9A-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) **Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subsection (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) [Reserved]

(g) **Cash proceeds received by junior secured party.** A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus. [2001 c 32 § 43; 2000 c 250 § 9A-615.]

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

62A.9A-616 Explanation of calculation of surplus or deficiency. (a) **Definitions.** In this section:

(1) "Explanation" means a writing that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of this section of how the secured party calculated the surplus or deficiency;

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) Authenticated by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under RCW 62A.9A-610.

(b) **Explanation of calculation.** In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under RCW 62A.9A-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) **Required information.** To comply with subsection (a)(1)(B) of this section, a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorneys' fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges,

to which the obligor is known to be entitled and which are not reflected in the amount in (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) **Substantial compliance.** A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) **Charges for responses.** A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response. [2000 c 250 § 9A-616.]

62A.9A-617 Rights of transferee of collateral. (a) **Effects of disposition.** A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) **Rights of good-faith transferee.** A transferee that acts in good faith takes free of the rights and interests described in subsection (a) of this section, even if the secured party fails to comply with this Article or the requirements of any judicial proceeding.

(c) **Rights of other transferee.** If a transferee does not take free of the rights and interests described in subsection (a) of this section, the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien. [2000 c 250 § 9A-617.]

62A.9A-618 Rights and duties of certain secondary obligors. (a) **Rights and duties of secondary obligor.** A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) **Effect of assignment, transfer, or subrogation.** An assignment, transfer, or subrogation described in subsection (a) of this section:

(1) Is not a disposition of collateral under RCW 62A.9A-610; and

(2) Relieves the secured party of further duties under this Article. [2000 c 250 § 9A-618.]

62A.9A-619 Transfer of record or legal title. (a) **"Transfer statement."** In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) **Effect of transfer statement.** A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) **Transfer not a disposition; no relief of secured party's duties.** A transfer of the record or legal title to collateral to a secured party under subsection (b) of this section or otherwise is not of itself a disposition of collateral under this Article and does not of itself relieve the secured party of its duties under this Article. [2000 c 250 § 9A-619.]

62A.9A-620 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral. (a) **Conditions to acceptance in satisfaction.** A secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c) of this section;

(2) The secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:

(A) A person to which the secured party was required to send a proposal under RCW 62A.9A-621; or

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal; and

(3) Subsection (e) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to RCW 62A.9A-624.

(b) **Purported acceptance ineffective.** A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) of this section are met.

(c) **Debtor's consent.** For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) Does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

(d) **Effectiveness of notification.** To be effective under subsection (a)(2) of this section, a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to RCW 62A.9A-621, within twenty days after notification was sent to that person; and

(2) In other cases:

(A) Within twenty days after the last notification was sent pursuant to RCW 62A.9A-621; or

(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c) of this section.

(e) **Mandatory disposition of consumer goods.** A secured party that has taken possession of collateral shall dispose of the collateral pursuant to RCW 62A.9A-610 within the time specified in subsection (f) of this section if:

(1) Sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(f) **Compliance with mandatory disposition requirement.** To comply with subsection (e) of this section, the secured party shall dispose of the collateral:

(1) Within ninety days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default. [2000 c 250 § 9A-620.]

62A.9A-621 Notification of proposal to accept collateral. (a) **Persons to which proposal to be sent.** A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(2) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in RCW 62A.9A-311(a).

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(b) **Proposal to be sent to secondary obligor in partial satisfaction.** A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section. [2000 c 250 § 9A-621.]

62A.9A-622 Effect of acceptance of collateral. (a) **Effect of acceptance.** A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) **Discharge of subordinate interest notwithstanding noncompliance.** A subordinate interest is discharged or terminated under subsection (a) of this section, even if the secured party fails to comply with this Article. [2000 c 250 § 9A-622.]

62A.9A-623 Right to redeem collateral. (a) **Persons that may redeem.** A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) **Requirements for redemption.** To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorneys' fees described in RCW 62A.9A-615(a)(1).

(c) **When redemption may occur.** A redemption may occur at any time before a secured party:

(1) Has collected collateral under RCW 62A.9A-607;

(2) Has disposed of collateral or entered into a contract for its disposition under RCW 62A.9A-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under RCW 62A.9A-622. [2000 c 250 § 9A-623.]

62A.9A-624 Waiver. (a) **Waiver of disposition notification.** A debtor may waive the right to notification of disposition of collateral under RCW 62A.9A-611 only by an agreement to that effect entered into and authenticated after default.

(b) **Waiver of mandatory disposition.** A debtor may waive the right to require disposition of collateral under RCW 62A.9A-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) **Waiver of redemption right.** Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under RCW 62A.9A-623 only by an agreement to that effect entered into and authenticated after default. [2000 c 250 § 9A-624.]

62A.9A-625 Remedies for secured party's failure to comply with Article. (a) **Judicial orders concerning non-**

compliance. If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d), and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article or by filing a false statement under RCW 62A.9A-607(b) or 62A.9A-619. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction.** Except as otherwise provided in RCW 62A.9A-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under RCW 62A.9A-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor may not recover under subsection (b) or (c)(2) of this section for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance to the extent that its deficiency is eliminated or reduced under RCW 62A.9A-626.

(e) **Statutory damages: Noncompliance with specific provisions.** In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

(1) Fails to comply with RCW 62A.9A-208;

(2) Fails to comply with RCW 62A.9A-209;

(3) Files a record that the person is not entitled to file under RCW 62A.9A-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by RCW 62A.9A-513 (a) or (c) within twenty days after the secured party receives an authenticated demand from a debtor;

(5) Fails to comply with RCW 62A.9A-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with RCW 62A.9A-616(b)(2).

(f) **Statutory damages: Noncompliance with RCW 62A.9A-210.** A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under RCW 62A.9A-210. A recipient of a request under RCW 62A.9A-210 which never claimed an interest in the collateral or obligations that are the subject of a request under RCW 62A.9A-210 has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: Noncompliance with RCW 62A.9A-210.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under RCW 62A.9A-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure. [2001 c 32 § 44; 2000 c 250 § 9A-625.]

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

62A.9A-626 Action in which deficiency or surplus is in issue. (a) **Applicable rules if amount of deficiency or surplus in issue.** In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in RCW 62A.9A-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorneys' fees exceeds the greater of:

(A) The proceeds of the collection, enforcement, disposition, or acceptance; or

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of (3)(B) of this subsection, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorneys' fees unless the secured party proves that the amount is less than that sum.

(b) [Reserved] [2000 c 250 § 9A-626.]

62A.9A-627 Determination of whether conduct was commercially reasonable. (a) **Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness.** The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) **Dispositions that are commercially reasonable.** A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) **Approval by court or on behalf of creditors.** A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

- (1) In a judicial proceeding;
- (2) By a bona fide creditors' committee;
- (3) By a representative of creditors; or
- (4) By an assignee for the benefit of creditors.

(d) **Approval under subsection (c) of this section not necessary; absence of approval has no effect.** Approval under subsection (c) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable. [2000 c 250 § 9A-627.]

62A.9A-628 Nonliability and limitation on liability of secured party; liability of secondary obligor. (a) **Limitation of liability of secured party for noncompliance with article.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

(2) The secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

(b) **Limitation of liability based on status as secured party.** A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

- (A) That the person is a debtor or obligor;
- (B) The identity of the person; and
- (C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (A) That the person is a debtor; and
- (B) The identity of the person.

(c) **Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) **Limitation of liability for statutory damages.** A secured party is not liable to any person under RCW 62A.9A-625(c)(2) for its failure to comply with RCW 62A.9A-616.

(e) **Limitation of multiple liability for statutory damages.** A secured party is not liable under RCW

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62A.9A-625(c)(2) more than once with respect to any one secured obligation. [2001 c 32 § 45; 2000 c 250 § 9A-628.]

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

PART 7 TRANSITION

62A.9A-701 Effective date—2000 c 250. This act takes effect July 1, 2001. [2000 c 250 § 9A-701.]

62A.9A-702 Savings clause. (a) **Preeffective-date transactions or liens.** Except as otherwise provided in this section, Article 62A.9A RCW applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2001.

(b) **Continuing validity.** Except as otherwise provided in subsection (c) of this section and RCW 62A.9A-703 through 62A.9A-709:

(1) Transactions and liens that were not governed by *Article 62A.9 RCW, were validly entered into or created before July 1, 2001, and would be subject to Article 62A.9A RCW if they had been entered into or created after July 1, 2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001; and

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by Article 62A.9A RCW or by the law that otherwise would apply if Article 62A.9A RCW had not taken effect.

(c) **Preeffective-date proceedings.** Article 62A.9A RCW does not affect an action, case, or proceeding commenced before July 1, 2001. [2001 c 32 § 46; 2000 c 250 § 9A-702.]

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

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

62A.9A-703 Security interest perfected before effective date. (a) **Continuing priority over lien creditor: Perfection requirements satisfied.** A security interest that is enforceable immediately before July 1, 2001, and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under Article 62A.9A RCW if, on or before July 1, 2001, the applicable requirements for enforceability and perfection under Article 62A.9A RCW are satisfied without further action.

(b) **Continuing priority over lien creditor: Perfection requirements not satisfied.** Except as otherwise provided in RCW 62A.9A-705, if, immediately before July 1, 2001, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under Article 62A.9A RCW are not satisfied on or before July 1, 2001, the security interest:

(1) Is a perfected security interest for one year after July 1, 2001;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under RCW 62A.9A-203 before the year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under Article 62A.9A RCW are

satisfied before the year expires. [2001 c 32 § 47; 2000 c 250 § 9A-703.]

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

62A.9A-704 Security interest unperfected before effective date. A security interest that is enforceable immediately before July 1, 2001, but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one year after July 1, 2001;

(2) Remains enforceable thereafter if the security interest becomes enforceable under RCW 62A.9A-203 on or before July 1, 2001, or within one year thereafter; and

(3) Becomes perfected:

(A) Without further action, on July 1, 2001, if the applicable requirements for perfection under Article 62A.9A RCW are satisfied before or at that time; or

(B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time. [2001 c 32 § 48; 2000 c 250 § 9A-704.]

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

62A.9A-705 Effectiveness of action taken before effective date. (a) **Preeffective-date action; one-year perfection period unless reperfected.** If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under Article 62A.9A RCW within one year after July 1, 2001. An attached security interest becomes unperfected one year after July 1, 2001, unless the security interest becomes a perfected security interest under Article 62A.9A RCW before the expiration of that period.

(b) **Preeffective-date filing.** The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Article 62A.9A RCW.

(c) **Preeffective-date filing in jurisdiction formerly governing perfection.** Article 62A.9A RCW does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former *RCW 62A.9-103. However, except as otherwise provided in subsections (d) and (e) of this section and RCW 62A.9A-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) **Continuation statement.** The filing of a continuation statement after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in

that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

(e) **Application of subsection (c)(2) of this section to transmitting utility financing statement.** Subsection (c)(2) of this section applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former *RCW 62A.9-103 only to the extent that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) **Application of Part 5.** A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement. [2001 c 32 § 49; 2000 c 250 § 9A-705.]

***Reviser's note:** RCW 62A.9-103 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

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

62A.9A-706 When initial financing statement suffices to continue effectiveness of financing statement. (a) **Initial financing statement in lieu of continuation statement.** The filing of an initial financing statement in the office specified in RCW 62A.9A-501 continues the effectiveness of a financing statement filed before July 1, 2001, if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under Article 62A.9A RCW;

(2) The preeffective-date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(b) **Period of continued effectiveness.** The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the preeffective-date financing statement:

(1) If the initial financing statement is filed before July 1, 2001, for the period provided in *RCW 62A.9-403 with respect to a financing statement; and

(2) If the initial financing statement is filed after July 1, 2001, for the period provided in RCW 62A.9A-515 with respect to an initial financing statement.

(c) **Requirements for initial financing statement under subsection (a) of this section.** To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of Part 5 for an initial financing statement;

(2) Identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the preeffective-date financing statement remains effective. [2001 c 32 § 50; 2000 c 250 § 9A-706.]

*Reviser's note: RCW 62A.9-403 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

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

62A.9A-707 Amendment of preeffective-date financing statement. (a) **Preeffective-date financing statement.** In this section, "preeffective-date financing statement" means a financing statement filed before July 1, 2001.

(b) **Applicable law.** On or after July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: General rule.** Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a preeffective-date financing statement may be amended on or after July 1, 2001, only if:

(1) The preeffective-date financing statement and an amendment are filed in the office specified in RCW 62A.9A-501;

(2) An amendment is filed in the office specified in RCW 62A.9A-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies RCW 62A.9A-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies RCW 62A.9A-706(c) is filed in the office specified in RCW 62A.9A-501.

(d) **Method of amending: Continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under RCW 62A.9A-705 (d) and (f) or 62A.9A-706.

(e) **Method of amending: Additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this state may be terminated on or after July 1, 2001, by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies RCW 62A.9A-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement. [2001 c 32 § 51; 2000 c 250 § 9A-707.]

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

62A.9A-708 Persons entitled to file initial financing statement or continuation statement. A person may file an initial financing statement or a continuation statement under this part if:

- (1) The secured party of record authorizes the filing; and
- (2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before July 1, 2001; or

(B) To perfect or continue the perfection of a security interest. [2001 c 32 § 52; 2000 c 250 § 9A-708.]

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

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62A.9A-709 Priority. (a) **Law governing priority.** Article 62A.9A RCW determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, *Article 62A.9 RCW determines priority.

(b) **Priority if security interest becomes enforceable under RCW 62A.9A-203.** For purposes of RCW 62A.9A-322(a), the priority of a security interest that becomes enforceable under RCW 62A.9A-203 dates from July 1, 2001, if the security interest is perfected under Article 62A.9A RCW by the filing of a financing statement before July 1, 2001, which would not have been effective to perfect the security interest under *Article 62A.9 RCW. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement. [2001 c 32 § 53.]

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

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

Article 10

EFFECTIVE DATE AND REPEALER

Sections

62A.10-101	Effective date—1965 ex.s. c 157.
62A.10-102	Specific repealer; provision for transition.
62A.10-103	General repealer.
62A.10-104	Laws not repealed.

62A.10-101 Effective date—1965 ex.s. c 157. This Title shall become effective at midnight on June 30, 1967. It applies to transactions entered into and events occurring after that date. [1965 ex.s. c 157 § 10-101.]

62A.10-102 Specific repealer; provision for transition. (1) The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

- (a)(i) RCW 22.04.010 through 22.04.610;
- (ii) RCW 23.80.010 through 23.80.250;
- (iii) RCW 30.16.020, 30.16.030, 30.16.040 and 30.16.050;
- (iv) RCW 30.40.030, 30.40.040 and 30.40.050;
- (v) RCW 30.52.010 through 30.52.160;
- (vi) RCW 61.04.010 through 61.04.090;
- (vii) RCW 61.08.010 through 61.08.120;
- (viii) RCW 61.12.160;
- (ix) RCW 61.16.040, 61.16.050 and 61.16.070;
- (x) RCW 61.20.010 through 61.20.190;
- (xi) RCW 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050;
- (xii) RCW 63.04.010 through 63.04.780;
- (xiii) RCW 63.08.010 through 63.08.060;
- (xiv) RCW 63.12.010 through 63.12.030;
- (xv) RCW 63.16.010 through 63.16.900;
- (xvi) RCW 65.08.010, 65.08.020 and 65.08.040; and
- (xvii) RCW 81.32.010 through 81.32.561: PROVIDED, That such repeal shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050).
- (b)(i) Chapter 99, Laws of 1913;
- (ii) Chapter 100, Laws of 1939;

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(iii) Section 4, chapter 106, Laws of 1959 and sections 30.16.020, 30.16.030, 30.16.040 and 30.16.050, chapter 33, Laws of 1955;

(iv) Sections 30.40.030, 30.40.040 and 30.40.050, chapter 33, Laws of 1955;

(v) Section 3, chapter 194, Laws of 1963 and sections 30.52.010 through 30.52.160, chapter 33, Laws of 1955;

(vi) Section 11, chapter 263, Laws of 1959, section 3, chapter 214, Laws of 1953, sections 1, 2 and 3, chapter 284, Laws of 1943, section 1, chapter 76, Laws of 1943, section 1, chapter 121, Laws of 1939, section 1, chapter 156, Laws of 1929, sections 1, 2, 3, 4, 5, 6 and 7, chapter 98, Laws of 1899, sections 1986, 1987 and 1988, Code of 1881, section 1, page 104, Laws of 1879, section 1, page 286, Laws of 1877 and section 1, page 43, Laws of 1875;

(vii) Sections 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998, Code of 1881, sections 4, 5, 6, 7, 8, 9, 10, 11 and 12, pages 105 and 106, Laws of 1879 and sections 18, 19, 20, 22, 23, 24 and 28, page 47, Laws of 1875;

(viii) Sections 618 and 619, Code of 1881 and section 572, page 147, Laws of 1869;

(ix) Section 12, chapter 263, Laws of 1959, section 4, chapter 214, Laws of 1953, section 4, chapter 284, Laws of 1943, sections 1 and 2, chapter 133, Laws of 1937 and sections 8, 9 and 11, chapter 98, Laws of 1899;

(x) Sections 1 and 2, chapter 249, Laws of 1957 and chapter 71, Laws of 1943;

(xi) Sections 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050, chapter 35, Laws of 1955;

(xii) Chapter 142, Laws of 1925 extraordinary session;

(xiii) Sections 1, 2, 3 and 4, chapter 247, Laws of 1953, section 1, chapter 98, Laws of 1943, sections 1, 2, 3 and 4, chapter 122, Laws of 1939 and sections 1, 2, 3 and 4, chapter 135, Laws of 1925 extraordinary session;

(xiv) Section 22, chapter 236, Laws of 1963, section 1, chapter 159, Laws of 1961, sections 1 and 2, chapter 196, Laws of 1937, sections 1 and 2, chapter 129, Laws of 1933, section 1, chapter 120, Laws of 1925 extraordinary session, section 1, chapter 95, Laws of 1915, sections 1 and 2, chapter 6, Laws of 1903 and sections 1 and 2, chapter 106, Laws of 1893;

(xv) Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, chapter 8, Laws of 1947;

(xvi) Sections 1 and 2, chapter 72, Laws of 1899, section 2327, Code of 1881, section 4, page 413, Laws of 1863 and section 4, page 404, Laws of 1854; and

(xvii) Chapter 159, Laws of 1915 and sections 81.32.011 through 81.32.561, chapter 14, Laws of 1961.

(2) Transactions validly entered into before the effective date specified in RCW 62A.10-101 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Title as though such repeal or amendment had not occurred. [1965 ex.s. c 157 § 10-102.]

62A.10-103 General repealer. Except as provided in the following section, all acts and parts of acts inconsistent with this Title are hereby repealed. [1965 ex.s. c 157 § 10-103.]

62A.10-104 Laws not repealed. The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (RCW 62A.1-201). [1995 c 48 § 71; 1965 ex.s. c 157 § 10-104.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Article 11

EFFECTIVE DATE AND TRANSITION PROVISIONS

Sections

62A.11-101	Effective date—1981 c 41.
62A.11-102	Preservation of old transition provisions.
62A.11-103	Transition to the Uniform Commercial Code as amended by chapter 41, Laws of 1981; general rule.
62A.11-104	Transition provision on change of requirement of filing.
62A.11-105	Transition provision on change of place of filing.
62A.11-106	Required refilings.
62A.11-107	Transition provisions as to priorities.
62A.11-108	Presumption that rule of law continues unchanged.
62A.11-109	Effective financing statement; certificate by county auditor.
62A.11-110	Effective date—1993 c 230.
62A.11-111	Recovery of attorneys' fees.
62A.11-112	Effective date—1993 c 229.
62A.11-113	Effective date—1995 c 48.

Reviser's note: Throughout Article 11, "chapter 41, Laws of 1981" is a translation of the term "this act."

62A.11-101 Effective date—1981 c 41. This act shall take effect at midnight on June 30, 1982. [1981 c 41 § 47.]

62A.11-102 Preservation of old transition provisions. The provisions of Article 10 shall continue to apply to the Uniform Commercial Code as amended by chapter 41, Laws of 1981 and for this purpose the Uniform Commercial Code before midnight June 30, 1982 and the Uniform Commercial Code as amended by chapter 41, Laws of 1981 shall be considered one continuous statute. [1981 c 41 § 38.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-103 Transition to the Uniform Commercial Code as amended by chapter 41, Laws of 1981; general rule. Transactions validly entered into after June 30, 1967 and before midnight June 30, 1982, and which were subject to the provisions of the Uniform Commercial Code as it existed before midnight June 30, 1982 and which would be subject to the Uniform Commercial Code as amended if they had been entered into after midnight June 30, 1982 and the rights, duties and interests flowing from such transactions remain valid after midnight June 30, 1982 and may be terminated, completed, consummated or enforced as required or permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981. Security interests arising out of such transactions which are perfected by midnight June 30, 1982 shall remain perfected until they lapse as provided in the Uniform Commercial Code as amended by chapter 41, Laws of 1981, and may be continued as permitted by the Uniform Commercial Code as amended by chapter 41, Laws of

1981, except as stated in RCW 62A.11-105. [1981 c 41 § 39.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-104 Transition provision on change of requirement of filing. A security interest for the perfection of which filing or the taking of possession was required under the Uniform Commercial Code as it existed before midnight June 30, 1982 and which attached prior to midnight June 30, 1982 but was not perfected shall be deemed perfected on midnight June 30, 1982 if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made. [1981 c 41 § 40.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-105 Transition provision on change of place of filing. (1) A financing statement or continuation statement filed prior to midnight June 30, 1982 which shall not have lapsed prior to midnight June 30, 1982, shall remain effective for the period provided in the Uniform Commercial Code as it existed before midnight June 30, 1982, but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to midnight June 30, 1982, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under chapter 41, Laws of 1981.

(3) The effectiveness of any financing statement or continuation statement filed prior to midnight June 30, 1982 may be continued by a continuation statement as permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981, except that if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 requires a filing in an office where there was no previous financing statement, a new financing statement conforming to RCW 62A.11-106 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under subsection (6) of *RCW 62A.9-402 as amended by chapter 41, Laws of 1981 on midnight June 30, 1982. [1981 c 41 § 41.]

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

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-106 Required refilings. (1) If a security interest is perfected or has priority on midnight June 30, 1982, as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the Uniform Commercial Code as amended by chapter 41, Laws of 1981, the perfection and priority rights of the security interest continue until three years after midnight June 30, 1982. The perfection will then

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lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when the Uniform Commercial Code as amended by chapter 41, Laws of 1981 takes effect under a law other than the Uniform Commercial Code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse three years after the Uniform Commercial Code as amended by chapter 41, Laws of 1981 takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under subsection (3) of *RCW 62A.9-302 the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by chapter 41, Laws of 1981 which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by chapter 41, Laws of 1981), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the Uniform Commercial Code or under any statute or other law repealed or modified by chapter 41, Laws of 1981 is still effective. *RCW 62A.9-401 and 62A.9-103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of *RCW 62A.9-403(3) for continuation statements apply to such a financing statement. [1981 c 41 § 42.]

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

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-107 Transition provisions as to priorities. Except as otherwise provided in this article, the Uniform Commercial Code as it existed before midnight June 30, 1982 shall apply to any questions of priority if the positions of the parties were fixed prior to midnight June 30, 1982. In other cases questions of priority shall be determined by the Uniform Commercial Code as amended by chapter 41, Laws of 1981. [1981 c 41 § 43.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-108 Presumption that rule of law continues unchanged. Unless a change in law has clearly been made, the provisions of the Uniform Commercial Code as amended by chapter 41, Laws of 1981 shall be deemed declaratory of the meaning of the Uniform Commercial Code as it existed before midnight June 30, 1982. [1981 c 41 § 44.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-109 Effective financing statement; certificate by county auditor. From and after midnight June 30, 1982, upon request of any person, the county auditor shall issue his certificate showing whether there is on file with the county auditor's office on the date and hour stated therein, any presently effective financing statement filed with the county auditor's office before midnight June 30, 1982, naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be four dollars. Upon request the county auditor shall issue his certificate and shall furnish a copy of any filed financing statements or statements of assignment for a uniform fee of ten dollars for each particular debtor's statements requested. [1981 c 41 § 45.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-110 Effective date—1993 c 230. This act shall take effect July 1, 1994. [1993 c 230 § 2A-605.]

62A.11-111 Recovery of attorneys' fees. No provision in this act changes or modifies existing common law or other law of Washington state concerning the recovery of attorneys' fees. [1993 c 229 § 119.]

62A.11-112 Effective date—1993 c 229. This act shall take effect July 1, 1994. [1993 c 229 § 120.]

62A.11-113 Effective date—1995 c 48. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995. [1995 c 48 § 72.]

Savings—1995 c 48: See RCW 62A.8-601.

Title 63

PERSONAL PROPERTY

Chapters

- 63.10** Consumer leases.
- 63.14** Retail installment sales of goods and services.
- 63.18** Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness.
- 63.19** Lease-purchase agreements.
- 63.21** Lost and found property.
- 63.24** Unclaimed property in hands of bailee.
- 63.26** Unclaimed property held by museum or historical society.
- 63.29** Uniform Unclaimed Property Act.
- 63.32** Unclaimed property in hands of city police.
- 63.35** Unclaimed property in hands of state patrol.
- 63.40** Unclaimed property in hands of sheriff.
- 63.42** Unclaimed inmate personal property.
- 63.44** Joint tenancies.
- 63.48** Escheat of postal savings system accounts.
- 63.52** Dies, molds, and forms.
- 63.60** Personality rights.

Attachment: Chapter 6.25 RCW.

Chattel mortgages: Article 62A.9A RCW.

Community property: Chapter 26.16 RCW.

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

Corporate shares issued or transferred in joint tenancy form—Presumption—Transfer pursuant to direction of survivor: RCW 23B.07.240.

County property: Chapter 36.34 RCW.

Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.

Duration of trusts for employee benefits: Chapter 49.64 RCW.

Enforcement of judgments: Title 6 RCW.

Fox, mink, marten declared personalty: RCW 16.72.030.

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

Intergovernmental disposition of personal property: Chapter 39.33 RCW.

Leases, satisfaction: Chapter 61.16 RCW.

Liens: Title 60 RCW.

Personal property sales, regulation of, generally: Titles 18 and 19 RCW.

Powers of appointment: Chapter 11.95 RCW.

Probate and trust law: Title 11 RCW.

Quieting title to personalty: RCW 7.28.310, 7.28.320.

Real property and conveyances: Title 64 RCW.

Replevin: Chapters 7.64, 12.28 RCW.

Safe deposit companies: Chapter 22.28 RCW.

Separate property: Chapter 26.16 RCW.

State institutions, property of inmates, residents: RCW 72.23.230 through 72.23.250.

Taxation

estate: Title 83 RCW.

excise: Title 82 RCW.

property: Title 84 RCW.

The Washington Principal and Income Act of 2002: Chapter 11.104A RCW.

Timeshare regulation: Chapter 64.36 RCW.

Transfers in trust: RCW 19.36.020.

Uniform transfers to minors act: Chapter 11.114 RCW.

Chapter 63.10 RCW CONSUMER LEASES

Sections

- 63.10.010 Legislative declaration.
- 63.10.020 Definitions.
- 63.10.030 Liability at expiration of lease—Residual value—Attorneys' fees—Lease terms.
- 63.10.040 Lease contracts—Disclosure requirements.
- 63.10.045 Unlawful acts or practices—Consumer lease of a motor vehicle.
- 63.10.050 Violations—Unfair acts under consumer protection act—Damages.
- 63.10.055 Remedies—Effect of chapter.
- 63.10.060 Defense or action of usury—Limitations.
- 63.10.900 Severability—1983 c 158.
- 63.10.901 Severability—1995 c 112.
- 63.10.902 Effective date—1995 c 112.

Installment sales contracts: Chapter 63.14 RCW.

63.10.010 Legislative declaration. The leasing of motor vehicles, furniture and fixtures, appliances, commercial equipment, and other personal property has become an important and widespread form of business transaction that is beneficial to the citizens and to the economy of the state. Users of personal property of all types and lessors throughout the state have relied upon the distinct nature of leasing as a modern means of transacting business that creates different relationships and legal consequences from those of lender and borrower in loan transactions and those of seller and buyer in installment sale transactions. The utility of lease transactions and the well-being of the state's economy and of the leasing industry require that leasing be a legally recognized and distinct form of transaction, creating legal relationships and having legal consequences different from loans or installment sales. [1983 c 158 § 1.]

63.10.020 Definitions. As used in this chapter, unless the context otherwise requires:

(1) The term "adjusted capitalized cost" means the agreed-upon amount that serves as the basis for determining the periodic lease payment, computed by subtracting from the gross capitalized cost any capitalized cost reduction.

(2) The term "gross capitalized cost" means the amount ascribed by the lessor to the vehicle including optional equipment, plus taxes, title, license fees, lease acquisition and administrative fees, insurance premiums, warranty charges, and any other product, service, or amount amortized in the lease. However, any definition of gross capitalized cost adopted by the federal reserve board to be used in the context of mandatory disclosure of the gross capitalized cost to lessees in consumer motor vehicle lease transactions supersedes the definition of gross capitalized cost in this subsection.

(3) The term "capitalized cost reduction" means any payment made by cash, check, or similar means, any manufacturer rebate, and net trade in allowance granted by the lessor at the inception of the lease for the purpose of reducing the gross capitalized cost but does not include any periodic lease payments due at the inception of the lease or all of the periodic lease payments if they are paid at the inception of the lease.

(4) The term "consumer lease" means a contract of lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding twenty-five thousand dollars, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any lease which meets the definition of a retail installment contract under RCW 63.14.010 or the definition of a lease-purchase agreement under chapter 63.19 RCW. The twenty-five thousand dollar total contractual obligation in this subsection shall not apply to consumer leases of motor vehicles. The inclusion in a lease of a provision whereby the lessee's or lessor's liability, at the end of the lease period or upon an earlier termination, is based on the value of the leased property at that time, shall not be deemed to make the transaction other than a consumer lease. The term "consumer lease" does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(5) The term "lessee" means a natural person who leases or is offered a consumer lease.

(6) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease. [1998 c 113 § 1; 1995 c 112 § 1; 1992 c 134 § 15; 1983 c 158 § 2.]

Short title—Severability—1992 c 134: See RCW 63.19.900 and 63.19.901.

63.10.030 Liability at expiration of lease—Residual value—Attorneys' fees—Lease terms. (1) Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property, such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorneys' fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual

value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

(2) Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(3) If a lease has a residual value provision at the termination of the lease, the lessee may obtain, at his expense, a professional appraisal of the leased property by an independent third party agreed to be both parties. Such appraisal shall be final and binding on the parties. [1983 c 158 § 3.]

63.10.040 Lease contracts—Disclosure requirements. (1) In any lease contract subject to this chapter, the following items, as applicable, shall be disclosed:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor.

(b) The total amount of any payment, such as a refundable security deposit paid by cash, check, or similar means, advance payment, capitalized cost reduction, or any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease.

(c) The number, amount, and due dates or periods of payments scheduled under the lease and the total amount of the periodic payments.

(d) The total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes.

(e) The total amount of all other charges, individually itemized, payable by the lessee to the lessor, which are not included in the periodic payments. This total includes the amount of any liabilities the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values required to be disclosed under (m) of this subsection.

(f) A brief identification of insurance in connection with the lease including (i) if provided or paid for by the lessor, the types and amounts of coverages and cost to the lessee, or (ii) if not provided or paid for by the lessor, the types and amounts of coverages required of the lessee.

(g) A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property.

(h) An identification of the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility, and a statement of reasonable standards for wear and use, if the lessor sets such standards.

(i) A description of any security interest, other than a security deposit disclosed under (b) of this subsection, held or to be retained by the lessor in connection with the lease and a

clear identification of the property to which the security interest relates.

(j) The amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments.

(k) A statement of whether or not the lessee has the option to purchase the leased property and, if at the end of the lease term, at what price, and, if prior to the end of the lease term, at what time, and the price or method of determining the price.

(l) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(m) A statement that the lessee shall be liable for the difference between the estimated value of the property and its realized value at early termination or the end of the lease term, if such liability exists.

(n) Where the lessee's liability at early termination or at the end of the lease term is based on the estimated value of the leased property, a statement that the lessee may obtain at the end of the lease term or at early termination, at the lessee's expense, a professional appraisal of the value which could be realized at sale of the leased property by an independent third party agreed to by the lessee and the lessor, which appraisal shall be final and binding on the parties.

(o) Where the lessee's liability at the end of the lease term is based upon the estimated value of the leased property:

(i) The value of the property at consummation of the lease, the itemized total lease obligation at the end of the lease term, and the difference between them.

(ii) That there is a rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period, and that the lessor cannot collect the amount of such excess liability unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees, and that this provision regarding the presumption and attorney's fees does not apply to the extent the excess of estimated value over realized value is due to unreasonable wear or use, or excessive use.

(iii) A statement that the requirements of (o)(ii) of this subsection do not preclude the right of a willing lessee to make any mutually agreeable final adjustment regarding such excess liability.

(p) In consumer leases of motor vehicles:

(i) The gross capitalized cost stated as a total and the identity of the components listed in the definition of gross capitalized cost and the respective amount of each component;

(ii) Any capitalized cost reduction stated as a total;

(iii) A statement of adjusted capitalized cost;

(iv) If the lessee trades in a motor vehicle, the amount of any sales tax exemption for the agreed value of the traded vehicle and any reduction in the periodic payments resulting from the application of the sales tax exemption shall be disclosed in the lease contract; and

(v) A statement of the total amount to be paid prior to or at consummation or by delivery, if delivery occurs after consummation. The lessor shall itemize each component by type

and amount and shall itemize how the total amount will be paid, by type and amount.

(2) Where disclosures required under this chapter are the same as those required under Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, as of the date upon which the consumer lease is executed, disclosures complying with the federal consumer leasing act shall be deemed to comply with the disclosure requirements of this chapter. [1998 c 113 § 2; 1995 c 112 § 2; 1983 c 158 § 4.]

63.10.045 Unlawful acts or practices—Consumer lease of a motor vehicle. Each of the following acts or practices are unlawful in the context of offering a consumer lease of a motor vehicle:

(1) Advertising that is false, deceptive, misleading, or in violation of *12 C.F.R. Sec. 213.5 (a) through (d) and 15 U.S.C. 1667, Regulation M;

(2) Misrepresenting any of the following:

(a) The material terms or conditions of a lease agreement;

(b) That the transaction is a purchase agreement as opposed to a lease agreement; or

(c) The amount of any equity or value the leased vehicle will have at the end of the lease; and

(3) Failure to comply with the disclosure requirements of Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, including, but not limited to, failure to disclose all fees that will be due when a consumer exercises the option to purchase. [1995 c 112 § 3.]

*Reviser's note: 12 C.F.R. Sec. 213.5 (a) through (d) has been amended. See 12 C.F.R. Sec. 213.7 (a) through (f).

63.10.050 Violations—Unfair acts under consumer protection act—Damages. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act or practice in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

Regarding damages awarded under this section, the court may award damages allowed under chapter 19.86 RCW or 15 U.S.C. Sec. 1667d (a) and 15 U.S.C. Sec. 1640, but not both. [1995 c 112 § 4; 1983 c 158 § 5.]

63.10.055 Remedies—Effect of chapter. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law or in equity. [1995 c 112 § 5.]

63.10.060 Defense or action of usury—Limitations. No person may plead the defense of usury or maintain any action thereon based upon a transaction heretofore entered into if such transaction:

(1) Constitutes a "consumer lease" as defined in RCW 63.10.020; or

(2) Would constitute such a consumer lease but for the fact that:

- (i) The lessee was not a natural person;
- (ii) The lease was not primarily for personal, family, or household purposes; or
- (iii) The total contractual obligation exceeded twenty-five thousand dollars. [1983 c 158 § 8.]

63.10.900 Severability—1983 c 158. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 158 § 9.]

63.10.901 Severability—1995 c 112. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 112 § 6.]

63.10.902 Effective date—1995 c 112. This act shall take effect January 1, 1996. [1995 c 112 § 7.]

Chapter 63.14 RCW

RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

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- 63.14.924 Application—1995 c 249.
- 63.14.925 Savings—1995 c 249.
- 63.14.926 Effective date—1995 c 249.

Consumer leases: Chapter 63.10 RCW.

Interest—Usury: Chapter 19.52 RCW.

63.14.010 Definitions. In this chapter, unless the context otherwise requires:

(1) "Goods" means all chattels personal when purchased primarily for personal, family, or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(2) "Lender credit card" means a card or device under a lender credit card agreement pursuant to which the issuer gives to a cardholder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not: (a) Principally engaged in the business of selling goods; or (b) a financial institution;

(3) "Lender credit card agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions pursuant to which the issuer may, with the buyer's consent, purchase or acquire one or more retail sellers' indebtedness of the buyer under a sales slip or memorandum evidencing the purchase, lease, loan, or otherwise to be paid in accordance with the agreement. The issuer of a lender credit card agreement shall not be principally engaged in the business of selling goods or be a financial institution;

(4) "Financial institution" means any bank or trust company, mutual savings bank, credit union, or savings and loan association organized pursuant to the laws of any one of the United States of America or the United States of America, or the laws of a foreign country if also qualified to conduct busi-

ness in any one of the United States of America or pursuant to the laws of the United States of America;

(5) "Services" means work, labor, or services of any kind when purchased primarily for personal, family, or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods and includes repairs, alterations, or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer, or official of either as in the case of transportation services;

(6) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(7) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(8) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract, a retail charge agreement, or a lender credit card agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid principal balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(9) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement, a lender credit card agreement, or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease. The term "retail installment contract" does not include: (a) A "consumer lease," heretofore or hereafter entered into, as defined in RCW 63.10.020; (b) a lease which would constitute such "consumer lease" but for the fact that: (i) It was entered into before April 29, 1983; (ii) the lessee was not a natural person; (iii) the lease was not primarily for personal, family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars; or (c) a lease-purchase agreement under chapter 63.19 RCW;

(10) "Retail charge agreement," "revolving charge agreement," or "charge agreement" means an agreement between a retail buyer and a retail seller that is entered into or performed in this state and that prescribes the terms of retail installment transactions with one or more sellers which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(11) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs, any vehicle dealer administrative fee under RCW 46.12.042, any vehicle dealer documentary service fee under RCW 46.70.180(2), or official fees;

(12) "Sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction. The sale price may include any taxes, registration and license fees, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations, or improvements;

(13) "Official fees" means the amount of the fees prescribed by law and payable to the state, county, or other governmental agency for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction;

(14) "Time balance" means the principal balance plus the service charge;

(15) "Principal balance" means the sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and official fees; and the amount actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;

(16) "Person" means an individual, partnership, joint venture, corporation, association, or any other group, however organized;

(17) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period. [2003 c 368 § 2; 1999 c 113 § 1; 1997 c 331 § 6; 1993 sp.s. c 5 § 1; 1992 c 134 § 16; 1984 c 280 § 1; 1983 c 158 § 7; 1981 c 77 § 1; 1972 ex.s. c 47 § 1; 1963 c 236 § 1.]

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

Short title—Severability—1992 c 134: See RCW 63.19.900 and 63.19.901.

Severability—1983 c 158: See RCW 63.10.900.

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

Effective date—1972 ex.s. c 47: "This 1972 amendatory act shall take effect on January 1, 1973." [1972 ex.s. c 47 § 5.]

63.14.020 Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size. Every retail installment contract shall be contained in a single document which shall contain

the entire agreement of the parties including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in RCW 63.14.050, 63.14.060 and 63.14.110: PROVIDED, That where the buyer's obligation to pay the time balance is represented by a promissory note secured by a chattel mortgage, the promissory note may be a separate instrument if the mortgage recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage: PROVIDED FURTHER, That any such promissory note or other evidence of indebtedness executed by the buyer shall not, when assigned or negotiated, cut off as to third parties any right of action or defense which the buyer may have against the seller, and each such promissory note or other evidence of indebtedness shall contain a statement to that effect: AND PROVIDED FURTHER, That in a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage on the real property contained in a separate document. Home improvement retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to this chapter.

The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in RCW 63.14.060 and 63.14.070. The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight point type. [1967 c 234 § 1; 1963 c 236 § 2.]

63.14.030 Retail installment contracts—Delivery to buyer of copy—Acknowledgment of delivery. The retail seller shall deliver to the retail buyer, at the time the buyer signs the contract a copy of the contract as signed by the buyer, unless the contract is completed by the buyer in situations covered by RCW 63.14.060, and if the contract is accepted at a later date by the seller the seller shall mail to the buyer at his address shown on the retail installment contract a copy of the contract as accepted by the seller or a copy of the memorandum as required in RCW 63.14.060. Until the seller does so, the buyer shall be obligated to pay only the sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature. [1981 c 77 § 2; 1967 c 234 § 2; 1963 c 236 § 3.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.040 Retail installment contracts—Contents.

(1) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or service furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below:

- (a) The sale price of each item of goods or services;
- (b) The amount of the buyer's down payment, if any, identifying the amounts paid in money and allowed for goods traded in;

- (c) The difference between items (a) and (b);
- (d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;
- (e) The aggregate amount of official fees, if any;
- (f) The amount, if any, actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;
- (g) The principal balance, which is the sum of items (c), (d), (e), and (f);
- (h) The dollar amount or rate of the service charge;
- (i) The amount of the time balance owed by the buyer to the seller, which is the sum of items (g) and (h), if (h) is stated in a dollar amount; and

(j) Except as otherwise provided in the next two sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such balance. If installment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

Additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer.

(2) Every retail installment contract shall contain the following notice in ten point bold face type or larger directly above the space reserved in the contract for the signature of the buyer: "NOTICE TO BUYER:

- (a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank.
- (b) You are entitled to a copy of this contract at the time you sign it.
- (c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the service charge.
- (d) The service charge does not exceed . . . % (must be filled in) per annum computed monthly.
- (e) You may cancel this contract if it is solicited in person, and you sign it, at a place other than the seller's business address shown on the contract, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the contract which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing this contract. If you choose to cancel this contract, you must return or make available to the seller at the place of delivery any merchandise, in its original condition, received by you under this contract."

Clause (2)(e) needs to be included in the notice only if the contract is solicited in person by the seller or his representative, and the buyer signs it, at a place other than the seller's business address shown on the contract. [1999 c 113 § 2; 1981 c 77 § 3; 1972 ex.s. c 47 § 2; 1969 c 2 § 1 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 3; 1963 c 236 § 4.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.043 Retail installment contracts—Purchase of motor vehicle. If a retail installment contract for the purchase of a motor vehicle meets the requirements of this chapter and meets the requirements of any federal law applicable to a retail installment contract for the purchase of a motor vehicle, the retail installment contract shall be accepted for consideration by any lender, except for lenders licensed and regulated under the provisions of chapter 31.04 RCW, to whom application for credit relating to the retail installment contract is made. [2006 c 288 § 1.]

63.14.050 Retail installment contracts—Multiple documents permissible where original applies to purchases from time to time. A retail installment contract may be contained in more than one document, provided that one such document shall be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by RCW 63.14.040 and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement may at the option of the seller constitute the memorandum required by RCW 63.14.110. [1963 c 236 § 5.]

63.14.060 Retail installment contracts—Mail orders based on catalog or other printed solicitation. Retail installment contracts negotiated and entered into by mail or telephone without solicitation in person by salesmen or other representatives of the seller and based upon a catalog of the seller, or other printed solicitation of business, if such catalog or other printed solicitation clearly sets forth the cash sale prices and other terms of sales to be made through such medium, may be made as provided in this section. The provisions of this chapter with respect to retail installment contracts shall be applicable to such sales, except that the retail installment contract, when completed by the buyer need not contain the items required by RCW 63.14.040.

When the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by RCW 63.14.040 to be included in a retail installment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in RCW 63.14.030, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment payable under the contract: PROVIDED, That if the catalog or other printed solicitation does not set forth all of the other terms of sales in addition to the cash sales prices, such memorandum

shall be delivered to the buyer prior to or at the time of delivery of the goods or services. [1967 c 234 § 4; 1963 c 236 § 6.]

63.14.070 Retail installment contracts—Seller not to obtain buyer's signature when essential blank spaces not filled—Exceptions. The seller shall not obtain the signature of the buyer to any contract when it contains blank spaces of items which are essential provisions of the transaction except as provided in RCW 63.14.060: PROVIDED, HOWEVER, That if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. [1963 c 236 § 7.]

63.14.080 Retail installment contracts—Prepayment in full of unpaid time balance—Refund of unearned service charge—"Rule of seventy-eighths". For the purpose of this section "periodic time balance" means the unpaid portion of the time balance as of the last day of each month, or other uniform time interval established by the regular consecutive payment period scheduled in a retail installment contract.

Notwithstanding the provisions of any retail installment contract to the contrary, and if the rights of the purchaser have not been terminated or forfeited under the terms of the contract, any buyer may prepay in full the unpaid portion of the time balance thereof at any time before its final due date and, if he does so, he shall receive a refund credit of the unearned portion of the service charge for such prepayment. The amount of such refund credit shall be computed according to the "rule of seventy-eighths", that is it shall represent at least as great a portion of the original service charge, as the sum of the periodic time balances not yet due bears to the sum of all the periodic time balances under the schedule of payments in the contract: PROVIDED, That where the earned service charge (total service charge minus refund credit) thus computed is less than the following minimum service charge: fifteen dollars where the principal balance is not in excess of two hundred and fifty dollars, twenty-five dollars where the principal balance exceeds two hundred and fifty dollars but is not in excess of five hundred dollars, thirty-seven dollars and fifty cents where the principal balance exceeds five hundred dollars but is not in excess of one thousand dollars, and fifty dollars where the principal balance exceeds one thousand dollars; then such minimum service charge shall be deemed to be the earned service charge: AND PROVIDED FURTHER, That where the amount of such refund credit is less than one dollar, no refund credit need be made. [1967 c 234 § 5; 1963 c 236 § 8.]

63.14.090 Retail installment contracts, retail charge agreements, and lender credit card agreements—Delinquency or collection charges—Attorney's fees, court costs—Other provisions not inconsistent with chapter are permissible. (1) The holder of any retail installment contract, retail charge agreement, or lender credit card agreement may not collect any delinquency or collection charges, including any attorney's fee and court costs and disburse-

ments, unless the contract, charge agreement, or lender credit card agreement so provides. In such cases, the charges shall be reasonable, and no attorney's fee may be recovered unless the contract, charge agreement, or lender credit card agreement is referred for collection to an attorney not a salaried employee of the holder.

(2) The contract, charge agreement, or lender credit card agreement may contain other provisions not inconsistent with the purposes of this chapter, including but not limited to provisions relating to refinancing, transfer of the buyer's equity, construction permits, and title reports.

(3) Notwithstanding subsection (1) of this section, where the minimum payment is received within the ten days following the payment due date, delinquency charges for the late payment of a retail charge agreement or lender credit card agreement may not be more than ten percent of the average balance of the delinquent account for the prior thirty-day period when the average balance of the account for the prior thirty-day period is less than one hundred dollars, except that a minimum charge of up to two dollars shall be allowed. This subsection (3) shall not apply in cases where the payment on the account is more than thirty days overdue. [1993 c 481 § 1; 1984 c 280 § 2; 1963 c 236 § 9.]

63.14.100 Receipt for cash payment—Retail installment contracts, statement of payment schedule and total amount unpaid. A buyer shall be given a written receipt for any payment when made in cash. Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. Such a statement shall be given the buyer once without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of one dollar for each additional statement so supplied. [1963 c 236 § 10.]

63.14.110 Consolidation of subsequent purchases with previous contract. (1) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of the previous contracts. All the provisions of this chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this subsection. In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this section, it shall be sufficient if the seller shall prepare a written memorandum of each such subsequent purchase, in which case the provisions of RCW 63.14.020, 63.14.030 and 63.14.040 shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memoranda or otherwise, such memorandum shall set forth with respect to each subsequent purchase items (a) to (h) inclusive of RCW 63.14.040(1), and in addition, if the service charge is stated as a dollar amount, the amount of the

time balance owed by the buyer to the seller for the subsequent purchase, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any, in accordance with RCW 63.14.040. If the service charge is not stated in a dollar amount, in addition to the items (a) to (h) inclusive of RCW 63.14.040(1), the memorandum shall set forth the outstanding balance of the previous contract or contracts, the consolidated outstanding balance and the revised installments applicable to the consolidated outstanding balance, in accordance with RCW 63.14.040.

The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(2) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation:

(a) The entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied on the previous purchases;

(b) The amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase;

(c) Each payment received after the subsequent purchase shall be deemed to be allocated to all of the various time balances in the same proportion or ratio as the original cash sale prices of the various retail installment transactions bear to one another: PROVIDED, That the seller may elect, where the amount of each installment payment is increased in connection with the subsequent purchase, to allocate only the increased amount to the time balance of the subsequent retail installment transaction, and to allocate the amount of each installment payment prior to the increase to the time balance(s) existing at the time of the subsequent purchase.

The provisions of this subsection shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request. [1999 c 113 § 3; 1967 c 234 § 6; 1963 c 236 § 11.]

63.14.120 Retail charge agreements and lender credit card agreements—Information to be furnished by seller. (1) At or prior to the time a retail charge agreement or lender credit card agreement is made the seller shall advise the buyer in writing, on the application form or otherwise, or orally that a service charge will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the service charge will be computed, and that the buyer may at any time pay his or her total unpaid balance: PROVIDED, That if this information is given orally, the seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to the buyer's address, a memorandum setting forth this information.

(2) The seller or holder of a retail charge agreement or lender credit card agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or other regular period agreed

upon, in which there is any unpaid balance thereunder, which statement shall set forth the following:

(a) The unpaid balance under the retail charge agreement or lender credit card agreement at the beginning and at the end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased during the period, the sale price, and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any service charge for such period; and

(e) A legend to the effect that the buyer may at any time pay his or her total unpaid balance.

(3) Every retail charge agreement shall contain the following notice in ten point bold face type or larger directly above the space reserved in the charge agreement for the signature of the buyer: NOTICE TO BUYER:

(a) Do not sign this retail charge agreement before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this charge agreement at the time you sign it.

(c) You may at any time pay off the full unpaid balance under this charge agreement.

(d) You may cancel any purchases made under this charge agreement if the seller or his representative solicited in person such purchase, and you sign an agreement for such purchase, at a place other than the seller's business address shown on the charge agreement, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the charge agreement, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the purchase agreement. If you choose to cancel this purchase, you must return or make available to seller at the place of delivery any merchandise, in its original condition, received by you under this purchase agreement. [1984 c 280 § 3; 1981 c 77 § 4; 1972 ex.s. c 47 § 3; 1969 c 2 § 2 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 7; 1963 c 236 § 12.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.123 Restrictions on electronically printed credit card receipts. (1) A retailer shall not print more than the last five digits of the credit card account number or print the credit card expiration date on a credit card receipt to the cardholder.

(2) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the credit card number is by handwriting or by an imprint or copy of the credit card.

(3) This section applies on July 1, 2001, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service on or after July 1, 2001, and on July 1, 2004, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service prior to July 1, 2001. [2000 c 163 § 2.]

(2008 Ed.)

Severability—Effective date—2000 c 163: See RCW 19.200.900 and 19.200.901.

63.14.125 Lender credit card agreements—Security interests prohibited. A lender credit card agreement may not contain any provision for a security interest in real or personal property or fixtures of the buyer to secure payment of performance of the buyer's obligation under the lender credit card agreement. [1984 c 280 § 4.]

63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge agreed to by contract—Other fees and charges prohibited. The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer, except for any vehicle dealer administrative fee under RCW 46.12.042 or for any vehicle dealer documentary service fee under RCW 46.70.180(2).

(1) The service charge, in a retail installment contract, shall not exceed the dollar amount or rate agreed to by contract and disclosed under RCW 63.14.040(1)(h).

(2) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed the schedule or rate agreed to by contract and disclosed under RCW 63.14.120(1). If the service charge so computed is less than one dollar for any month, then one dollar may be charged. [2003 c 368 § 3; 1999 c 113 § 4; 1997 c 331 § 7; 1992 c 193 § 1. Prior: 1989 c 112 § 1; 1989 c 14 § 5; 1987 c 318 § 1; 1984 c 280 § 5; 1981 c 77 § 5; 1969 c 2 § 3 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 8; 1963 c 236 § 13.]

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

Effective date—1987 c 318: "This act shall take effect January 1, 1988." [1987 c 318 § 2.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.136 Retail installment transaction—Unconscionable—Judicial action. (1) With respect to a retail installment transaction, as defined in RCW 63.14.010(8), if the court as a matter of law finds the agreement or contract, or any clause in the agreement or contract, to have been unconscionable at the time it was made, the court may refuse to enforce the agreement or contract, may enforce the remainder of the agreement or contract, or may limit the application of any unconscionable clause to avoid an unconscionable result.

(2) If it is claimed or it appears to the court that the agreement or contract, or any clause in the agreement or contract, may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to assist the court in making a determination regarding unconscionability.

(3) For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable. [1995 c 249 § 4.]

63.14.140 Retail installment contracts, retail charge agreements, and lender credit card agreements—Insurance. If the cost of any insurance is included in the retail installment contract, retail charge agreement, or lender credit card agreement:

(1) The contract or agreement shall state the nature, purpose, term, and amount of such insurance, and in connection with the sale of a motor vehicle, the contract shall state that the insurance coverage ordered under the terms of this contract does not include "bodily injury liability," "public liability," and "property damage liability" coverage, where such coverage is in fact not included;

(2) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller;

(3) The amount, included for such insurance, shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer, except where the amount is less than one dollar;

(4) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at his or her address as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured. [1984 c 280 § 6; 1963 c 236 § 14.]

63.14.145 Retail installment contracts and charge agreements—Sale, transfer, or assignment. (1) A retail seller may sell, transfer, or assign a retail installment contract or charge agreement. After such sale, transfer, or assignment, the retail installment contract or charge agreement remains a retail installment contract or charge agreement.

(2) Nothing contained in this chapter shall be deemed to limit any charge made by an assignee of a retail installment contract or charge agreement to the seller-assignor upon the sale, transfer, assignment, or discount of the contract or agreement, notwithstanding retention by the assignee of recourse rights against the seller-assignor and notwithstanding duties retained by the seller-assignor to service delinquencies, perform service or warranty agreements regarding the property which is the subject matter of the assigned or discounted contracts or charge agreements, or to do or perform any other duty with respect to the contract or agreement assigned or the subject matter of such contract or agreement. [1993 sp.s. c 5 § 2.]

63.14.150 Retail installment contracts, retail charge agreements, and lender credit card agreements—Agreements by buyer not to assert claim or defense or to submit to suit in another county invalid. No provision of a retail installment contract, retail charge agreement, or lender credit card agreement is valid by which the buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale, or by which the buyer agrees to submit to suit in a county other than the county where the buyer signed the contract or where the buyer resides or has his principal place of business. [1984 c 280 § 7; 1967 c 234 § 9; 1963 c 236 § 15.]

63.14.151 Retail installment contracts, retail charge agreements, and lender credit card agreements—Compliance with disclosure requirements of federal consumer protection act deemed compliance with chapter 63.14 RCW. Any retail installment contract, retail charge agreement, or lender credit card agreement that complies with the disclosure requirements of Title I of the federal consumer protection act (82 Stat. 146, 15 U.S.C. 1601) which is also known as the truth in lending act, as of the date upon which said retail installment contract, revolving charge agreement, or lender credit card agreement is executed, shall be deemed to comply with the disclosure provisions of chapter 63.14 RCW. [1984 c 280 § 8; 1981 c 77 § 9.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.152 Declaratory judgment action to establish if service charge is excessive. The seller, holder, or buyer may bring an action for declaratory judgment to establish whether service charges contracted for or received in connection with a retail installment transaction are in excess of those allowed by chapter 234, Laws of 1967. Such an action shall be brought against the current holder or against the buyer or his successor in interest or, if the entire principal balance has been fully paid, by the buyer or his successor in interest against the holder to whom the final payment was made. No such action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal balance is fully paid, whichever first occurs. If the buyer commences such an action and fails to establish that the service charge is in excess of that allowed by RCW 63.14.130, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees and costs from the buyer. [1967 c 234 § 11.]

63.14.154 Cancellation of transaction by buyer—Procedure. (1) In addition to any other rights he may have, the buyer shall have the right to cancel a retail installment transaction for other than the seller's breach by sending notice of such cancellation to the seller at his place of business as set forth in the contract or charge agreement by certified mail, return receipt requested, which shall be posted not later than midnight of the third day (excluding Sundays and holidays) following the date the buyer signs the contract or charge agreement:

(a) If the retail installment transaction was entered into by the buyer and solicited in person or by a commercial telephone solicitation as defined by chapter 20, Laws of 1989 by the seller or his representative at a place other than the seller's address, which may be his main or branch office, shown on the contract; and

(b) If the buyer returns goods received or makes them available to the seller as provided in clause (b) of subsection (2) of this section.

(2) In the event of cancellation pursuant to this section:

(a) The seller shall, without request, refund to the buyer within ten days after such cancellation all deposits, including any down payment, made under the contract or charge agreement and shall return all goods traded in to the seller on

account or in contemplation of the contract less any reasonable costs actually incurred in making ready for sale the goods so traded in;

(b) The seller shall be entitled to reclaim and the buyer shall return or make available to the seller at the place of delivery in its original condition any goods received by the buyer under the contract or charge agreement;

(c) The buyer shall incur no additional liability for such cancellation. [1989 c 20 § 18; 1989 c 14 § 8; 1972 ex.s. c 47 § 4; 1967 c 234 § 12.]

Reviser's note: This section was amended by 1989 c 14 § 8 and by 1989 c 20 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1989 c 20: See RCW 19.158.900 and 19.158.901.

63.14.156 Extension or deferment of payments—Agreement, charges. The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date or defer a scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless a written acknowledgment of such extension or deferment is sent or delivered to the buyer. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed those permitted by *RCW 63.14.130 (a), (b), or (c) on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract, subject to the provisions of RCW 63.14.140. [1967 c 234 § 13.]

***Reviser's note:** The reference to RCW 63.14.130 (a), (b), or (c) is erroneous. RCW 63.14.130(1) (a) or (b) is apparently intended. Subsequently, RCW 63.14.130 was amended by 1992 c 193 § 2, changing the subsection numbering.

63.14.158 Refinancing agreements—Costs—Contents. The holder of a retail installment contract or contracts may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance or balances of the contract or contracts by providing for a new schedule of installment payments.

The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same but such refinance charge (1) shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduc-

tion of a refund credit in an amount equal to that to which the buyer would have been entitled under RCW 63.14.080 if he had prepaid in full his obligations under the contract or contracts, but in computing such refund credit there shall not be allowed the minimum earned service charge as authorized by clause (d) of subsection (1) of such section, and (2) may not exceed the rate of service charge provided under RCW 63.14.130. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided for therein, subject to the provisions of RCW 63.14.140.

The refinancing agreement shall set forth the amount of the unpaid time balance or balances to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, the amount or rate of the service charge under the refinancing agreement, any additional cost of insurance and of official fees to the buyer, the new unpaid time balance, if the service charge is stated as a dollar amount, and the new schedule of installment payments. Where there is a consolidation of two or more contracts then the provisions of RCW 63.14.110 shall apply. [1967 c 234 § 14.]

Minimum earned service charges: RCW 63.14.080.

63.14.159 New payment schedule—When authorized. In the event a contract provides for the payment of any installment which is more than double the amount of the average of the preceding installments the buyer upon default of this installment, shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the buyer, the periodic payments under the new schedule shall not be substantially greater than the average of the preceding installments. This section shall not apply if the payment schedule is adjusted to the seasonal or irregular income of the buyer or to accommodate the nature of the buyer's employment. [1967 c 234 § 15.]

63.14.160 Conduct or agreement of buyer does not waive remedies. No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement, lender credit card agreement, or purchases thereunder shall constitute a valid waiver of any of the provisions of this chapter or of any remedies granted to the buyer by law. [1984 c 280 § 9; 1963 c 236 § 16.]

63.14.165 Financial institution credit card agreement not subject to chapter 63.14 RCW, but subject to chapter 19.52 RCW. A financial institution credit card is a card or device issued under an arrangement pursuant to which the issuing financial institution gives to a card holder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not principally engaged in the business of selling goods.

Except as provided in RCW 63.14.167, a financial institution credit card agreement and credit extended pursuant to it is not subject to the provisions of this chapter but shall be

subject to the provisions of chapter 19.52 RCW. [1984 c 280 § 10; 1981 c 77 § 10.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.167 Lender credit card agreements and financial institution credit card agreements—Credit to account for returned goods or forgiveness of a debit for services—Statement of credit to card issuer—Notice to cardholder. (1) Pursuant to a lender credit card or financial institution credit card transaction in which a credit card has been used to obtain credit, the seller is a person other than the card issuer, and the seller accepts or allows a return of goods or forgiveness of a debit for services that were the subject of the sale, credit shall be applied to the obligor's account as provided by this section.

(2) Within seven working days after a transaction in which an obligor becomes entitled to credit, the seller shall transmit a statement to the card issuer through the normal channels established by the card issuer for the transmittal of such statements. The credit card issuer shall credit the obligor's account within three working days following receipt of a credit statement from the seller.

(3) The obligor is not responsible for payment of any service charges resulting from the seller's or card issuer's failure to comply with subsection (2) of this section.

(4) An issuer issuing a lender credit card or financial institution credit card shall mail or deliver a notice of the provisions of this section at least once per calendar year, at intervals of not less than six months nor more than eighteen months, either to all cardholders or to each cardholder entitled to receive a periodic statement for any one billing cycle. The notice shall state that the obligor is not responsible for payment of any service charges resulting from the seller's or card issuer's failure to comply with subsection (2) of this section. [1989 c 11 § 24; 1984 c 280 § 11.]

Severability—1989 c 11: See note following RCW 9A.56.220.

63.14.170 Violations—Penalties. Any person who shall wilfully and intentionally violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or both. Violation of any order or injunction issued pursuant to this chapter shall constitute prima facie proof of a violation of this section. [1963 c 236 § 17.]

63.14.175 Violations—Remedies. No person may pursue any remedy alleging a violation of this chapter on the basis of any act or omission that does not constitute a violation of this chapter as amended by chapter 5, Laws of 1993 sp. sess. For purposes of this section, the phrase "pursue any remedy" includes pleading a defense, asserting a counterclaim or right of offset or recoupment, commencing, maintaining, or continuing any legal action, or pursuing or defending any appeal. [1993 sp.s. c 5 § 3.]

63.14.180 Noncomplying person barred from recovery of service charge, etc.—Remedy of buyer—Extent of recovery. Any person who enters into a retail installment

contract, charge agreement, or lender credit card agreement that does not comply with the provisions of this chapter or who violates any provision of this chapter except as a result of an accidental or bona fide error shall be barred from the recovery of any service charge, official fees, or any delinquency or collection charge under or in connection with the related retail installment contract or purchases under a retail charge agreement or lender credit card agreement; but such person may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to such person of any insurance included in the transaction: PROVIDED, That if the service charge is in excess of that allowed by RCW 63.14.130, except as the result of an accidental or bona fide error, the buyer shall be entitled to an amount equal to the total of (1) twice the amount of the service charge paid, and (2) the amount of the service charge contracted for and not paid, plus (3) costs and reasonable attorneys' fees. The reduction in the cash price by the application of the above sentence shall be applied to diminish pro rata each future installment of principal amount payable under the terms of the contract or agreement. [1984 c 280 § 12; 1967 c 234 § 10; 1963 c 236 § 18.]

63.14.190 Restraint of violations. The attorney general or the prosecuting attorney may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1963 c 236 § 19.]

63.14.200 Assurance of discontinuance of unlawful practices. In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided in RCW 63.14.190 and for the purpose of RCW 63.14.180 hereof: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney. [1963 c 236 § 20.]

63.14.210 Violation of order or injunction—Penalty. Any person who violates any order or injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1963 c 236 § 21.]

63.14.900 Severability—1963 c 236. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the

applicability thereof to other persons and circumstances shall not be affected thereby. [1963 c 236 § 23.]

63.14.901 Severability—1967 c 234. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1967 c 234 § 16.]

63.14.902 Severability—1981 c 77. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 77 § 12.]

63.14.903 Application, saving—1981 c 77. This act applies only to loans, forbearances, or transactions which are entered into after May 8, 1981, or to existing loans, forbearances, contracts, or agreements which were not primarily for personal, family, or household use in which there is an addition to the principal amount of the credit outstanding after May 8, 1981. [1981 c 77 § 13.]

63.14.904 Severability—1984 c 280. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 280 § 13.]

63.14.910 Saving—1963 c 236. The provisions of this chapter shall not invalidate or make unlawful retail installment contracts or retail charge agreements executed prior to the effective date hereof. [1963 c 236 § 24.]

63.14.920 Effective date—1963 c 236. This chapter shall take effect October 1, 1963. [1963 c 236 § 25.]

63.14.921 Effective date—Saving—1967 c 234. This 1967 amendatory act shall take effect on January 1, 1968. Nothing in this 1967 amendatory act shall be construed to affect the validity of any agreement or contractual relationship entered into prior to such date, except that the rate of any service charge computed periodically on the outstanding balance in excess of that allowed by this 1967 amendatory act shall be reduced to a permissible rate on or before January 1, 1968. [1967 c 234 § 17.]

63.14.922 Effective date—1993 sp.s. c 5. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 28, 1993]. [1993 sp.s. c 5 § 4.]

63.14.923 Severability—1993 sp.s. c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 sp.s. c 5 § 5.]

(2008 Ed.)

63.14.924 Application—1995 c 249. This act applies prospectively only and not retroactively. It applies only to retail installment transactions entered into on or after May 5, 1995. [1995 c 249 § 2.]

63.14.925 Savings—1995 c 249. The repeals in section 1, chapter 249, Laws of 1995 shall not be construed as affecting any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted pursuant to those statutes; nor as affecting any proceeding instituted under them. [1995 c 249 § 3.]

63.14.926 Effective date—1995 c 249. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]. [1995 c 249 § 5.]

Chapter 63.18 RCW

LEASE OR RENTAL OF PERSONAL PROPERTY— DISCLAIMER OF WARRANTY OF MERCHANTABILITY OR FITNESS

Sections

63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions.

63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions. In any lease or rental agreement for the lease of movable personal property for use primarily in this state (other than a lease under which the lessee is authorized to use such property at no charge), if the rental or other consideration paid or payable thereunder is at a rate which if computed on an annual basis would be six thousand dollars per year or less, no provision thereof purporting to disclaim any warranty of merchantability or fitness for particular purposes which may be implied by law shall be enforceable unless either (1) the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted, or (2) the lessee is engaged in a public utility business or a public service business subject to regulation by the United States or this state. [1974 ex.s. c 180 § 3.]

Exclusion or modification of warranties: RCW 62A.2-316.

Chapter 63.19 RCW

LEASE-PURCHASE AGREEMENTS

Sections

63.19.010 Definitions.
63.19.020 Chapter application.
63.19.030 Disclosure by lessor—Requirement.
63.19.040 Disclosure by lessor—Contents.
63.19.050 Agreement—Restrictions.
63.19.060 Consumer—Reinstatement of agreement—Terms.
63.19.070 Written receipt—Lessor's duty.
63.19.080 Renegotiation—Same lessor and consumer.
63.19.090 Advertising—Requirements—Liability.
63.19.100 Upholstered furniture or bedding.
63.19.110 Violation—Application of chapter 19.86 RCW.
63.19.900 Short title—1992 c 134.
63.19.901 Severability—1992 c 134.

63.19.010 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a lease-purchase agreement.

(2) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the lease-purchase agreement.

(3) "Consumer" means a natural person who rents personal property under a lease-purchase agreement to be used primarily for personal, family, or household purposes.

(4) "Consummation" means the time a consumer becomes contractually obligated on a lease-purchase agreement.

(5) "Lease-purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

(6) "Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement. [1992 c 134 § 2.]

63.19.020 Chapter application. (1) Lease-purchase agreements that comply with this chapter are not governed by the laws relating to:

- (a) A consumer lease as defined in chapter 63.10 RCW;
- (b) A retail installment sale of goods or services as regulated under chapter 63.14 RCW;
- (c) A security interest as defined in Title 62A RCW; or
- (d) Loans, forbearances of money, goods, or things in action as governed by chapter 19.52 RCW.

(2) This chapter does not apply to the following:

- (a) Lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;
- (b) A lease of a safe deposit box;
- (c) A lease or bailment of personal property that is incidental to the lease of real property, and that provides that the consumer has no option to purchase the leased property; or
- (d) A lease of an automobile. [1992 c 134 § 3.]

63.19.030 Disclosure by lessor—Requirement. (1) The lessor shall disclose to the consumer the information required under this chapter. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by such disclosures.

(2) The disclosure shall be made at or before consummation of the lease-purchase agreement.

(3) The disclosure shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement provided to the consumer. The disclosures required under RCW 63.19.040(1) shall be made on the face of the contract above the line for the consumer's signature.

(4) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement by the consumer after delivery

of the required disclosures, the resulting inaccuracy is not a violation of this chapter. [1992 c 134 § 4.]

63.19.040 Disclosure by lessor—Contents. (1) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(a) The total number, total amount, and timing of all payments necessary to acquire ownership of the property;

(b) A statement that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership;

(c) A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;

(d) A brief description of the leased property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this chapter;

(e) A brief description of any damage to the leased property;

(f) A statement of the cash price of the property. Where the agreement involves a lease of five or more items as a set, in one agreement, a statement of the aggregate cash price of all items shall satisfy this requirement;

(g) The total of initial payments paid or required at or before consummation of the agreement or delivery of the property, whichever is later;

(h) A statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, which fees shall be separately disclosed in the contract;

(i) A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula, or method for determining the price at which the property may be so purchased;

(j) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(k) The date of the transaction and the identities of the lessor and consumer;

(l) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term along with any past due rental payments; and

(m) Notice of the right to reinstate an agreement as herein provided.

(2) With respect to matters specifically governed by the federal consumer credit protection act, compliance with the act satisfies the requirements of this section. [1992 c 134 § 5.]

63.19.050 Agreement—Restrictions. A lease-purchase agreement may not contain:

- (1) A confession of judgment;
- (2) A negotiable instrument;
- (3) A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;
- (4) A wage assignment;
- (5) A waiver by the consumer of claims or defenses; or
- (6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods. [1992 c 134 § 6.]

63.19.060 Consumer—Reinstatement of agreement—Terms. (1) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options that exist under the agreement, by the payment of:

- (a) All past due rental charges;
- (b) If the property has been picked up, the reasonable costs of pickup and redelivery; and
- (c) Any applicable late fee, within ten days of the renewal date if the consumer pays monthly, or within five days of the renewal date if the consumer pays more frequently than monthly.

(2) In the case of a consumer who has paid less than two-thirds of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in subsection (1) of this section, the consumer may reinstate the agreement during a period of not less than twenty-one days after the date of the return of the property.

(3) In the case of a consumer who has paid two-thirds or more of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in subsection (1) of this section, the consumer may reinstate the agreement during a period of not less than forty-five days after the date of the return of the property.

(4) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition. [1992 c 134 § 7.]

63.19.070 Written receipt—Lessor's duty. A lessor shall provide the consumer a written receipt for each payment made by cash or money order. [1992 c 134 § 8.]

63.19.080 Renegotiation—Same lessor and consumer. (1) A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures. However, events such as the following shall not be treated as renegotiations:

- (a) The addition or return of property in a multiple-item agreement or the substitution of the lease property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent;
 - (b) A deferral or extension of one or more periodic payments, or portions of a periodic payment;
 - (c) A reduction in charges in the lease or agreement; and
 - (d) A lease or agreement involved in a court proceeding.
- (2) No disclosures are required for any extension of a lease-purchase agreement. [1992 c 134 § 9.]

63.19.090 Advertising—Requirements—Liability.

(1) If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership for any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

- (a) That the transaction advertised is a lease-purchase agreement;
- (b) The total of payments necessary to acquire ownership; and
- (c) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

(2) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) The provisions of subsection (1) of this section shall not apply to an advertisement that does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business. [1992 c 134 § 10.]

63.19.100 Upholstered furniture or bedding. Upon the return of leased upholstered furniture or bedding, the lessor shall sanitize the property. A lessor shall not lease used upholstered furniture or bedding that has not been sanitized. [1992 c 134 § 11.]

63.19.110 Violation—Application of chapter 19.86 RCW. The Washington lease-purchase agreement act is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. The violation of this chapter is not reasonable in relation to the development and preservation of business. A violation of this chapter constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW. [1992 c 134 § 12.]

63.19.900 Short title—1992 c 134. This act may be known and cited as the Washington lease-purchase agreement act. [1992 c 134 § 1.]

63.19.901 Severability—1992 c 134. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 134 § 18.]

Chapter 63.21 RCW

LOST AND FOUND PROPERTY

Sections

63.21.010	Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication.
63.21.020	Circumstances extinguishing finder's claim to property.
63.21.030	Release of property to finder—Limitations—Payment to governmental entity—Expiration of finder's claim.
63.21.040	Failure to comply with chapter—Forfeiture of right to property.
63.21.050	Duties of chief law enforcement officer receiving found property.
63.21.060	Duties of governmental entity acquiring lost property—Disposal of property.
63.21.070	Claim to found property by employee, officer, or agent of governmental entity—Limitation.
63.21.080	Chapter not applicable to certain unclaimed property.
63.21.900	Severability—1979 ex.s. c 85.

63.21.010 Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication. (1) Any person who finds property that is not unlawful to possess, the owner of which is unknown, and who wishes to claim the found property, shall:

(a) Within seven days of the finding acquire a signed statement setting forth an appraisal of the current market value of the property prepared by a qualified person engaged in buying or selling like items or by a district court judge, unless the found property is cash; and

(b) Within seven days report the find of property and surrender, if requested, the property and a copy of the evidence of the value of the property to the chief law enforcement officer, or his or her designated representative, of the governmental entity where the property was found, and serve written notice upon the officer of the finder's intent to claim the property if the owner does not make out his or her right to it under this chapter.

(2) Within thirty days of the report the governmental entity shall cause notice of the finding to be published at least once a week for two successive weeks in a newspaper of general circulation in the county where the property was found, unless the appraised value of the property is less than the cost of publishing notice. If the value is less than the cost of publishing notice, the governmental entity may cause notice to be posted or published in other media or formats that do not incur expense to the governmental entity. [1997 c 237 § 1; 1979 ex.s. c 85 § 1.]

63.21.020 Circumstances extinguishing finder's claim to property. The finder's claim to the property shall be extinguished:

(1) If the owner satisfactorily establishes, within sixty days after the find was reported to the appropriate officer, the owner's right to possession of the property; or

(2) If the chief law enforcement officer determines and so informs the finder that the property is illegal for the finder to possess. [1979 ex.s. c 85 § 2.]

63.21.030 Release of property to finder—Limitations—Payment to governmental entity—Expiration of finder's claim. (1) The found property shall be released to the finder and become the property of the finder sixty days

after the find was reported to the appropriate officer if no owner has been found, or sixty days after the final disposition of any judicial or other official proceeding involving the property, whichever is later. The property shall be released only after the finder has presented evidence of payment to the treasurer of the governmental entity handling the found property, the amount of ten dollars plus the amount of the cost of publication of notice incurred by the government [governmental] entity pursuant to RCW 63.21.010, which amount shall be deposited in the general fund of the governmental entity. If the appraised value of the property is less than the cost of publication of notice of the finding, then the finder is not required to pay any fee.

(2) When ninety days have passed after the found property was reported to the appropriate officer, or ninety days after the final disposition of a judicial or other proceeding involving the found property, and the finder has not completed the requirements of this chapter, the finder's claim shall be deemed to have expired and the found property may be disposed of as unclaimed property under chapter 63.32 or 63.40 RCW. Such laws shall also apply whenever a finder states in writing that he or she has no intention of claiming the found property. [1997 c 237 § 2; 1979 ex.s. c 85 § 3.]

63.21.040 Failure to comply with chapter—Forfeiture of right to property. Any finder of property who fails to discharge the duties imposed by this chapter shall forfeit all right to the property and shall be liable for the full value of the property to its owner. [1979 ex.s. c 85 § 4.]

63.21.050 Duties of chief law enforcement officer receiving found property. The chief law enforcement officer or his or her designated representative to whom a finder surrenders property, shall:

(1) Advise the finder if the found property is illegal for him or her to possess;

(2) Advise the finder if the found property is to be held as evidence in judicial or other official proceedings;

(3) Advise the finder in writing of the procedures to be followed in claiming the found property;

(4) If the property is valued at twenty-five dollars or less, allow the finder to retain the property if it is determined there is no reason for the officer to retain the property;

(5) If the property exceeds twenty-five dollars in value and has been requested to be surrendered to the law enforcement agency, retain the property for sixty days before it can be claimed by the finder under this chapter, unless the owner shall have recovered the property;

(6) If the property is held as evidence in judicial or other official proceedings, retain the property for sixty days after the final disposition of the judicial or other official proceeding, before it can be claimed by the finder or owner under the provisions of this chapter;

(7) After the required number of days have passed, and if no owner has been found, surrender the property to the finder according to the requirements of this chapter; or

(8) If neither the finder nor the owner claim the property retained by the officer within thirty days of the time when the claim can be made, the property shall be disposed of as

unclaimed property under chapter 63.32 or 63.40 RCW. [1979 ex.s. c 85 § 5.]

63.21.060 Duties of governmental entity acquiring lost property—Disposal of property. Any governmental entity that acquires lost property shall attempt to notify the apparent owner of the property. If the property is not returned to a person validly establishing ownership or right to possession of the property, the governmental entity shall forward the lost property within thirty days but not less than ten days after the time the governmental entity acquires the lost property to the chief law enforcement officer, or his or her designated representative, of the county in which the property was found, except that if the property is found within the borders of a city or town the property shall be forwarded to the chief law enforcement officer of the city or town or his or her designated representative. A governmental entity may elect to retain property which it acquires and dispose of the property as provided by chapter 63.32 or 63.40 RCW. [1979 ex.s. c 85 § 6.]

63.21.070 Claim to found property by employee, officer, or agent of governmental entity—Limitation. An employee, officer, or agent of a governmental entity who finds or acquires any property covered by this chapter while acting within the course of his or her employment may not claim possession of the lost property as a finder under this chapter unless the governing body of the governmental entity has specifically provided, by ordinance, resolution, or rule for such a claim. [1979 ex.s. c 85 § 7.]

63.21.080 Chapter not applicable to certain unclaimed property. This chapter shall not apply to:

- (1) Motor vehicles under chapter 46.52 RCW;
- (2) Unclaimed property in the hands of a bailee under chapter 63.24 RCW;
- (3) Uniform disposition of unclaimed property under chapter 63.29 RCW; and
- (4) Secured vessels under *chapter 88.27 RCW. [1994 c 51 § 6; 1985 c 7 § 125; 1979 ex.s. c 85 § 8.]

*Reviser's note: Chapter 88.27 RCW was recodified as chapter 79A.65 RCW pursuant to 1999 c 249 § 1601.

Severability—1994 c 51: See RCW 79A.65.900.

63.21.900 Severability—1979 ex.s. c 85. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 85 § 11.]

Chapter 63.24 RCW

UNCLAIMED PROPERTY IN HANDS OF BAILEE

Sections

- 63.24.150 Notice to owner.
- 63.24.160 Disposition of unclaimed property—Donation to charitable organization or transmittal to police or sheriff.
- 63.24.170 Bailee not liable to owner—Reimbursed for reasonable costs.

Abandoned inmate personal property: Chapter 63.42 RCW.

Unclaimed property in hands of state patrol: Chapter 63.35 RCW.

(2008 Ed.)

63.24.150 Notice to owner. Unless otherwise provided between the parties, if personal property deposited with a bailee is unclaimed for a period of thirty days, the bailee shall notify the owner, if known, either personally or by mail that the property is subject to disposition under RCW 63.24.160. [1981 c 154 § 4.]

63.24.160 Disposition of unclaimed property—Donation to charitable organization or transmittal to police or sheriff. If property not covered by chapter 63.26 RCW remains unclaimed sixty days after notice is given, or, if the owner's identity or address is unknown, sixty days from when notice was attempted, the bailee shall:

- (1) If the reasonable aggregate value of the unclaimed property is less than one hundred dollars, donate the property, or proceeds thereof, to a charitable organization exempt from federal income tax under the federal internal revenue code; or
- (2) If the reasonable aggregate value of the unclaimed property is one hundred dollars or more, forward the property to the chief of police or sheriff for disposition as unclaimed property under chapter 63.32 or 63.40 RCW. [1988 c 226 § 1; 1981 c 154 § 5.]

63.24.170 Bailee not liable to owner—Reimbursed for reasonable costs. A bailee is not liable to the owner for unclaimed property disposed of in good faith in accordance with the requirements of this chapter. A bailee shall be reimbursed from the proceeds of sale of any unclaimed property disposed of under RCW 63.24.160 for the reasonable costs or charges for any goods or services provided by the bailee regarding the property, and for the costs to provide notice to the owner. [1990 c 41 § 1; 1981 c 154 § 6.]

Chapter 63.26 RCW

UNCLAIMED PROPERTY HELD BY MUSEUM OR HISTORICAL SOCIETY

Sections

- 63.26.010 Definitions.
- 63.26.020 Abandoned property—Notice.
- 63.26.030 Loaned property deemed donated—Notice of owner's change of address—Notice of provisions of chapter.
- 63.26.040 Notice of abandonment of property.
- 63.26.050 Vesting of title in museum or historical society—Subsequent purchase from museum or historical society.

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

(1) "Museum or historical society" means an institution operated by a nonprofit corporation, nonprofit association, or public agency, primarily educational, scientific, historic, or aesthetic in purpose, which owns, borrows, studies, or cares for tangible objects, including archives, and exhibits them as appropriate.

(2) "Property" includes all documents and tangible objects, animate and inanimate, under the care of a museum or historical society which have intrinsic scientific, historic, artistic, or cultural value. [1988 c 226 § 3.]

63.26.020 Abandoned property—Notice. Any property held by a museum or historical society within the state,

other than by terms of a loan agreement, that has been held for five years or more and has remained unclaimed shall be deemed to be abandoned. Such property shall become the property of the museum or historical society if the museum or society has given notice pursuant to RCW 63.26.040 and no assertion of title has been filed for the property within ninety days from the date of the second published notice. [1988 c 226 § 4.]

63.26.030 Loaned property deemed donated—Notice of owner's change of address—Notice of provisions of chapter. (1) Property subject to a loan agreement which is on loan to a museum or historical society shall be deemed to be donated to the museum or society if no claim is made or action filed to recover the property after termination or expiration of the loan and if the museum or society has given notice pursuant to RCW 63.26.040 and no assertion of title has been filed within ninety days from the date of the second published notice.

(2) A museum or society may terminate a loan of property if the property was loaned to the museum or society for an indefinite term and the property has been held by the museum or society for five years or more. Property on "permanent loan" shall be deemed to be loaned for an indefinite term.

(3) If property was loaned to the museum or society for a specified term, the museum or society may give notice of termination of the loan at any time after expiration of the specified term.

(4) It is the responsibility of the owner of property on loan to a museum or society to notify the museum or society promptly in writing of any change of address or change in ownership of the property.

(5) When a museum or society accepts a loan of property, the museum or society shall inform the owner in writing of the provisions of this chapter. [1988 c 226 § 5.]

63.26.040 Notice of abandonment of property. (1) When a museum or historical society is required to give notice of abandonment of property or of termination of a loan, the museum or historical society shall mail such notice by certified mail, return receipt requested, to the last known owner at the most recent address of such owner as shown on the museum's or society's records. If the museum or society has no address on record, or the museum or society does not receive written proof of receipt of the mailed notice within thirty days of the date the notice was mailed, the museum or society shall publish notice, at least once each week for two consecutive weeks, in a newspaper of general circulation in both the county in which the museum is located and the county in which the last known address, if available, of the owner is located.

(2) The published notice shall contain:

(a) A description of the unclaimed property;
 (b) The name and last known address of the owner;
 (c) A request that all persons who may have any knowledge of the whereabouts of the owner provide written notice to the museum or society; and

(d) A statement that if written assertion of title is not presented by the owner to the museum or society within ninety

days from the date of the second published notice, the property shall be deemed abandoned or donated and shall become the property of the museum or society.

(3) For purposes of this chapter, if the loan of property was made to a branch of a museum or society, the museum or society is deemed to be located in the county in which the branch is located. Otherwise the museum or society is located in the county in which it has its principal place of business. [1988 c 226 § 6.]

63.26.050 Vesting of title in museum or historical society—Subsequent purchase from museum or historical society. (1) If no written assertion of title has been presented by the owner to the museum or society within ninety days from the date of the second published notice, title to the property shall vest in the museum or historical society, free of all claims of the owner and of all persons claiming under the owner.

(2) One who purchases or otherwise acquires property from a museum or historical society acquires good title to the property if the museum or society has acquired title to the property under this chapter. [1988 c 226 § 7.]

Chapter 63.29 RCW

UNIFORM UNCLAIMED PROPERTY ACT

Sections

63.29.010	Definitions and use of terms.
63.29.020	Property presumed abandoned—General rule—Exceptions.
63.29.030	General rules for taking custody of intangible unclaimed property.
63.29.040	Travelers checks and money orders.
63.29.050	Checks, drafts, and similar instruments issued or certified by banking and financial organizations.
63.29.060	Bank deposits and funds in financial organizations.
63.29.070	Funds owing under life insurance policies.
63.29.080	Deposits held by utilities.
63.29.090	Refunds held by business associations.
63.29.100	Stock and other intangible interests in business associations.
63.29.110	Property of business associations held in course of dissolution.
63.29.120	Property held by agents and fiduciaries.
63.29.130	Property held by courts and public agencies—When abandoned—Overpayments.
63.29.133	Property held by landlord.
63.29.135	Abandoned intangible property held by local government.
63.29.140	Gift certificates and credit memos.
63.29.150	Wages.
63.29.160	Contents of safe deposit box or other safekeeping repository.
63.29.165	Property in self-storage facility.
63.29.170	Report of abandoned property.
63.29.180	Notice and publication of information about unclaimed property.
63.29.190	Payment or delivery of abandoned property.
63.29.200	Custody by state—Holder relieved from liability—Reimbursement of holder paying claim—Reclaiming for owner—Defense of holder—Payment of safe deposit box or repository charges.
63.29.210	Crediting of dividends, interest, or increments to owner's account.
63.29.220	Public sale of abandoned property.
63.29.230	Deposit of funds.
63.29.240	Filing of claim with department.
63.29.250	Claim of another state to recover property—Procedure.
63.29.260	Action to establish claim.
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63.29.280	Destruction or disposition of property having insubstantial commercial value—Immunity from liability.
63.29.290	Periods of limitation.
63.29.300	Requests for reports and examination of records.
63.29.310	Retention of records.
63.29.320	Enforcement.
63.29.330	Interstate agreements and cooperation—Joint and reciprocal actions with other states.

63.29.340	Interest and penalties.
63.29.350	Penalty for excessive fee for locating abandoned property.
63.29.360	Foreign transactions.
63.29.370	Rules.
63.29.380	Information and records confidential.
63.29.900	Effect of new provisions—Clarification of application.
63.29.901	Captions not law—1983 c 179.
63.29.902	Uniformity of application and construction.
63.29.903	Short title.
63.29.904	Severability—1983 c 179.
63.29.905	Effective date—1983 c 179.
63.29.906	Effective date—1996 c 45.

Abandoned inmate personal property: Chapter 63.42 RCW.

Unclaimed property in hands of state patrol: Chapter 63.35 RCW.

63.29.010 Definitions and use of terms. As used in this chapter, unless the context otherwise requires:

(1) "Department" means the department of revenue established under RCW 82.01.050.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this state referred to in chapter 43.10 RCW.

(4) "Banking organization" means a bank, trust company, savings bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a nonpublic corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) "Fare card" means any pass or instrument, and value contained therein, purchased to utilize public transportation facilities or services. "Fare card" does not include "gift card" or "gift certificate" as those terms are defined in RCW 19.240.010.

(8) "Financial organization" means a savings and loan association, cooperative bank, building and loan association, or credit union.

(9) "Gift certificate" has the same meaning as in RCW 19.240.010.

(10) "Holder" means a person, wherever organized or domiciled, who is:

- (a) In possession of property belonging to another,
- (b) A trustee, or
- (c) Indebted to another on an obligation.

(11) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(12) "Intangible property" does not include contract claims which are unliquidated but does include:

(a) Moneys, checks, drafts, deposits, interest, dividends, and income;

(b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances, but does not include discounts which represent credit balances for which no consideration was given;

(c) Stocks, and other intangible ownership interests in business associations;

(d) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(e) Liquidated amounts due and payable under the terms of insurance policies; and

(f) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(13) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(14) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his legal representative.

(15) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(16) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(17) "Third party bank check" means any instrument drawn against a customer's account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.

(18) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. [2005 c 285 § 1; 2004 c 168 § 13; 1983 c 179 § 1.]

Effective date—2004 c 168 §§ 13 and 14: "Sections 13 and 14 of this act take effect July 1, 2004." [2004 c 168 § 19.]

63.29.020 Property presumed abandoned—General rule—Exceptions. (1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.

(2) Property, with the exception of unredeemed Washington state lottery tickets and unrepresented winning parimutuel tickets, is payable and distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(3) This chapter does not apply to claims drafts issued by insurance companies representing offers to settle claims

unliquidated in amount or settled by subsequent drafts or other means.

(4) This chapter does not apply to property covered by chapter 63.26 RCW.

(5) This chapter does not apply to used clothing, umbrellas, bags, luggage, or other used personal effects if such property is disposed of by the holder as follows:

(a) In the case of personal effects of negligible value, the property is destroyed; or

(b) The property is donated to a bona fide charity.

(6) This chapter does not apply to a gift certificate subject to the prohibition against expiration dates under RCW 19.240.020 or to a gift certificate subject to RCW 19.240.030 through 19.240.060. However, this chapter applies to gift certificates presumed abandoned under RCW 63.29.110.

(7) This chapter does not apply to excess proceeds held by counties, cities, towns, and other municipal or quasi-municipal corporations from foreclosures for delinquent property taxes, assessments, or other liens. [2005 c 502 § 3; 2005 c 367 § 1; 2004 c 168 § 14; 2003 1st sp.s. c 13 § 1; 1992 c 122 § 1; 1988 c 226 § 2; 1983 c 179 § 2.]

Effective date—2005 c 502: See note following RCW 1.12.070.

Effective date—2004 c 168 §§ 13 and 14: See note following RCW 63.29.010.

Effective dates—2003 1st sp.s. c 13: "(1) Sections 8 through 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect August 1, 2003.

(2) Sections 11 through 16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(3) Sections 1 through 7 of this act take effect January 1, 2004." [2003 1st sp.s. c 13 § 17.]

63.29.030 General rules for taking custody of intangible unclaimed property. Unless otherwise provided in this chapter or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under RCW 63.29.020 and 63.29.050 through 63.29.160 are satisfied and:

(1) The last known address, as shown on the records of the holder, of the apparent owner is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(a) The last known address of the person entitled to the property is in this state, or

(b) The holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a govern-

ment or governmental subdivision or agency of this state: PROVIDED, That a holder may rely, with acquittance, upon a list of such states which shall be provided by the department;

(5) The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(6) The transaction out of which the property arose occurred in this state; and

(a)(i) The last known address of the apparent owner or other person entitled to the property is unknown, or

(ii) The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property: PROVIDED, That a holder may rely, with acquittance, upon a list of such states which shall be provided by the department, and

(b) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property. [1983 c 179 § 3.]

63.29.040 Travelers checks and money orders. (1) Subject to subsection (4) of this section, any sum payable on a travelers check that has been outstanding for more than fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(2) Subject to subsection (4) of this section, any sum payable on a money order or similar written instrument, other than a third party bank check, that has been outstanding for more than five years after its issuance is presumed abandoned unless the owner, within five years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(3) A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(4) No sum payable on a travelers check, money order, or similar written instrument, other than a third party bank check, described in subsections (1) and (2) of this section may be subjected to the custody of this state as unclaimed property unless:

(a) The records of the issuer show that the travelers check, money order, or similar written instrument was purchased in this state;

(b) The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the travelers check, money order, or similar written instrument was purchased; or

(c) The issuer has its principal place of business in this state, the records of the issuer show the state in which the travelers check, money order, or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property. The department shall provide to the issuer a list of all such states and the issuer may rely with acquittance upon such list.

(5) Notwithstanding any other provision of this chapter, subsection (4) of this section applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state. [1983 c 179 § 4.]

63.29.050 Checks, drafts, and similar instruments issued or certified by banking and financial organizations.

(1) Any sum payable on a check, draft, or similar instrument, except those subject to RCW 63.29.040, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than three years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within three years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

(2) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them. [2003 1st sp.s. c 13 § 2; 1983 c 179 § 5.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.060 Bank deposits and funds in financial organizations.

(1) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within three years, has:

(a) In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

(d) Owned other property to which subsection (1)(a), (b), or (c) of this section applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which com-

munications regarding the other property regularly are sent; or

(e) Had another relationship with the banking or financial organization concerning which the owner has:

(i) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(ii) Communicated in writing with the banking or financial organization; or

(iii) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

(2) For purposes of subsection (1) of this section property includes interest and dividends.

(3) This chapter shall not apply to deposits made by a guardian or decedent's personal representative with a banking organization when the deposit is subject to withdrawal only upon the order of the court in the guardianship or estate proceeding.

(4) A holder may not impose with respect to property described in subsection (1) of this section any charge due to dormancy or inactivity or cease payment of interest unless:

(a) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;

(b) For property in excess of ten dollars, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before June 30, 1983; and

(c) The holder regularly imposes such charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.

(5) Any property described in subsection (1) of this section that is automatically renewable is matured for purposes of subsection (1) of this section upon the expiration of its initial time period, or after one year if the initial period is less than one year, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in RCW 63.29.190, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result. [2003 1st sp.s. c 13 § 3; 1983 c 179 § 6.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.070 Funds owing under life insurance policies.

(1) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than three years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subsection (3)(b) of this section is presumed abandoned if unclaimed for more than two years.

(2) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(a) The company knows that the insured or annuitant has died; or

(b)(i) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(ii) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph (i) of this subsection; and

(iii) Neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection (1) of this section if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing two years after June 30, 1983, every change of beneficiary form issued by an insurance company

under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured. [2003 1st sp.s. c 13 § 4; 1983 c 179 § 7.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.080 Deposits held by utilities. (1) A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than one year after the date it became payable in accordance with the final determination or order providing for the refund is presumed abandoned. [1983 c 179 § 8.]

63.29.090 Refunds held by business associations. Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned. [1983 c 179 § 9.]

63.29.100 Stock and other intangible interests in business associations. (1) Except as provided in subsections (2) and (5) of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for three years and the owner within three years has not:

(a) Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(b) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(2) At the expiration of a three-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the inter-

est is not presumed abandoned unless there have been at least five dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If five dividends, distributions, or other sums are paid during the three-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If five dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been five dividends, distributions, or other sums that have not been claimed by the owner.

(3) The running of the three-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection (1) of this section. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(4) At the time any interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This chapter shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless:

(a) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within three years communicated in any manner described in subsection (1) of this section; or

(b) Three years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable, and the owner has not within those three years communicated in any manner described in subsection (1) of this section. The three-year period from the return of official shareholder notifications or communications shall commence from the earlier of the return of the second such mailing or the date the holder discontinues mailings to the shareholder. [2003 1st sp.s. c 13 § 5; 1996 c 45 § 1; 1983 c 179 § 10.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.110 Property of business associations held in course of dissolution. Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned. [1983 c 179 § 11.]

63.29.120 Property held by agents and fiduciaries.

(1) Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within three years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the

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property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States are not payable or distributable within the meaning of subsection (1) of this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(3) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

(4) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned. [2003 1st sp.s. c 13 § 6; 1983 c 179 § 12.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.130 Property held by courts and public agencies—When abandoned—Overpayments. Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, public authority, or the United States or any instrumentality of the United States that remains unclaimed by the owner for more than two years after becoming payable or distributable is presumed abandoned. However, courts may retain overpayments made in connection with any litigation, including traffic, criminal, and noncriminal matters, in an amount less than or equal to ten dollars. These overpayments shall be remitted by the clerk of the court to the local treasurer for deposit in the local current expense fund. [2007 c 183 § 1; 1993 c 498 § 2; 1983 c 179 § 13.]

63.29.133 Property held by landlord. Intangible property held by a landlord as a result of a sheriff's sale pursuant to RCW 59.18.312 that remains unclaimed for a period of one year from the date of the sale is presumed abandoned. [1992 c 38 § 9.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

63.29.135 Abandoned intangible property held by local government. A local government holding abandoned intangible property that is not forwarded to the department of revenue, as authorized under RCW 63.29.190, shall not be required to maintain current records of this property for longer than five years after the property is presumed to be abandoned, and at that time may archive records of this intangible property and transfer the intangible property to its general fund. However, the local government shall remain liable to pay the intangible property to a person or entity subsequently establishing its ownership of this intangible property. [1990 2nd ex.s. c 1 § 301.]

Applicability—1990 2nd ex.s. c 1: "Any funds covered by RCW 63.29.190 that were received by the state prior to June 6, 1990, shall be retained by the state of Washington, and any such funds not remitted to the state prior to June 6, 1990, may be retained as provided for under RCW 63.29.190." [1990 2nd ex.s. c 1 § 303.]

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

63.29.140 Gift certificates and credit memos. (1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

(3) A gift certificate that is presumed abandoned under this section may, but need not be, included in the report as provided under RCW 63.29.170(4). If a gift certificate that is presumed abandoned under this section is not timely reported as provided under RCW 63.29.170(4), RCW 19.240.005 through 19.240.110 apply to the gift certificate. [2004 c 168 § 15; 2003 1st sp.s. c 13 § 7; 1983 c 179 § 14.]

Effective date—2004 c 168 §§ 15 and 16: "Sections 15 and 16 of this act take effect January 1, 2005." [2004 c 168 § 20.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.150 Wages. Unpaid wages, including wages represented by unrepresented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned. [1983 c 179 § 15.]

63.29.160 Contents of safe deposit box or other safekeeping repository. All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, which remain unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired, are presumed abandoned. [1983 c 179 § 16.]

63.29.165 Property in self-storage facility. The excess proceeds of a sale conducted pursuant to RCW 19.150.080 by an owner of a self-service storage facility to satisfy the lien and costs of storage which are not claimed by the occupant of the storage space or any other person which remains unclaimed for more than six months are presumed abandoned. [1993 c 498 § 4; 1988 c 240 § 21.]

Severability—1988 c 240: See RCW 19.150.904.

63.29.170 Report of abandoned property. (1) A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property with a value of more than fifty dollars presumed abandoned under this chapter;

(b) In the case of unclaimed funds of more than fifty dollars held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and where it may be inspected by the department, and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items with a value of fifty dollars or less each may be reported in the aggregate;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his or her name while holding the property, the holder shall file with the report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1st of each year and shall include, except as provided in RCW 63.29.140(3), all property presumed abandoned and subject to custody as unclaimed property under this chapter that is in the holder's possession as of the preceding June 30th. On written request by any person required to file a report, the department may postpone the reporting date.

(5) After May 1st, but before August 1st, of each year in which a report is required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the last known address informing him or her that the holder is in possession of property subject to this chapter if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) The claim of the apparent owner is not barred by the statute of limitations; and

(c) The property has a value of more than seventy-five dollars. [2004 c 168 § 16; 2003 c 237 § 1; 1996 c 45 § 2; 1993 c 498 § 7; 1983 c 179 § 17.]

Effective date—2004 c 168 §§ 15 and 16: See note following RCW 63.29.140.

63.29.180 Notice and publication of information about unclaimed property. (1) The department shall cause a notice to be published not later than November 1st, immediately following the report required by RCW 63.29.170 in a

newspaper of general circulation within this state, which the department determines is most likely to give notice to the apparent owner of the property.

(2) The published notice must be entitled "Notice to Owners of Unclaimed Property" and contain a summary explanation of how owners may obtain information about unclaimed property reported to the department.

(3) Not later than September 1st, immediately following the report required by RCW 63.29.170, the department shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property with a value of more than seventy-five dollars presumed abandoned under this chapter and any beneficiary of a life or endowment insurance policy or annuity contract for whom the department has a last known address.

(4) The mailed notice must contain:

(a) A statement that, according to a report filed with the department, property is being held to which the addressee appears entitled; and

(b) The name of the person reporting the property and the type of property described in the report.

(5) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under RCW 63.29.040. [2005 c 367 § 2; 2003 c 237 § 2; 1993 c 498 § 9; 1986 c 84 § 1; 1983 c 179 § 18.]

63.29.190 Payment or delivery of abandoned property. (1) Except as otherwise provided in subsections (2) and (3) of this section, a person who is required to file a report under RCW 63.29.170 shall pay or deliver to the department all abandoned property required to be reported at the time of filing the report.

(2)(a) Counties, cities, towns, and other municipal and quasi-municipal corporations that hold funds representing warrants canceled pursuant to RCW 36.22.100 and 39.56.040, uncashed checks, and property tax overpayments or refunds may retain the funds until the owner notifies them and establishes ownership as provided in RCW 63.29.135. Counties, cities, towns, or other municipal or quasi-municipal corporations shall provide to the department a report of property it is holding pursuant to this section. The report shall identify the property and owner in the manner provided in RCW 63.29.170 and the department shall publish the information as provided in RCW 63.29.180.

(b)(i) A public transportation authority that holds funds representing value on abandoned fare cards may retain the funds until the owner notifies the authority and establishes ownership as provided in RCW 63.29.135.

(ii) For the purposes of this subsection (2)(b), "public transportation authority" means a municipality, as defined in RCW 35.58.272, a regional transit authority authorized by chapter 81.112 RCW, a public mass transportation system authorized by chapter 47.60 RCW, or a city transportation authority authorized by chapter 35.95A RCW.

(3) The contents of a safe deposit box or other safekeeping repository presumed abandoned under RCW 63.29.160 and reported under RCW 63.29.170 shall be paid or delivered to the department within six months after the final date for filing the report required by RCW 63.29.170.

If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the department, and the property will no longer be presumed abandoned. In that case, the holder shall file with the department a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(4) The holder of an interest under RCW 63.29.100 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the department. Upon delivery of a duplicate certificate to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with RCW 63.29.200 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the department, for any losses or damages resulting to any person by the issuance and delivery to the department of the duplicate certificate. [2005 c 502 § 4; 2005 c 367 § 3; 2005 c 285 § 2; 1993 c 498 § 8; 1991 c 311 § 7; 1990 2nd ex.s. c 1 § 302; 1983 c 179 § 19.]

Reviser's note: This section was amended by 2005 c 285 § 2, 2005 c 367 § 3, and by 2005 c 502 § 4, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2005 c 502: See note following RCW 1.12.070.

Severability—1991 c 311: See note following RCW 82.14.310.

Applicability—1990 2nd ex.s. c 1: See note following RCW 63.29.135.

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

63.29.200 Custody by state—Holder relieved from liability—Reimbursement of holder paying claim—Reclaiming for owner—Defense of holder—Payment of safe deposit box or repository charges. (1) Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the department in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(2) A holder who has paid money to the department pursuant to this chapter may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the department shall promptly reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on an instrument, including a travelers check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder must be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under RCW 63.29.290(1).

(3) A holder who has delivered property (including a certificate of any interest in a business association) other than

money to the department pursuant to this chapter may reclaim the property if still in the possession of the department, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(4) The department may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

(5) If the holder pays or delivers property to the department in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the department, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(6) For the purposes of this section, "good faith" means that:

(a) Payment or delivery was made in a reasonable attempt to comply with this chapter;

(b) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him, that the property was abandoned for the purposes of this chapter; and

(c) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(7) Property removed from a safe deposit box or other safekeeping repository is received by the department subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The department shall reimburse or pay the holder out of the proceeds remaining after deducting the department's selling cost. The liability of the department for this reimbursement to the holder shall be limited to the proceeds of the sale of the property remaining after the deduction of the department's costs. [1983 c 179 § 20.]

63.29.210 Crediting of dividends, interest, or increments to owner's account. Whenever property other than money is paid or delivered to the department under this chapter, the owner is entitled to receive from the department any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money. [1983 c 179 § 21.]

63.29.220 Public sale of abandoned property. (1) Except as provided in subsections (2) and (3) of this section the department, within five years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the department the most favorable market for the property involved. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. If in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of gen-

eral circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the department considers advisable. All securities may be sold over the counter at prices prevailing at the time of the sale, or by any other method the department deems advisable.

(3) Unless the department considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under RCW 63.29.100, delivered to the department must be held for at least one year before being sold.

(4) Unless the department considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under RCW 63.29.100 and delivered to the department must be held for at least three years before being sold. If the department sells any securities delivered pursuant to RCW 63.29.100 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to RCW 63.29.230(2). A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, less any amounts deducted pursuant to RCW 63.29.230(2), but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the department.

(5) The purchaser of property at any sale conducted by the department pursuant to this chapter takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership. [2005 c 367 § 4; 1996 c 45 § 3; 1993 c 498 § 10; 1983 c 179 § 22.]

63.29.230 Deposit of funds. (1) Except as otherwise provided by this section, the department shall promptly deposit in the general fund of this state all funds received under this chapter, including the proceeds from the sale of abandoned property under RCW 63.29.220. The department shall retain in a separate trust fund an amount not less than two hundred fifty thousand dollars from which prompt payment of claims duly allowed must be made by the department. Before making the deposit, the department shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, and the name of the company. The record must be available for public inspection at all reasonable business hours.

(2) The department of revenue may pay from the trust fund provided in subsection (1) of this section any costs of administering this chapter. [1983 c 179 § 23.]

63.29.240 Filing of claim with department. (1) A person, excluding another state, claiming an interest in any property paid or delivered to the department may file with it a claim on a form prescribed by it and verified by the claimant.

(2) The department shall consider each claim within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(3) If a claim is allowed, the department shall pay over or deliver to the claimant the property or the amount the department actually received or the net proceeds if it has been sold by the department, together with any additional amount required by RCW 63.29.210. If the claim is for property presumed abandoned under RCW 63.29.100 which was sold by the department within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the department also shall pay interest at the legal rate or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the department and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. No interest on interest-bearing property is payable for any period before June 30, 1983.

(4) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the department, would be subject to subsection (3) of this section shall add interest as provided in subsection (3) of this section. The added interest must be repaid to the holder by the department in the same manner as the principal. [1983 c 179 § 24.]

63.29.250 Claim of another state to recover property—Procedure. (1) At any time after property has been paid or delivered to the department under this chapter another state may recover the property if:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(b) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(c) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or become subject to a claim of abandonment by that state;

(d) The property was subjected to custody by this state under RCW 63.29.030(6) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(e) The property is the sum payable on a travelers check, money order, or other similar instrument that was subjected to custody by this state under RCW 63.29.040, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the department, who shall decide the claim within ninety days after it is presented. The department shall allow the claim if it determines that the other state is entitled to the abandoned property under subsection (1) of this section.

(3) The department shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property. [1983 c 179 § 25.]

63.29.260 Action to establish claim. A person aggrieved by a decision of the department or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the superior court of Thurston county naming the department as a defendant. The action must be brought within ninety days after the decision of the department or within one hundred eighty days after the filing of the claim if the department has failed to act on it. [1983 c 179 § 26.]

63.29.270 Election to take payment or delivery. (1) The department may decline to receive any property reported under this chapter which it considers to have a value less than the expense of giving notice and of sale. If the department elects not to receive custody of the property, the holder shall be notified within one hundred twenty days after filing the report required under RCW 63.29.170. The holder then may dispose of the property in such manner as it sees fit. No action or proceeding may be maintained against the holder for or on account of any action taken by the holder pursuant to this subsection with respect to the property.

(2) A holder, with the written consent of the department and upon conditions and terms prescribed by it, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection must be held by the department and is not presumed abandoned until such time as it otherwise would be presumed abandoned under this chapter. [1983 c 179 § 27.]

63.29.280 Destruction or disposition of property having insubstantial commercial value—Immunity from liability. If the department determines after investigation that any property delivered under this chapter has insubstantial commercial value, the department may destroy or otherwise

dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the department pursuant to this section. Original documents which the department has identified to be destroyed and which have legal significance or historical interest may be surrendered to the state historical museum or to the state library. [2005 c 367 § 5; 1983 c 179 § 28.]

63.29.290 Periods of limitation. (1) The expiration, after September 1, 1979, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the department as required by this chapter.

(2) No action or proceeding may be commenced by the department with respect to any duty of a holder under this chapter more than six years after the duty arose. [1983 c 179 § 29.]

63.29.300 Requests for reports and examination of records. (1) The department may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter. Nothing in this chapter requires reporting of property which is not subject to payment or delivery.

(2) The department, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the provisions of this chapter. The department may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this chapter.

(3) If a person is treated under RCW 63.29.120 as the holder of the property only insofar as the interest of the business association in the property is concerned, the department, pursuant to subsection (2) of this section, may examine the records of the person if the department has given the notice required by subsection (2) of this section to both the person and the business association at least ninety days before the examination.

(4) If an examination of the records of a person results in the disclosure of property reportable and deliverable under this chapter, the department may assess the cost of the examination against the holder at the rate of one hundred forty dollars a day for each examiner, but in no case may the charges exceed the lesser of three thousand dollars or the value of the property found to be reportable and deliverable. No assessment shall be imposed where the person proves that failure to report and deliver property was inadvertent. The cost of examination made pursuant to subsection (3) of this section may be imposed only against the business association.

(5) If a holder fails after June 30, 1983, to maintain the records required by RCW 63.29.310 and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the depart-

ment may require the holder to report and pay such amounts as may reasonably be estimated from any available records. [1983 c 179 § 30.]

63.29.310 Retention of records. (1) Every holder required to file a report under RCW 63.29.170, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for six years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) of this section or by rule of the department.

(2) Any business association that sells in this state its travelers checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable. [1983 c 179 § 31.]

63.29.320 Enforcement. The department may bring an action in a court of competent jurisdiction to enforce this chapter. [1983 c 179 § 32.]

63.29.330 Interstate agreements and cooperation—Joint and reciprocal actions with other states. (1) The department may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The department by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

(2) To avoid conflicts between the department's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the department, so far as is consistent with the purposes, policies, and provisions of this chapter, before adopting, amending or repealing rules, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

(3) The department may join with other states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(4) At the request of another state, the attorney general of this state may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(5) The department may request that the attorney general of another state or any other person bring an action in the name of the department in the other state. This state shall pay all expenses including attorney's fees in any action under this subsection. The department may agree to pay the person bringing the action attorney's fees based in whole or in part

on a percentage of the value of any property recovered in the action. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under this chapter. [1983 c 179 § 33.]

63.29.340 Interest and penalties. (1) A person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay to the department interest at the rate as computed under RCW 82.32.050(2) from the date the property should have been paid or delivered until the property is paid or delivered, unless the department finds that the failure to pay or deliver the property within the time prescribed by this chapter was the result of circumstances beyond the person's control sufficient for waiver or cancellation of interest under RCW 82.32.105.

(2) A person who willfully fails to render any report, to pay or deliver property, or to perform other duties required under this chapter shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars, plus one hundred percent of the value of the property which should have been reported, paid or delivered.

(3) A person who willfully refuses after written demand by the department to pay or deliver property to the department as required under this chapter or who enters into a contract to avoid the duties of this chapter is guilty of a gross misdemeanor and upon conviction may be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. [1996 c 149 § 11; 1996 c 45 § 4; 1983 c 179 § 34.]

Reviser's note: This section was amended by 1996 c 45 § 4 and by 1996 c 149 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

63.29.350 Penalty for excessive fee for locating abandoned property. It is unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property which he knows has been reported or paid or delivered to the department of revenue pursuant to this chapter in excess of five percent of the value thereof returned to such owner. Any person violating this section is guilty of a misdemeanor and shall be fined not less than the amount of the fee or charge he has sought or received or contracted for, and not more than ten times such amount, or imprisoned for not more than thirty days, or both. [1983 c 179 § 35.]

63.29.360 Foreign transactions. This chapter does not apply to any property held, due, and owing in a foreign country and arising out of a foreign transaction. [1983 c 179 § 36.]

63.29.370 Rules. The department may adopt necessary rules in accordance with chapter 34.05 RCW to carry out the provisions of this chapter. [1983 c 179 § 38.]

63.29.380 Information and records confidential. Any information or records required to be furnished to the department of revenue as provided in this chapter shall be confidential

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and shall not be disclosed to any person except the person who furnished the same to the department of revenue, and except as provided in RCW 63.29.180 and 63.29.230, or as may be necessary in the proper administration of this chapter. [1983 c 179 § 39.]

63.29.900 Effect of new provisions—Clarification of application. (1) This chapter does not relieve a holder of a duty that arose before June 30, 1983, to report, pay, or deliver property. A holder who did not comply with the law in effect before June 30, 1983, is subject to the applicable enforcement and penalty provisions that then existed and they are continued in effect for the purpose of this subsection, subject to RCW 63.29.290(2).

(2) The initial report to be filed under this chapter shall include all property which is presumed abandoned under this chapter. The report shall include property that was not required to be reported before June 30, 1983, but which would have been presumed abandoned on or after September 1, 1979 under the terms of chapter 63.29 RCW.

(3) It shall be a defense to any action by the department that facts cannot be established because a holder, prior to January 1, 1983, destroyed or lost records or did not then keep records, if the destruction, loss, or failure to keep records did not violate laws existing at the time of the destruction, loss or failure. [1983 c 179 § 37.]

63.29.901 Captions not law—1983 c 179. Captions as used in sections of this act shall not constitute any part of the law. [1983 c 179 § 40.]

63.29.902 Uniformity of application and construction. This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1983 c 179 § 41.]

63.29.903 Short title. This chapter may be cited as the Uniform Unclaimed Property Act of 1983. [1983 c 179 § 42.]

63.29.904 Severability—1983 c 179. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 179 § 43.]

63.29.905 Effective date—1983 c 179. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1983. [1983 c 179 § 47.]

63.29.906 Effective date—1996 c 45. This act shall take effect July 1, 1996. [1996 c 45 § 5.]

Chapter 63.32 RCW
UNCLAIMED PROPERTY IN HANDS
OF CITY POLICE

Sections

63.32.010	Methods of disposition—Notice—Sale, retention, destruction, or trade.
63.32.020	Notice of sale.
63.32.030	Disposition of proceeds.
63.32.040	Reimbursement to owner.
63.32.050	Donation of unclaimed personal property to nonprofit charitable organizations.

63.32.010 Methods of disposition—Notice—Sale, retention, destruction, or trade. Whenever any personal property shall come into the possession of the police authorities of any city in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the police department, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said city may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the police department subject to giving notice in the manner prescribed in RCW 63.32.020 and the right of the owner, or the owner's legal representative, to reclaim the property within one year after receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the chief of police, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the police department shall provide the city's mayor or council and retain for public inspection a list of such retained items and an estimation of each item's replacement value. At the end of the one-year period any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2);

(3) Destroy an item of personal property at the discretion of the chief of police if the chief of police determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The chief of police has determined that the item is unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in RCW 63.32.020, may be offered by the chief of police to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained

property for purpose of annual listing requirements of subsection (2) of this section; or

(5) If the item is not unsafe or illegal to possess or sell, but has been, or may be used, in the judgment of the chief of police, in a manner that is illegal, such item may be destroyed. [1988 c 223 § 3; 1988 c 132 § 1; 1981 c 154 § 2; 1973 1st ex.s. c 44 § 1; 1939 c 148 § 1; 1925 ex.s. c 100 § 1; RRS § 8999-1.]

Reviser's note: This section was amended by 1988 c 132 § 1 and by 1988 c 223 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

63.32.020 Notice of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in the official newspaper of said city at least ten days prior to the date fixed for said sale. The notice shall be signed by the chief or other head of the police department of such city. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief or other head of the police department shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1988 c 132 § 2; 1925 ex.s. c 100 § 2; RRS § 8999-2.]

63.32.030 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be paid into the police pension fund of said city if such fund exists; otherwise into the city current expense fund. [1939 c 148 § 2; 1925 ex.s. c 100 § 3; RRS § 8999-3.]

63.32.040 Reimbursement to owner. If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in said police pension fund or the city current expense fund, furnish satisfactory evidence to the police pension fund board or the city treasurer of said city of the ownership of said personal property he or they shall be entitled to receive from said police pension fund or city current expense fund the amount so deposited therein with interest. [1939 c 148 § 3; 1925 ex.s. c 100 § 4; RRS § 899-4.]

63.32.050 Donation of unclaimed personal property to nonprofit charitable organizations. In addition to any other method of disposition of unclaimed property provided under this chapter, the police authorities of a city or town may donate unclaimed personal property to nonprofit charitable organizations. A nonprofit charitable organization receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons. Such organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code. [2007 c 219 § 1; 1987 c 182 § 1.]

Severability—1987 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 182 § 3.]

Chapter 63.35 RCW

UNCLAIMED PROPERTY IN HANDS OF STATE PATROL

Sections

63.35.010	Definitions.
63.35.020	Methods of disposition—Sale, retention, destruction, or trade.
63.35.030	Notice of sale.
63.35.040	Disposition of proceeds.
63.35.050	Reimbursement to owner.
63.35.060	Applicability of other statutes.
63.35.065	Donation of unclaimed personal property to nonprofit charitable organizations.
63.35.900	Severability—1989 c 222.

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

- (1) "Agency" means the Washington state patrol.
- (2) "Chief" means the chief of the Washington state patrol or designee.
- (3) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.
- (4) "Contraband" means any property which is unlawful to produce or possess.
- (5) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.
- (6) "Owner" means the person in whom is vested the ownership, dominion, or title of the property.
- (7) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.
- (8) "Illegal items" means those items unlawful to be possessed. [1989 c 222 § 1.]

63.35.020 Methods of disposition—Sale, retention, destruction, or trade. Whenever any personal property shall come into the possession of the officers of the state patrol in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from the date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the state agency, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said agency may:

- (1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

- (2) Retain the property for the use of the state patrol subject to giving notice in the manner prescribed in RCW 63.35.030 and the right of the owner, or the owner's legal representative, to reclaim the property within one year after receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the chief, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the state patrol shall provide the office of financial management and retain for public inspection a list of such retained items and an estimation of each item's replacement value;

- (3) Destroy an item of personal property at the discretion of the chief if the chief determines that the following circumstances have occurred:

- (a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

- (b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

- (c) The chief has determined that the item is illegal to possess or sell or unsafe and unable to be made safe for use by any member of the general public;

- (4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in this section may be offered by the chief to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

- (5) At the end of one year, any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2). Any other item which is not unsafe or illegal to possess or sell, but has been, or may be used, in the judgment of the chief, in a manner that is illegal, may be destroyed. [1989 c 222 § 2.]

63.35.030 Notice of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in a newspaper of general circulation in the county in which the property is to be sold at least ten days prior to the date fixed for the auction. The notice shall be signed by the chief. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1989 c 222 § 3.]

63.35.040 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be forwarded to the state treasurer to be deposited into the state patrol highway account. [1989 c 222 § 4.]

63.35.050 Reimbursement to owner. If the owner of said personal property so sold, or the owner’s legal representative, shall, at any time within three years after such money shall have been deposited in the state patrol highway account, furnish satisfactory evidence to the state treasurer of the ownership of said personal property, the owner or the owner’s legal representative shall be entitled to receive from said state patrol highway account the amount so deposited therein with interest. [1989 c 222 § 5.]

63.35.060 Applicability of other statutes. (1) Chapter 63.24 RCW, unclaimed property in hands of bailee, does not apply to personal property in the possession of the state patrol.

(2) The uniform unclaimed property act, chapter 63.29 RCW, does not apply to personal property in the possession of the state patrol. [1989 c 222 § 6.]

63.35.065 Donation of unclaimed personal property to nonprofit charitable organizations. In addition to any other method of disposition of unclaimed property provided under this chapter, the state patrol may donate unclaimed personal property to nonprofit charitable organizations. A nonprofit charitable organization receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons. Such organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code. [2007 c 219 § 2.]

63.35.900 Severability—1989 c 222. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 222 § 9.]

Chapter 63.40 RCW

UNCLAIMED PROPERTY IN HANDS OF SHERIFF

Sections

63.40.010	Methods of disposition—Notice—Sale, retention, destruction, or trade.
63.40.020	Notice of sale, form, contents—Conduct of sale.
63.40.030	Disposition of proceeds.
63.40.040	Reimbursement to owner.
63.40.050	Uniform unclaimed property act not applicable.
63.40.060	Donation of unclaimed personal property to nonprofit charitable organizations.

63.40.010 Methods of disposition—Notice—Sale, retention, destruction, or trade. Whenever any personal property, other than vehicles governed by chapter 46.52 RCW, shall come into the possession of the sheriff of any county in connection with the official performance of his duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the sheriff’s office, unless said property has been held as evidence in any court, then, in that event, after sixty days

from date when said case has been finally disposed of and said property released as evidence by order of the court, said county sheriff may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the sheriff’s office subject to giving notice in the manner prescribed in RCW 63.40.020 and the right of the owner, or his or her legal representative, to reclaim the property within one year after the receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the county sheriff, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the sheriff shall provide the county’s executive or legislative authority and retain for public inspection a list of such retained items and an estimation of each item’s replacement value. At the end of the one-year period any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2);

(3) Destroy an item of personal property at the discretion of the county sheriff if the county sheriff determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The county sheriff has determined that the item is unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in RCW 63.40.020, may be offered by the county sheriff to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(5) If the item is not unsafe or illegal to possess or sell, but has been, or may be used, in the discretion of the county sheriff, in a manner that is illegal, such item may be destroyed. [1988 c 223 § 4; 1988 c 132 § 3; 1981 c 154 § 3; 1973 1st ex.s. c 44 § 4; 1961 c 104 § 1.]

Reviser’s note: This section was amended by 1988 c 132 § 3 and by 1988 c 223 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

63.40.020 Notice of sale, form, contents—Conduct of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The notice shall be signed by the sheriff or his deputy. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the sheriff or his deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and

upon payment of the amount of such bid shall deliver the said property to such bidder. [1988 c 132 § 4; 1961 c 104 § 2.]

63.40.030 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keeping of said personal property and the balance, if any, shall be paid into the county current expense fund. [1961 c 104 § 3.]

63.40.040 Reimbursement to owner. If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in the county current expense fund, furnish satisfactory evidence to the county treasurer of said county of the ownership of said personal property he or they shall be entitled to receive from said county current expense fund the amount so deposited therein. [1961 c 104 § 4.]

63.40.050 Uniform unclaimed property act not applicable. The provisions of chapter 63.29 RCW shall not apply to personal property in the possession of the office of county sheriff. [1985 c 7 § 126; 1961 c 104 § 5.]

63.40.060 Donation of unclaimed personal property to nonprofit charitable organizations. In addition to any other method of disposition of unclaimed property provided under this chapter, the county sheriff may donate unclaimed personal property to nonprofit charitable organizations. A nonprofit charitable organization receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons. Such organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code. [2007 c 219 § 3; 1987 c 182 § 2.]

Severability—1987 c 182: See note following RCW 63.32.050.

Chapter 63.42 RCW

UNCLAIMED INMATE PERSONAL PROPERTY

Sections

63.42.010	Legislative intent.
63.42.020	Definitions.
63.42.030	Personal property presumed abandoned—Illegal items retained as evidence or destroyed.
63.42.040	Disposition of property presumed abandoned—Inventory—Notice.
63.42.050	Chapter not applicable if prior written agreement.
63.42.060	Application of chapters 63.24 and 63.29 RCW.
63.42.900	Severability—1983 1st ex.s. c 52.

63.42.010 Legislative intent. It is the intent of the legislature to relieve the department of corrections from unacceptable burdens of cost related to storage space and manpower in the preservation of inmate personal property if the property has been abandoned by the inmate and to enhance the security and safety of the institutions. [1983 1st ex.s. c 52 § 1.]

(2008 Ed.)

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

(1) "Secretary" means the secretary of the department of corrections or the secretary's designees.

(2) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes among others contraband and money.

(3) "Contraband" means all personal property including, but not limited to, alcoholic beverages and other items which a resident of a correctional institution may not have in the resident's possession, as defined in rules adopted by the secretary.

(4) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(5) "Owner" means the inmate, the inmate's legal representative, or any person claiming through or under the inmate entitled to title and possession of the property.

(6) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(7) "Inmate" means a person committed to the custody of the department of corrections or transferred from other states or the federal government.

(8) "Institutions" means those facilities set forth in RCW 72.01.050(2) and all community residential programs under the department's jurisdiction operated pursuant to chapter 72.65 RCW.

(9) "Department" means the department of corrections.

(10) "Illegal items" means those items unlawful to be possessed.

(11) "Nonprofit" has the meaning prescribed by state or federal law or rules. [1983 1st ex.s. c 52 § 2.]

63.42.030 Personal property presumed abandoned—Illegal items retained as evidence or destroyed. (1) All personal property, and any income or increment which has accrued thereon, held for the owner by an institution that has remained unclaimed for more than six months from the date the owner terminated without authorization from work training release, transferred to a different institution, or when the owner is unknown or deceased, from the date the property was placed in the custody of the institution, is presumed abandoned: PROVIDED, That the provisions of this section shall be extended for up to six months for any inmate, transferred to another institution, who has no recorded next of kin, or person to whom the unclaimed property can be sent.

(2) All personal property, and any income or increment which has accrued thereon, the inmate owner of which has been placed on escape status is presumed abandoned and shall be held for three months by the institution from which the inmate escaped. If the inmate owner remains on escape status for three months or if no other person claims ownership within three months, the property shall be disposed of as set forth in this chapter.

(3) All illegal items owned by and in the possession of an inmate shall be confiscated and held by the institution to which the inmate is assigned. Such items shall be held as required for evidence for law enforcement authorities. Illegal

items not retained for evidence shall be destroyed. [1983 1st ex.s. c 52 § 3.]

Property of deceased inmates: RCW 11.08.101, 11.08.111, and 11.08.120.

63.42.040 Disposition of property presumed abandoned—Inventory—Notice. (1) All personal property, other than money, presumed abandoned shall be destroyed unless, in the opinion of the secretary, the property may be used or has value to a charitable or nonprofit organization, in which case the property may be donated to the organization. A charitable or nonprofit organization does not have a claim nor shall the department or any employee thereof be held liable to any charitable or nonprofit organization for property which is destroyed rather than donated or for the donation of property to another charitable or nonprofit organization.

(2) Money presumed abandoned under this chapter shall be paid into the revolving fund set up in accordance with RCW 9.95.360.

(3) The department shall inventory all personal property prior to its destruction or donation.

(4) Before personal property is donated or destroyed, if the name and address of the owner thereof is known or if deceased, the address of the heirs as known, at least thirty days' notice of the donation or destruction of the personal property shall be given to the owner at the owner's residence or place of business or to some person of suitable age and discretion residing or employed therein. If the name or residence of the owner or the owner's heirs is not known, a notice of the action fixing the time and place thereof shall be published at least once in an official newspaper in the county at least thirty days prior to the date fixed for the action. The notice shall be signed by the secretary. The notice need not contain a description of property, but shall contain a general statement that the property is unclaimed personal property of inmates, specifying the institution at which the property is held. If the owner fails to reclaim the property prior to the time fixed in the notice, the property shall be donated or destroyed. [1983 1st ex.s. c 52 § 4.]

Property of deceased inmates: RCW 11.08.101, 11.08.111, and 11.08.120.

63.42.050 Chapter not applicable if prior written agreement. This chapter does not apply if the inmate and the department have reached an agreement in writing regarding the disposition of the personal property. [1983 1st ex.s. c 52 § 5.]

63.42.060 Application of chapters 63.24 and 63.29 RCW. (1) The uniform unclaimed property act, chapter 63.29 RCW, does not apply to personal property in the possession of the department of corrections.

(2) Chapter 63.24 RCW, unclaimed property in hands of bailee, does not apply to personal property in the possession of the department of corrections. [1985 c 7 § 127; 1983 1st ex.s. c 52 § 6.]

63.42.900 Severability—1983 1st ex.s. c 52. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 52 § 9.]

Chapter 63.44 RCW JOINT TENANCIES

Sections

63.44.010 Joint tenancies in property.

63.44.010 Joint tenancies in property. See chapter 64.28 RCW.

Chapter 63.48 RCW ESCHEAT OF POSTAL SAVINGS SYSTEM ACCOUNTS

Sections

63.48.010 Accounts presumed abandoned and to escheat to state.
63.48.020 Director to request federal records.
63.48.030 Escheat proceedings brought in Thurston county.
63.48.040 Notice to depositors whose accounts are to be escheated.
63.48.050 Copy of judgment presented for payment—Disposition of proceeds.
63.48.060 Indemnification for losses as result of escheat proceedings—Source.

63.48.010 Accounts presumed abandoned and to escheat to state. All postal savings system accounts created by the deposits of persons whose last known addresses are in the state which have not been claimed by the persons entitled thereto before May 1, 1971, are presumed to have been abandoned by their owners and are declared to escheat and become the property of this state. [1971 ex.s. c 68 § 1.]

63.48.020 Director to request federal records. The director of revenue shall request from the bureau of accounts of the United States treasury department records providing the following information: The names of depositors at the post offices of this state whose accounts are unclaimed, their last addresses as shown by the records of the post office department, and the balance in each account. He shall agree to return to the bureau of accounts promptly all account cards showing last addresses in another state. [1971 ex.s. c 68 § 2.]

63.48.030 Escheat proceedings brought in Thurston county. The director of revenue may bring proceedings in the superior court for Thurston county to escheat unclaimed postal savings system accounts held by the United States treasury. A single proceeding may be used to escheat as many accounts as may be available for escheat at one time. [1971 ex.s. c 68 § 3.]

63.48.040 Notice to depositors whose accounts are to be escheated. The director of revenue shall notify depositors whose accounts are to be escheated as follows:

(1) A letter advising that a postal savings system account in the name of the addressee is about to be escheated and setting forth the procedure by which a deposit may be claimed shall be mailed by first-class mail to the named depositor at the last address shown on the account records for each account to be escheated having an unpaid principal balance of more than twenty-five dollars.

(2) A general notice of intention to escheat postal savings system accounts shall be published once in each of three

successive weeks in one or more newspapers which combine to provide general circulation throughout this state.

(3) A special notice of intention to escheat the unclaimed postal savings system accounts originally deposited in each post office must be published once in each of three successive weeks in a newspaper published in the county in which the post office is located or, if there is none, in a newspaper having general circulation in the county. This notice must list the names of the owners of each unclaimed account to be escheated having a principal balance of three dollars or more. [1971 ex.s. c 68 § 4.]

63.48.050 Copy of judgment presented for payment—Disposition of proceeds. The director of revenue shall present a copy of each final judgment of escheat to the United States treasury department for payment of the principal due and the interest computed under regulations of the United States treasury department. The payment received shall be deposited in the general fund in the state treasury. [1971 ex.s. c 68 § 5.]

63.48.060 Indemnification for losses as result of escheat proceedings—Source. This state shall indemnify the United States for any losses suffered as a result of the escheat of unclaimed postal savings system accounts. The burden of the indemnification falls upon the fund into which the proceeds of the escheated accounts have been paid. [1971 ex.s. c 68 § 6.]

**Chapter 63.52 RCW
DIES, MOLDS, AND FORMS**

Sections

- 63.52.005 Definitions.
- 63.52.010 Customer has title and all rights—Written exception—Failure to claim within three years after the last use—Notice to customer—Title and all rights may transfer to the molder.

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

(1) "Customer" means an individual or entity that causes or did cause a molder to fabricate, cast, or otherwise make a die, mold, or form.

(2) "Molder" means an individual or entity, including but not limited to a tool or die maker, that fabricates, casts, or otherwise makes a die, mold, or form.

(3) "Within three years after the last use" means the three-year period after the last use of a die, mold, or form, regardless of whether or not any portion of that period pre-dates June 6, 1996. [1996 c 235 § 1.]

63.52.010 Customer has title and all rights—Written exception—Failure to claim within three years after the last use—Notice to customer—Title and all rights may transfer to the molder. (1) In the absence of a written agreement otherwise, the customer has title and all rights to a die, mold, or form in the molder's possession.

(2) If a customer does not claim possession from a molder of a die, mold, or form within three years after the last use of the die, mold, or form, title and all rights to the die,

mold, or form may be transferred to the molder for the purpose of destroying or otherwise disposing of the die, mold, or form.

(3) At least one hundred twenty days before seeking title and rights to a die, mold, or form in its possession, a molder shall send notice, via registered or certified mail, to the chief executive officer of the customer or, if the customer is not a business entity, to the customer's last known address. The notice must state that the molder intends to seek title and rights to the die, mold, or form. The notice must also include the name, address, and phone number of the molder.

(4) If a customer does not respond in person or by mail within one hundred twenty days after the date the notice was sent, or does not make other contractual arrangements with the molder for storage of the die, mold, or form, title and all rights of the customer transfer by operation of law to the molder. Thereafter, the molder may destroy or otherwise dispose of the die, mold, or form without any risk of liability to the customer. [1996 c 235 § 2.]

**Chapter 63.60 RCW
PERSONALITY RIGHTS**

Sections

- 63.60.010 Property right—Use of name, voice, signature, photograph, or likeness.
- 63.60.020 Definitions.
- 63.60.030 Transfer, assignment, and license.
- 63.60.040 Right is exclusive for individuals and personalities.
- 63.60.050 Infringement of right—Use without consent—Profit or not for profit.
- 63.60.060 Infringement of right—Superior courts—Injunctions—Liability for damages and profits—Impoundment—Destruction—Attorneys' fees.
- 63.60.070 Exemptions from use restrictions—When chapter does not apply.
- 63.60.080 Community property rights.

63.60.010 Property right—Use of name, voice, signature, photograph, or likeness. Every individual or personality has a property right in the use of his or her name, voice, signature, photograph, or likeness. Such right exists in the name, voice, signature, photograph, or likeness of individuals or personalities deceased before, on, or after June 11, 1998. This right shall be freely transferable, assignable, and licensable, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer, including without limitation a will or other testamentary instrument, trust, contract, community property agreement, or cotenancy with survivorship provisions or payable-on-death provisions, whether the will or other testamentary instrument, trust, contract, community property agreement, or cotenancy document is entered into or executed before, on, or after June 11, 1998, by the deceased individual or personality or by any subsequent owner of the deceased individual's or personality's rights as recognized by this chapter; or, if none is applicable, then the owner of the rights shall be determined under the laws of intestate succession applicable to interests in intangible personal property. The property right does not expire upon the death of the individual or personality, regardless of whether the law of the domicile, residence, or citizenship of the individual or personality at the time of death or otherwise recognizes a similar or identical property right. The right exists whether or not it was commercially exploited by the individ-

ual or the personality during the individual's or the personality's lifetime. The rights recognized under this chapter shall be deemed to have existed before June 11, 1998, and at the time of death of any deceased individual or personality or subsequent successor of their rights for the purpose of determining the person or persons entitled to these property rights as provided in RCW 63.60.030. This chapter is intended to apply to all individuals and personalities, living and deceased, regardless of place of domicile or place of domicile at time of death. [2008 c 62 § 1; 1998 c 274 § 1.]

Application—2008 c 62: "This act applies to all causes of action commenced on or after June 11, 1998, regardless of when the cause of action arose. To this extent, this act applies retroactively, but in all other respects it applies prospectively." [2008 c 62 § 4.]

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

(1) "Deceased individual" means any individual, regardless of the individual's place of domicile, residence, or citizenship at the time of death or otherwise, who has died within ten years before January 1, 1998, or thereafter.

(2) "Deceased personality" means any individual, regardless of the personality's place of domicile, residence, or citizenship at the time of death or otherwise, whose name, voice, signature, photograph, or likeness had commercial value at the time of his or her death, whether or not during the lifetime of that individual he or she used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or soliciting the purchase or sale of, products, merchandise, goods, or services. A "deceased personality" includes, without limitation, any such individual who has died within fifty years before January 1, 1998, or thereafter.

(3) "Fund-raising" means an organized activity to solicit donations of money or other goods or services from persons or entities by an organization, company, or public entity. A fund-raising activity does not include a live, public performance by an individual or group of individuals for which money is received in solicited or unsolicited gratuities.

(4) "Individual" means a natural person, living or dead.

(5) "Likeness" means an image, painting, sketching, model, diagram, or other clear representation, other than a photograph, of an individual's face, body, or parts thereof, or the distinctive appearance, gestures, or mannerisms of an individual.

(6) "Name" means the actual or assumed name, or nickname, of a living or deceased individual that is intended to identify that individual.

(7) "Person" means any natural person, firm, association, partnership, corporation, joint stock company, syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name known or however organized, formed, or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic, or other organizations.

(8) "Personality" means any individual whose name, voice, signature, photograph, or likeness has commercial value, whether or not that individual uses his or her name, voice, signature, photograph, or likeness on or in products,

merchandise, or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services.

(9) "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, so that the individual is readily identifiable.

(10) "Signature" means the one handwritten or otherwise legally binding form of an individual's name, written or authorized by that individual, that distinguishes the individual from all others. [2008 c 62 § 2; 2004 c 71 § 1; 1998 c 274 § 2.]

Application—2008 c 62: See note following RCW 63.60.010.

63.60.030 Transfer, assignment, and license. (1) Every individual or personality has a property right in the use of his or her name, voice, signature, photograph, or likeness. Such right shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer. This right shall not expire upon the death of the individual or personality, but shall be owned and enforceable by the following successors, heirs, or other transferees of living or deceased individuals or personalities:

(a) Except where such rights were transferred or assigned before such deceased personality's death by means of any contract or trust instrument, the right shall be owned by the person entitled to such rights under the deceased individual's or personality's last will and testament or, if none, then by the beneficiaries or heirs under the laws of intestate succession applicable to interests in intangible personal property generally of the individual's or personality's domicile, regardless of whether the law of the domicile of the deceased individual or personality, at the time of death, or thereafter, recognizes a similar or identical property right; or

(b) If the deceased individual or personality transferred or assigned any interest in the personality rights during his or her life by means of any contract or trust instrument, then the transferred or assigned interest shall be held as follows:

(i) If the transferred or assigned interest was held in trust, in accordance with the terms of the trust;

(ii) If the interest is subject to a cotenancy with any survivorship provisions or payable-on-death provisions, in accordance with those provisions;

(iii) If the interest is subject to any contract, including without limitation an exclusive license, assignment, or a community property agreement, in accordance with the terms of the applicable contract or contracts;

(iv) If the interest has been transferred or assigned to a third person in a form that is not addressed in this section, by the individual or personality, or the successor, heir, or other transferee of the living or deceased individual or personality, then the interest may be transferred, assigned, or licensed by such third person, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property of the third person's domicile, regardless of whether the law of the domicile of the deceased third party, at the time of death, or thereafter, recognizes a similar or identical property right.

(2) A property right exists whether or not such rights were commercially exploited by or under the authority of the individual or the personality or the individual's or personality's successors or transferees during the individual's or the personality's lifetime.

(3) The rights recognized under this chapter shall be deemed to have existed before June 11, 1998, and at the time of death of any deceased individual or personality or subsequent successor of their rights for the purpose of determining the person or persons entitled to these property rights as provided in this section. [2008 c 62 § 3; 1998 c 274 § 3.]

Application—2008 c 62: See note following RCW 63.60.010.

63.60.040 Right is exclusive for individuals and personalities. (1) For individuals, except to the extent that the individual may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the individual, subject to the assignment or licensing of such rights, during such individual's lifetime and are exclusive to the persons entitled to such rights under RCW 63.60.030 for a period of ten years after the death of the individual except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(2) For personalities, except to the extent that the personality may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the personality, subject to the assignment or licensing of such rights, during such personality's lifetime and to the persons entitled to such rights under RCW 63.60.030 for a period of seventy-five years after the death of the personality except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(3) The rights granted in this chapter may be exercised by a personal representative, attorney-in-fact, parent of a minor child, or guardian, or as authorized by a court of competent jurisdiction. The terms "personal representative," "attorney-in-fact," and "guardian" shall have the same meanings in this chapter as they have in Title 11 RCW. [2004 c 71 § 2; 1998 c 274 § 4.]

63.60.050 Infringement of right—Use without consent—Profit or not for profit. Any person who uses or authorizes the use of a living or deceased individual's or personality's name, voice, signature, photograph, or likeness, on or in goods, merchandise, or products entered into commerce in this state, or for purposes of advertising products, merchandise, goods, or services, or for purposes of fund raising or solicitation of donations, or if any person disseminates or publishes such advertisements in this state, without written or oral, express or implied consent of the owner of the right, has infringed such right. An infringement may occur under this section without regard to whether the use or activity is for profit or not for profit. [1998 c 274 § 5.]

63.60.060 Infringement of right—Superior courts—Injunctions—Liability for damages and profits—Impoundment—Destruction—Attorneys' fees. (1) The superior courts of this state may grant injunctions on reasonable terms to prevent or restrain the unauthorized use of the

rights in a living or deceased individual's or personality's name, voice, signature, photograph, or likeness.

(2) Any person who infringes the rights under this chapter shall be liable for the greater of one thousand five hundred dollars or the actual damages sustained as a result of the infringement, and any profits that are attributable to the infringement and not taken into account when calculating actual damages. To prove profits under this section, the injured party or parties must submit proof of gross revenues attributable to the infringement, and the infringing party is required to prove his or her deductible expenses. For the purposes of computing statutory damages, use of a name, voice, signature, photograph, and/or likeness in or related to one work constitutes a single act of infringement regardless of the number of copies made or the number of times the name, voice, signature, photograph, or likeness is displayed.

(3) At any time while an action under this chapter is pending, the court may order the impounding, on reasonable terms, of all materials or any part thereof claimed to have been made or used in violation of the injured party's rights, and the court may enjoin the use of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(4) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all materials found to have been made or used in violation of the injured party's rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(5) The prevailing party may recover reasonable attorneys' fees, expenses, and court costs incurred in recovering any remedy or defending any claim brought under this section.

(6) The remedies provided for in this section are cumulative and are in addition to any others provided for by law. [1998 c 274 § 6.]

63.60.070 Exemptions from use restrictions—When chapter does not apply. (1) For purposes of RCW 63.60.050, the use of a name, voice, signature, photograph, or likeness in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including, without limitation, comment, criticism, satire, and parody relating thereto, shall not constitute a use for which consent is required under this chapter. A matter exempt from consent under this subsection does not lose such exempt status because it appears in the form of a paid advertisement if it is clear that the principal purpose of the advertisement is to comment on such matter.

(2) This chapter does not apply to the use or authorization of use of an individual's or personality's name, voice, signature, photograph, or likeness, in any of the following:

(a) Single and original works of fine art, including but not limited to photographic, graphic, and sculptural works of art that are not published in more than five copies;

(b) A literary work, theatrical work, musical composition, film, radio, online or television program, magazine article, news story, public affairs report, or sports broadcast or account, or with any political campaign when the use does not inaccurately claim or state an endorsement by the individual or personality;

(c) An advertisement or commercial announcement for a use permitted by subsections (1) and (7) of this section and (a) or (b) of this subsection;

(d) An advertisement, commercial announcement, or packaging for the authorized sale, distribution, performance, broadcast, or display of a literary, musical, cinematographic, or other artistic work using the name, voice, signature, photograph, or likeness of the writer, author, composer, director, actor, or artist who created the work, where such individual or personality consented to the use of his or her name, voice, signature, photograph, or likeness on or in connection with the initial sale, distribution, performance, or display thereof; and

(e) The advertisement or sale of a rare or fine product, including but not limited to books, which incorporates the signature of the author.

(3) It is no defense to an infringement action under this chapter that the use of an individual's or personality's name, voice, signature, photograph, or likeness includes more than one individual or personality so identifiable. However, the individuals or personalities complaining of the use shall not bring their cause of action as a class action.

(4) RCW 63.60.050 does not apply to the owners or employees of any medium used for advertising, including but not limited to, newspapers, magazines, radio and television stations, online service providers, billboards, and transit ads, who have published or disseminated any advertisement or solicitation in violation of this chapter, unless the advertisement or solicitation was intended to promote the medium itself.

(5) This chapter does not apply to a use or authorization of use of an individual's or personality's name that is merely descriptive and used fairly and in good faith only to identify or describe something other than the individual or personality, such as, without limitation, to describe or identify a place, a legacy, a style, a theory, an ownership interest, or a party to a transaction or to accurately describe the goods or services of a party.

(6) This chapter does not apply to the use of an individual's or personality's name, voice, signature, photograph, or likeness when the use of the individual's or personality's name, voice, signature, photograph, or likeness is an insignificant, de minimis, or incidental use.

(7) This chapter does not apply to the distribution, promotion, transfer, or license of a photograph or other material containing an individual's or personality's name, voice, signature, photograph, or likeness to a third party for use in a manner which is lawful under this chapter, or to a third party for further distribution, promotion, transfer, or license for use in a manner which is lawful under this chapter. [2004 c 71 § 3; 1998 c 274 § 7.]

63.60.080 Community property rights. Nothing contained in this chapter is intended to invalidate any community property rights. [1998 c 274 § 8.]

Title 64

REAL PROPERTY AND CONVEYANCES

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- 64.06** **Residential real property transfers—Seller’s disclosures.**
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Chapter 64.04 RCW CONVEYANCES

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Validating—1929 c 33: "All instruments in writing purporting to convey or encumber real estate situated in this state, or any interest therein, or other instrument in writing required to be acknowledged, heretofore executed and acknowledged according to the provisions of this act are hereby declared legal and valid." [1929 c 33 § 7; RRS § 10563, part.]

Validating—1891 p 178: "In all cases where real estate has been heretofore duly sold by a sheriff in pursuance of law by virtue of an execution or other process, and no deed having been made therefor in the manner required by law to the purchaser therefor [thereof] or other person entitled to the same by the sheriff making the sale, the successor in office of the sheriff making the sale having made a deed of the premises so sold to the purchaser or other person entitled to the same, such deed shall be valid and effectual to convey to the grantee the lands or premises so sold: PROVIDED, That this act shall not be construed to affect the equities of third parties in the premises." [1891 p 178 § 1; RRS § 10569.]

Validating—1890 p 89: "All deeds, mortgages or other instruments in writing heretofore executed to convey real estate, or any interest therein, and which have no subscribing witness or witnesses thereto, are hereby cured of such defect and made valid, notwithstanding such omission: PROVIDED, Nothing in this act shall be construed to affect vested rights or impair contracts made in good faith between parties prior to the passage of this act: AND PROVIDED FURTHER, That nothing in this act shall be construed to give validity to, or in any manner affect, the sale or transfer of real estate made by the territory or state of Washington, or any officer, agent or employee thereof prior to the passage of this act." [1890 p 89 § 1; RRS § 10570.]

Reviser's note: The two sections below were repealed by 1929 c 33 § 15 but are retained for their historical value.

Validating—Code 1881: "All deeds, mortgages, or other instruments in writing, which, prior to the passage of this chapter may have been acknowledged before either of the foregoing named officers, or deputies, or before the clerk of any court, or his deputies, heretofore established by the laws of this territory, are hereby declared legal and valid, in so far as such acknowledgment is concerned." [Code 1881 § 2318; RRS § 10562.]

Validating—Code 1881: "That all deeds, mortgages, and other instruments at any time heretofore acknowledged according to the provisions of this chapter are hereby declared legal and valid." [Code 1881 § 2322; RRS § 10568.]

Recording of deeds and conveyances: Title 65 RCW.

64.04.005 Liquidated damages—Earnest money deposit—Exclusive remedy—Definition. (1) A provision

in a written agreement for the purchase and sale of real estate which provides for liquidated damages or the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if a party fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the other party incurs any actual damages. However, the amount of liquidated damages or amount of earnest money to be forfeited under this subsection may not exceed five percent of the purchase price.

(2) For purposes of this section:

(a) "Earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser; and

(b) "Liquidated damages" means an amount agreed by the parties as the amount of damages to be recovered for a breach of the agreement by the other and identified in the agreement as liquidated damages, and does not include other deposits or payments made by the purchaser.

(3) This section does not prohibit, or supersede the common law with respect to, liquidated damages or earnest money forfeiture provisions in excess of five percent of the purchase price. A liquidated damages or earnest money forfeiture provision not meeting the requirements of subsection (1) of this section shall be interpreted and enforced without regard to this statute. [2005 c 186 § 1; 1991 c 210 § 1.]

Application—2005 c 186: "This act applies to all contracts executed after April 26, 2005." [2005 c 186 § 2.]

Effective date—2005 c 186: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 2005]." [2005 c 186 § 3.]

Application—1991 c 210: "The provisions of this act apply only to written agreements entered on or after July 28, 1991." [1991 c 210 § 2.]

64.04.010 Conveyances and encumbrances to be by deed. Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid. [1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

64.04.020 Requisites of a deed. Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by *this act

to take acknowledgments of deeds. [1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

***Reviser's note:** The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010-64.04.050, 64.08.010-64.08.070, 64.12.020, and 65.08.030.

64.04.030 Warranty deed—Form and effect. Warranty deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of, state of Washington. Dated this day of, 19. . . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. [1929 c 33 § 9; RRS § 10552. Prior: 1886 p 177 § 3.]

64.04.040 Bargain and sale deed—Form and effect. Bargain and sale deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, bargains, sells and conveys to (here insert the grantee's name or names) the following described real estate (here insert description) situated in the county of, state of Washington. Dated this day of, 19. . . .

Every deed in substance in the above form when otherwise duly executed, shall convey to the grantee, his heirs or assigns an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, free from encumbrances, done or suffered from the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns may recover in any action for breaches as if such covenants were expressly inserted. [1929 c 33 § 10; RRS § 10553. Prior: 1886 p 178 § 4.]

64.04.050 Quitclaim deed—Form and effect. Quitclaim deeds may be in substance in the following form:

(2008 Ed.)

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of, state of Washington. Dated this day of, 19. . . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. [1929 c 33 § 11; RRS § 10554. Prior: 1886 p 178 § 5.]

64.04.055 Deeds for conveyance of apartments under horizontal property regimes act. All deeds for the conveyance of apartments as provided for in chapter 64.32 RCW shall be substantially in the form required by law for the conveyance of any other land or real property and shall in addition thereto contain the contents described in RCW 64.32.120. [1963 c 156 § 29.]

64.04.060 Word "heirs" unnecessary. The term "heirs", or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. All conveyances heretofore made omitting the word "heirs", or other technical words of inheritance, but not limiting the estate conveyed, are hereby validated as and are declared to be conveyances of an estate in fee simple. [1931 c 20 § 1; RRS § 10558. Prior: 1888 p 51 § 4.]

64.04.070 After acquired title follows deed. Whenever any person or persons having sold and conveyed by deed any lands in this state, and who, at the time of such conveyance, had no title to such land, and any person or persons who may hereafter sell and convey by deed any lands in this state, and who shall not at the time of such sale and conveyance have the title to such land, shall acquire a title to such lands so sold and conveyed, such title shall inure to the benefit of the purchasers or conveyee or conveyees of such lands to whom such deed was executed and delivered, and to his and their heirs and assigns forever. And the title to such land so sold and conveyed shall pass to and vest in the conveyee or conveyees of such lands and to his or their heirs and assigns, and shall thereafter run with such land. [1871 p 195 § 1; RRS § 10571. Cf. Code 1881 (Supp.) p 25 § 1.]

64.04.080 Purchaser of community real property protected by record title. See RCW 26.16.095.

64.04.090 Private seals abolished. The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect. [1923 c 23 § 1; RRS §

10556. Prior: 1888 p 184 § 1; 1888 p 50 § 3; 1886 p 165 § 1; 1871 p 83 §§ 1, 2.]

64.04.100 Private seals abolished—Validation. All deeds, mortgages, leases, bonds and other instruments and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, which have heretofore been executed without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid. [1923 c 23 § 2; RRS § 10557. Prior: 1888 p 184 § 2.]

64.04.105 Corporate seals—Effect of absence from instrument. The absence of a corporate seal on any deed, mortgage, lease, bond or other instrument or contract in writing shall not affect its validity, legality or character in any respect. [1957 c 200 § 1.]

64.04.120 Registration of land titles. See chapter 65.12 RCW.

64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances. A development right, easement, covenant, restriction, or other right, or any interest less than the fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land, whether the right or interest be appurtenant or in gross, may be held or acquired by any state agency, federal agency, county, city, town, or metropolitan municipal corporation, nonprofit historic preservation corporation, or nonprofit nature conservancy corporation. Any such right or interest shall constitute and be classified as real property. All instruments for the conveyance thereof shall be substantially in the form required by law for the conveyance of any land or other real property.

As used in this section, "nonprofit nature conservancy corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) (of the United States Internal Revenue Code of 1954, as amended) as it existed on June 25, 1976, and which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of natural areas including but not limited to wildlife or plant habitat.

As used in this section, "nonprofit historic preservation corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and which has as one of its principal purposes the conducting or facilitating of historic preservation activities within the state, including conservation or preservation of historic sites, districts, buildings, and artifacts. [1987 c 341 § 1; 1979 ex.s. c 21 § 1.]

Acquisition of open space, land, or rights to future development by certain entities: RCW 84.34.200 through 84.34.250.

Property tax exemption for conservation futures on agricultural land: RCW 84.36.500.

64.04.135 Criteria for monitoring historical conformance not to exceed those in original donation agreement—Exception. The criteria for monitoring historical conformance shall not exceed those included in the original donation agreement, unless agreed to in writing between grantor and grantee. [1987 c 341 § 4.]

64.04.140 Legislative declaration—Solar energy systems—Solar easements authorized. The legislature declares that the potential economic and environmental benefits of solar energy use are considered to be in the public interest; therefore, local governments are authorized to encourage and protect access to direct sunlight for solar energy systems. The legislature further declares that solar easements appropriate to assuring continued access to direct sunlight for solar energy systems may be created and may be privately negotiated. [1979 ex.s. c 170 § 1.]

Severability—1979 ex.s. c 170: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 170 § 15.]

64.04.150 Solar easements—Definitions. (1) As used in this chapter:

(a) "Solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (i) The heating or cooling of a structure or building;
- (ii) The heating or pumping of water;
- (iii) Industrial, commercial, or agricultural processes; or
- (iv) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

(b) "Solar easement" means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

(2) A solar easement is an interest in real property, and shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(3) A solar easement shall be appurtenant and run with the land or lands benefited and burdened, unless otherwise provided in the easement.

(4) Any instrument creating a solar easement shall include but not be limited to:

(a) A description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement; and

(b) A description of the extent of the solar easement which is sufficiently certain to allow the owner of the real property subject to the easement to ascertain the extent of the easement. Such description may be made by describing the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the easement and the points from which those angles are to be

measured, or the height over the property above which the solar easement extends, or a prohibited shadow pattern, or any other reasonably certain description.

(5) Any instrument creating a solar easement may include:

(a) The terms or conditions or both under which the solar easement is granted or will be terminated; and

(b) Any provisions for compensation to the owner of property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation to the owner of the property subject to the solar easement for maintaining the solar easement. [1979 ex.s. c 170 § 12.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.160 Solar easements—Creation. A solar easement created under this chapter may only be created by written agreement. Nothing in this chapter shall be deemed to create or authorize the creation of an implied easement or a prescriptive easement. [1979 ex.s. c 170 § 14.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.170 Interference with solar easement—Remedies. In any action for interference with a solar easement, if the instrument creating the easement does not specify any appropriate and applicable remedies, the court may choose one or more remedies including but not limited to the following:

(1) Actual damages as measured by increased charges for supplemental energy, the capital cost of the solar energy system, and/or the cost of additional equipment necessary to supply sufficient energy:

(a) From the time the interference began until the actual or expected cessation of the interference; or

(b) If the interference is not expected to cease, in a lump sum which represents the present value of the damages from the time the interference began until the normally expected end of the useful life of the equipment which was interfered with;

(2) Reasonable and necessary attorney's fees as fixed by the court; and

(3) An injunction against the interference. [1979 ex.s. c 170 § 13.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.175 Easements established by dedication—Extinguishing or altering. Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement. [1991 c 132 § 1.]

64.04.180 Railroad properties as public utility and transportation corridors—Declaration of availability for public use—Acquisition of reversionary interest. Railroad properties, including but not limited to rights-of-way, land held in fee and used for railroad operations, bridges, tunnels, and other facilities, are declared to be suitable for public use upon cessation of railroad operations on the properties. It is in

the public interest of the state of Washington that such properties retain their character as public utility and transportation corridors, and that they may be made available for public uses including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. Nothing in this section or in RCW 64.04.190 authorizes a public agency or utility to acquire reversionary interests in public utility and transportation corridors without payment of just compensation. [1988 c 16 § 1; 1984 c 143 § 22.]

64.04.190 Public utility and transportation corridors—Defined. Public utility and transportation corridors are railroad properties (1) on which railroad operations have ceased; (2) that have been found suitable for public use by an order of the Interstate Commerce Commission of the United States; and (3) that have been acquired by purchase, lease, donation, exchange, or other agreement by the state, one of its political subdivisions, or a public utility. [1988 c 16 § 2; 1984 c 143 § 23.]

64.04.200 Existing rate or charge for energy conservation—Seller's duty to disclose. Prior to closing, the seller of real property subject to a rate or charge for energy conservation measures, services, or payments provided under a tariff approved by the utilities and transportation commission pursuant to RCW 80.28.065 shall disclose to the purchaser of the real property the existence of the obligation and the possibility that the purchaser may be responsible for the payment obligation. [1993 c 245 § 3.]

Findings—Intent—1993 c 245: See note following RCW 80.28.065.

64.04.210 Requests for notice of transfer or encumbrance—Disclosure—Notice to department of social and health services. (1) If the department of social and health services has filed a request for notice of transfer or encumbrance under RCW 43.20B.750:

(a) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance when performing a title search on real property shall disclose the presence of the request for notice of transfer or encumbrance in any report preliminary to, or any commitment to offer, a certificate of title insurance for the real property; and

(b) Any individual who transfers or encumbers real property shall provide the department of social and health services with a notice of transfer or encumbrance. The department of social and health services shall adopt by rule a model form for notice of transfer or encumbrance to be used by a purchaser or lender when notifying the department.

(2) If the department of social and health services has caused to be recorded a termination of request for notice of transfer or encumbrance in the deed and mortgage records under RCW 43.20B.750, an individual transferring or encumbering the real property is not required to provide the notice of transfer or encumbrance required by subsection (1)(b) of this section. [2005 c 292 § 2.]

Chapter 64.06 RCW

RESIDENTIAL REAL PROPERTY TRANSFERS—SELLER’S DISCLOSURES

Sections

64.06.005 Definitions.
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64.06.015 Unimproved residential real property—Seller’s duty—Format of disclosure statement—Minimum information.
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64.06.050 Error, inaccuracy, or omission in disclosure statement—Actual knowledge—Liability.
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64.06.070 Buyer’s rights or remedies.
64.06.900 Effective date—1994 c 200.

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

(1) "Improved residential real property" means:

(a) Real property consisting of, or improved by, one to four residential dwelling units;

(b) A residential condominium as defined in RCW 64.34.020(9), unless the sale is subject to the public offering statement requirement in the Washington condominium act, chapter 64.34 RCW;

(c) A residential timeshare, as defined in RCW 64.36.010(11), unless subject to written disclosure under the Washington timeshare act, chapter 64.36 RCW; or

(d) A mobile or manufactured home, as defined in RCW 43.22.335 or 46.04.302, that is personal property.

(2) "Residential real property" means both improved and unimproved residential real property.

(3) "Seller disclosure statement" means the form to be completed by the seller of residential real property as prescribed by this chapter.

(4) "Unimproved residential real property" means property zoned for residential use that is not improved by residential dwelling units, a residential condominium, a residential timeshare, or a mobile or manufactured home. [2007 c 107 § 2; 2002 c 268 § 8; 1994 c 200 § 1.]

Findings—Intent—2007 c 107: See note following RCW 64.06.015.

Purpose—Finding—Effective dates—2002 c 268: See notes following RCW 43.22.434.

64.06.010 Application—Exceptions for certain transfers of residential real property. This chapter does not apply to the following transfers of residential real property:

(1) A foreclosure or deed-in-lieu of foreclosure;

(2) A gift or other transfer to a parent, spouse, domestic partner, or child of a transferor or child of any parent, spouse, or domestic partner of a transferor;

(3) A transfer between spouses or between domestic partners in connection with a marital dissolution or dissolution of a state registered domestic partnership;

(4) A transfer where a buyer had an ownership interest in the property within two years of the date of the transfer

including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;

(5) A transfer of an interest that is less than fee simple, except that the transfer of a vendee’s interest under a real estate contract is subject to the requirements of this chapter;

(6) A transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and

(7) A transfer in which the buyer has expressly waived the receipt of the seller disclosure statement. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," the buyer may not waive the receipt of the "Environmental" section of the seller disclosure statement. [2008 c 6 § 632; 2007 c 107 § 3; 1994 c 200 § 2.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Findings—Intent—2007 c 107: See note following RCW 64.06.015.

64.06.015 Unimproved residential real property—Seller’s duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of unimproved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT..... ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER’S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER’S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER’S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED

[] Yes [] No [] Don't know (6) Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain:

[] Yes [] No [] Don't know (7) Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain:

4. ELECTRICAL/GAS

[] Yes [] No [] Don't know A. Is the property served by natural gas?
[] Yes [] No [] Don't know B. Is there a connection charge for gas?
[] Yes [] No [] Don't know C. Is the property served by electricity?
[] Yes [] No [] Don't know D. Is there a connection charge for electricity?
[] Yes [] No [] Don't know E. Are there any electrical problems on the property? If yes, please explain:

5. FLOODING

[] Yes [] No [] Don't know A. Are there any flooding, standing water, or drainage problems on the property or affecting access to the property? If yes, please explain:

[] Yes [] No [] Don't know B. Is the property located in a government designated flood zone or floodplain?

6. SOIL STABILITY

[] Yes [] No [] Don't know A. Are there any settlement, earth movement, slides, or similar soil problems on the property? If yes, please explain:

[] Yes [] No [] Don't know B. Does any part of the property contain fill dirt, waste, or other fill material? If yes, please explain:

7. ENVIRONMENTAL

[] Yes [] No [] Don't know *A. Have there been any drainage problems on the property?

[] Yes [] No [] Don't know *B. Does the property contain fill material?

[] Yes [] No [] Don't know *C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

[] Yes [] No [] Don't know D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

[] Yes [] No [] Don't know *E. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

[] Yes [] No [] Don't know *F. Has the property been used for commercial or industrial purposes?

[] Yes [] No [] Don't know *G. Is there any soil or groundwater contamination?

[] Yes [] No [] Don't know *H. Are there transmission poles, transformers, or other utility equipment installed, maintained, or buried on the property?

[] Yes [] No [] Don't know *I. Has the property been used as a legal or illegal dumping site?

[] Yes [] No [] Don't know *J. Has the property been used as an illegal drug manufacturing site?

[] Yes [] No [] Don't know *K. Are there any radio towers in the area that may cause interference with telephone reception?

8. HOMEOWNERS' ASSOCIATION/Common Interests

[] Yes [] No [] Don't know A. Is there a homeowners' association? Name of association:

[] Yes [] No [] Don't know B. Are there regular periodic assessments: \$. . . per [] Month [] Year [] Other

[] Yes [] No [] Don't know *C. Are there any pending special assessments?

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

9. OTHER FACTS

A. Are there any disagreements, disputes, encroachments, or legal actions concerning the property? If yes, please explain:

B. Does the property have any plants or wildlife that are designated as species or [of] concern, or listed as threatened or endangered by the government?

C. Is the property classified or designated as forest land or open space? If so, specify:

D. Do you have a forest management plan? If yes, attach.

E. Have any development-related permit applications been submitted to any government agencies? If so, specify:

If the answer to E is "yes," what is the status or outcome of those applications?

10. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof.

I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.

B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.

C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.

D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.

E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED

WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER’S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2007 c 107 § 5.]

Findings—Intent—2007 c 107: "(1) The legislature finds that:

(a) Some purchasers of residential property have been financially ruined, and their health threatened, by the discovery of toxic materials buried or otherwise hidden on the property, that was not disclosed by the seller who had actual knowledge of the presence of such materials before the sale;

(b) Current law exempts some sellers from legal responsibility to disclose what they know about the presence of toxic materials on unimproved property they are selling for residential purposes; and

(c) Seller disclosure statements provide information of fundamental importance to a buyer to help the buyer determine whether the property has health and safety characteristics suitable for residential use and whether the buyer can financially afford the clean-up costs and related legal costs.

(2) The legislature intends that:

(a) Purchasers of unimproved property intended to be used for residential purposes be entitled to receive from the seller information known by the seller about toxic materials on or buried in the property;

(b) There be no legal exemptions from such disclosure in the interests of fairness and transparency in residential property sales transactions; and

(c) Separate residential property sales disclosure forms be used for improved and unimproved property, to assist with transparency in property transactions." [2007 c 107 § 1.]

64.06.020 Improved residential real property—Seller’s duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of improved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

(2008 Ed.)

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER’S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER’S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER’S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER’S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- Yes No Don’t know **1. TITLE**
- Yes No Don’t know A. Do you have legal authority to sell the property? If no, please explain.
- Yes No Don’t know *B. Is title to the property subject to any of the following?
 - (1) First right of refusal
 - (2) Option
 - (3) Lease or rental agreement
 - (4) Life estate?
- Yes No Don’t know *C. Are there any encroachments, boundary agreements, or boundary disputes?
- Yes No Don’t know *D. Is there a private road or easement agreement for access to the property?

- Yes No Don't know

*E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property?
 *F. Are there any written agreements for joint maintenance of an easement or right-of-way?
 *G. Is there any study, survey project, or notice that would adversely affect the property?
 *H. Are there any pending or existing assessments against the property?
 *I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?
 *J. Is there a boundary survey for the property?
 *K. Are there any covenants, conditions, or restrictions which affect the property?

2. WATER

A. Household Water

(1) The source of water for the property is:

- Private or publicly owned water system
- Private well serving only the subject property
- Other water system

- Yes No Don't know

*If shared, are there any written agreements?
 *(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
 *(3) Are there any known problems or repairs needed?
 (4) During your ownership, has the source provided an adequate year-round supply of potable water? If no, please explain.
 *(5) Are there any water treatment systems for the property? If yes, are they Leased Owned
 *(6) Are there any water rights for the property associated with its domestic water supply, such as a water right permit, certificate, or claim?
 (a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
 (b) If yes, has all or any portion of the water right not been used for five or more successive years? (If yes, please explain.)

B. Irrigation Water

(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim?

- Yes No Don't know

*(a) If yes, has all or any portion of the water right not been used for five or more successive years?
 *(b) If so, is the certificate available? (If yes, please attach a copy.)
 (c) If so, has the water right permit, certificate, or claim been assigned, transferred, or changed? If so, explain:

(2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies water to the property:

- Yes No Don't know
- Yes No Don't know
- Yes No Don't know

C. Outdoor Sprinkler System

(1) Is there an outdoor sprinkler system for the property?

(2) If yes, are there any defects in the system?

*(3) If yes, is the sprinkler system connected to irrigation water?

- Yes No Don't know
- Yes No Don't know

- Yes No Don't know

- Yes No Don't know

- Don't know

- Don't know

- Yes No Don't know

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by:

- Public sewer system,
- On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
- Other disposal system, please describe:

B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.

C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

D. If the property is connected to an on-site sewage system:

*(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?
 (2) When was it last pumped:

*(3) Are there any defects in the operation of the on-site sewage system?
 (4) When was it last inspected?

By whom:

(5) For how many bedrooms was the on-site sewage system approved?

. bedrooms

E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:

*F. Have there been any changes or repairs to the on-site sewage system?

G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain.

4. STRUCTURAL

*A. Has the roof leaked?

*B. Has the basement flooded or leaked?

*C. Have there been any conversions, additions, or remodeling?

*(1) If yes, were all building permits obtained?

*(2) If yes, were all final inspections obtained?

D. Do you know the age of the house? If yes, year of original construction:

*E. Has there been any settling, slippage, or sliding of the property or its improvements?

*F. Are there any defects with the following: (If yes, please check applicable items and explain.)

- Foundations
- Chimneys
- Doors
- Ceilings
- Pools
- Sidewalks
- Garage Floors
- Other
- Decks
- Interior Walls
- Windows
- Slab Floors
- Hot Tub
- Outbuildings
- Walkways
- Wood Stoves
- Exterior Walls
- Fire Alarm
- Patio
- Driveways
- Sauna
- Fireplaces
- Siding

NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2007 c 107 § 4; 2004 c 114 § 1; 2003 c 200 § 1; 1996 c 301 § 2; 1994 c 200 § 3.]

Findings—Intent—2007 c 107: See note following RCW 64.06.015.

Application—Effective date—2004 c 114: See notes following RCW 64.06.021.

Effective date—1996 c 301 § 2: "Section 2 of this act shall take effect July 1, 1996." [1996 c 301 § 7.]

64.06.021 Notice regarding sex offenders. The notice regarding sex offenders under RCW 64.06.020 does not create any legal duty on the part of the seller, or on the part of any real estate licensee, to investigate or to provide the buyer with information regarding the actual presence, or lack thereof, of registered sex offenders in the area of any property, including but not limited to any property that is the subject of a disclosure or waiver of disclosure under this chapter, or that is exempt from disclosure under RCW 64.06.010. [2004 c 114 § 2.]

Application—2004 c 114: "This act applies prospectively only and not retroactively. It applies only to residential real property purchase and sale agreements entered into on or after January 1, 2005, without regard to when the agreements are closed or finalized." [2004 c 114 § 3.]

Effective date—2004 c 114: "This act takes effect January 1, 2005." [2004 c 114 § 4.]

64.06.022 Disclosure of possible proximity to farm. A seller of real property shall make available to the buyer the following statement: "This notice is to inform you that the real property you are considering for purchase may lie in close proximity to a farm. The operation of a farm involves usual and customary agricultural practices, which are protected under RCW 7.48.305, the Washington right to farm act." [2006 c 77 § 1; 2005 c 511 § 3.]

64.06.030 Delivery of disclosure statement—Buyer's options—Time frame. Unless the buyer has expressly waived the right to receive the disclosure statement, not later than five business days or as otherwise agreed to, after mutual acceptance of a written agreement between a buyer and a seller for the purchase and sale of residential real property, the seller shall deliver to the buyer a completed, signed, and dated real property transfer disclosure statement. Within three business days, or as otherwise agreed to, of receipt of the real property transfer disclosure statement, the buyer shall have the right to exercise one of the following two options: (1) Approving and accepting the real property transfer disclosure

statement; or (2) rescinding the agreement for the purchase and sale of the property, which decision may be made by the buyer in the buyer's sole discretion. If the buyer elects to rescind the agreement, the buyer must deliver written notice of rescission to the seller within the three-business-day period, or as otherwise agreed to, and upon delivery of the written rescission notice the buyer shall be entitled to immediate return of all deposits and other considerations less any agreed disbursements paid to the seller, or to the seller's agent or an escrow agent for the seller's account, and the agreement for purchase and sale shall be void. If the buyer does not deliver a written rescission notice to [the] seller within the three-business-day period, or as otherwise agreed to, the real property transfer disclosure statement will be deemed approved and accepted by the buyer. [1996 c 301 § 3; 1994 c 200 § 4.]

64.06.040 After delivery of disclosure statement—Additional information—Seller's duty—Buyer's options—Closing the transaction. (1) If, after the date that a seller of residential real property completes a real property transfer disclosure statement, the seller becomes aware of additional information, or an adverse change occurs which makes any of the disclosures made inaccurate, the seller shall amend the real property transfer disclosure statement, and deliver the amendment to the buyer. No amendment shall be required, however, if the seller takes whatever corrective action is necessary so that the accuracy of the disclosure is restored, or the adverse change is corrected, at least three business days prior to the closing date. Unless the corrective action is completed by the seller prior to the closing date, the buyer shall have the right to exercise one of the following two options: (a) Approving and accepting the amendment, or (b) rescinding the agreement of purchase and sale of the property within three business days after receiving the amended real property transfer disclosure statement. Acceptance or rescission shall be subject to the same procedures described in RCW 64.06.030. If the closing date provided in the purchase and sale agreement is scheduled to occur within the three-business-day rescission period provided for in this section, the closing date shall be extended until the expiration of the three-business-day rescission period. The buyer shall have no right of rescission if the seller takes whatever action is necessary so that the accuracy of the disclosure is restored at least three business days prior to the closing date.

(2) In the event any act, occurrence, or agreement arising or becoming known after the closing of a residential real property transfer causes a real property transfer disclosure statement to be inaccurate in any way, the seller of such property shall have no obligation to amend the disclosure statement, and the buyer shall not have the right to rescind the transaction under this chapter.

(3) If the seller in a residential real property transfer fails or refuses to provide to the prospective buyer a real property transfer disclosure statement as required under this chapter, the prospective buyer's right of rescission under this section shall apply until the earlier of three business days after receipt of the real property transfer disclosure statement or the date the transfer has closed, unless the buyer has otherwise waived the right of rescission in writing. Closing is deemed to occur when the buyer has paid the purchase price, or down pay-

ment, and the conveyance document, including a deed or real estate contract, from the seller has been delivered and recorded. After closing, the seller's obligation to deliver the real property transfer disclosure statement and the buyer's rights and remedies under this chapter shall terminate. [1996 c 301 § 4; 1994 c 200 § 5.]

64.06.050 Error, inaccuracy, or omission in disclosure statement—Actual knowledge—Liability. (1) The seller of residential real property shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission. Unless the seller of residential real property has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the seller shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor.

(2) Any licensed real estate salesperson or broker involved in a residential real property transaction is not liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the licensee had no actual knowledge of the error, inaccuracy, or omission. Unless the salesperson or broker has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the salesperson or broker shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor. [1996 c 301 § 5; 1994 c 200 § 6.]

64.06.060 Consumer protection act does not apply. The legislature finds that the practices covered by this chapter are not matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1994 c 200 § 7.]

64.06.070 Buyer's rights or remedies. Except as provided in RCW 64.06.050, nothing in this chapter shall extinguish or impair any rights or remedies of a buyer of real estate against the seller or against any agent acting for the seller otherwise existing pursuant to common law, statute, or contract; nor shall anything in this chapter create any new right or remedy for a buyer of residential real property other than the right of rescission exercised on the basis and within the time limits provided in this chapter. [1996 c 301 § 6; 1994 c 200 § 8.]

64.06.900 Effective date—1994 c 200. This act shall take effect on January 1, 1995. [1994 c 200 § 10.]

(2008 Ed.)

Chapter 64.08 RCW ACKNOWLEDGMENTS

Sections

64.08.010	Who may take acknowledgments.
64.08.020	Acknowledgments out of state—Certificate.
64.08.040	Foreign acknowledgments, who may take.
64.08.050	Certificate of acknowledgment—Evidence.
64.08.060	Form of certificate for individual.
64.08.070	Form of certificate for corporation.
64.08.090	Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.
64.08.100	Acknowledgments by persons unable to sign name.

Validating: See notes following chapter 64.04 RCW digest.

Acknowledgments

merchant seamen: RCW 73.20.010.

persons in the armed services: RCW 73.20.010.

persons outside United States in connection with war: RCW 73.20.010.

64.08.010 Who may take acknowledgments. Acknowledgments of deeds, mortgages and other instruments in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the court of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged according to the provisions of this section are hereby declared legal and valid. [1971 c 81 § 131; 1931 c 13 § 1; 1929 c 33 § 3; RRS § 10559. Prior: 1913 c 14 § 1; Code 1881 § 2315; 1879 p 110 § 1; 1877 p 317 § 5; 1875 p 107 § 1; 1873 p 466 § 5.]

64.08.020 Acknowledgments out of state—Certificate. Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein, and other instruments in writing, required to be acknowledged, may be taken in any other state or territory of the United States, the District of Columbia, or in any possession of the United States, before any person authorized to take the acknowledgments of deeds by the laws of the state, territory, district or possession wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this state, for that purpose, but unless such acknowledgment is taken before a commissioner so appointed by the governor, or before the clerk of a court of record of such state, territory, district or possession, or before a notary public or other officer having a seal of office, the instrument shall have attached thereto a certificate of the clerk of a court of record of the county, parish, or other political subdivision of such state, territory, district or possession wherein the acknowledgment was taken, under the seal of said court, certifying that the person who took the acknowledgment, and whose name is subscribed to the certificate thereof, was at the date thereof such officer as he represented himself to be, authorized by law to take acknowledgments of deeds, and that the clerk verily believes the signature of the person subscribed to the certificate of acknowledgment to be genuine. [1929 c 33 § 4; RRS §§ 10560, 10561. Prior: Code 1881 §§ 2316, 2317;

1877 p 313 §§ 6, 7; 1873 p 466 §§ 6, 7; 1867 pp 93, 94 §§ 1, 2; 1866 p 89 § 1; 1865 p 25 § 1. Formerly RCW 64.08.020 and 64.08.030.]

64.08.040 Foreign acknowledgments, who may take.

Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein and other instruments in writing, required to be acknowledged, may be taken in any foreign country before any minister, plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the United States government, or before any notary public, or before the judge, clerk, or other proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein. [1929 c 33 § 5; RRS § 10563, part. Prior: 1901 c 53 § 1; 1888 p 1 § 1; Code 1881 § 2319; 1875 p 108 § 2.]

64.08.050 Certificate of acknowledgment—Evidence.

The officer, or person, taking an acknowledgment as in this chapter provided, shall certify the same by a certificate written upon or annexed to the instrument acknowledged and signed by him or her and sealed with his or her official seal, if any, and reciting in substance that the person, or persons, known to him or her as, or determined by satisfactory evidence to be, the person, or persons, whose name, or names, are signed to the instrument as executing the same, acknowledged before him or her on the date stated in the certificate that he, she, or they, executed the same freely and voluntarily. Such certificate shall be prima facie evidence of the facts therein recited. The officer or person taking the acknowledgment has satisfactory evidence that a person is the person whose name is signed on the instrument if that person: (1) Is personally known to the officer or person taking the acknowledgment; (2) is identified upon the oath or affirmation of a credible witness personally known to the officer or person taking the acknowledgment; or (3) is identified on the basis of identification documents. [1988 c 69 § 1; 1929 c 33 § 6; RRS §§ 10564, 10565. Prior: Code 1881 §§ 2320, 2321; 1879 p 158 §§ 2, 3.]

64.08.060 Form of certificate for individual.

A certificate of acknowledgment for an individual, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(1), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of }
County of } ss.

On this day personally appeared before me (here insert the name of grantor or grantors) to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he (she or they) signed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein men-

tioned. Given under my hand and official seal this day of , 19. . . (Signature of officer and official seal)

If acknowledgment is taken before a notary public of this state the signature shall be followed by substantially the following: Notary Public in and for the state of Washington, residing at, (giving place of residence). [1988 c 69 § 2; 1929 c 33 § 13; RRS § 10566. Prior: 1888 p 51 § 2; 1886 p 179 § 7.]

64.08.070 Form of certificate for corporation. A certificate of acknowledgment for a corporation, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(2), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of }
County of } ss.

On this day of , 19. . . , before me personally appeared , to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written. (Signature and title of officer with place of residence of notary public.) [1988 c 69 § 3; 1929 c 33 § 14; RRS § 10567. Prior: 1903 c 132 § 1.]

64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.

The superintendents, associate and assistant superintendents, business managers, records officers and camp superintendents of any correctional institution or facility operated by the state of Washington are hereby authorized and empowered to take acknowledgments on any instruments of writing, and certify the same in the manner required by law, and to administer all oaths required by law to be administered, all of the foregoing acts to have the same effect as if performed by a notary public: PROVIDED, That such authority shall only extend to taking acknowledgments for and administering oaths to officers, employees and residents of such institutions and facilities. None of the individuals herein empowered to take acknowledgments and administer oaths shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or acknowledgment under the authority conferred by this section.

In certifying any oath or in signing any instrument officially, an individual empowered to do so under this section shall, in addition to his name, state in writing his place of residence, the date of his action, and affix the seal of the institution where he is employed: PROVIDED, That in certifying any oath to be used in any of the courts of this state, it shall

not be necessary to append an impression of the official seal of the institution. [1972 ex.s. c 58 § 1.]

64.08.100 Acknowledgments by persons unable to sign name. Any person who is otherwise competent but is physically unable to sign his or her name or make a mark may make an acknowledgment authorized under this chapter by orally directing the notary public or other authorized officer taking the acknowledgment to sign the person's name on his or her behalf. In taking an acknowledgment under this section, the notary public or other authorized officer shall, in addition to stating his or her name and place of residence, state that the signature in the acknowledgment was obtained under the authority of this section. [1987 c 76 § 2.]

Chapter 64.12 RCW WASTE AND TRESPASS

Sections

64.12.010	Waste actionable.
64.12.020	Waste by guardian or tenant, action for.
64.12.030	Injury to or removing trees, etc.—Damages.
64.12.035	Cutting or removing vegetation—Electric utility—Liability—Definitions.
64.12.040	Mitigating circumstances—Damages.
64.12.045	Cutting, breaking, removing Christmas trees from state lands—Compensation.
64.12.050	Injunction to prevent waste on public land.
64.12.060	Action by occupant of unsurveyed land.

Actions to be commenced where subject is situated: RCW 4.12.010.

Damages for waste after injunction issued: RCW 7.40.200.

Injunctions, generally: Chapter 7.40 RCW.

Trespass

animals: Title 16 RCW.

criminal: Chapter 9A.52 RCW.

public lands: Chapter 79.02 RCW.

theft: Chapter 9A.56 RCW.

waste, executor or administrator may sue: RCW 11.48.010.

Waste

option contracts and coal leases on state lands: RCW 79.14.580.

restraining during redemption period: RCW 6.23.100.

trespass on state lands: Chapter 79.02 RCW.

64.12.010 Waste actionable. Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs. [Code 1881 § 600; 1877 p 125 § 605; 1869 p 143 § 554; 1854 p 206 § 403; RRS § 937.]

64.12.020 Waste by guardian or tenant, action for. If a guardian, tenant in severalty or in common, for life or for years, or by sufferance, or at will, or a subtenant, of real property commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant or subtenant; in which action, if the plaintiff prevails, there shall be judgment for treble damages, or for fifty dollars, whichever is greater, and the court, in addition may decree forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. The judgment, in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to

the value of the tenant's estate or unexpired term, or to have been done or suffered in malice. [1943 c 22 § 1; Code 1881 § 601; 1877 p 125 § 606; 1869 p 143 § 555; 1854 p 206 § 403; Rem. Supp. 1943 § 938.]

64.12.030 Injury to or removing trees, etc.—Damages. Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway in front of any person's house, village, town or city lot, or cultivated grounds, or on the commons or public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town or city against the person committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be. [Code 1881 § 602; 1877 p 125 § 607; 1869 p 143 § 556; RRS § 939.]

Trespass, public lands: Chapter 79.02 RCW.

64.12.035 Cutting or removing vegetation—Electric utility—Liability—Definitions. (1) An electric utility is immune from liability under RCW 64.12.030, 64.12.040, and 4.24.630 and any claims for general or special damages, including claims of emotional distress, for cutting or removing vegetation located on or originating from land or property adjacent to electric facilities that:

(a) Has come in contact with or caused damage to electric facilities;

(b) Poses an imminent hazard to the general public health, safety, or welfare and the electric utility provides notice and makes a reasonable effort to obtain an agreement from the resident or property owner present on the property to trim or remove such hazard. For purposes of this subsection (1)(b), notice may be provided by posting a notice or flier in a conspicuous location on the affected property that gives a good faith estimate of the time frame in which the electric utility's trimming or removal work must occur, specifies how the electric utility may be contacted, and explains the responsibility of the resident or property owner to respond pursuant to the requirements of the notice. An electric utility may act without agreement if the resident or property owner fails to respond pursuant to the requirements of the notice. No notice or agreement is necessary if the electric utility's action is necessary to protect life, property, or restore electric service; or

(c) Poses a potential threat to damage electric facilities and the electric utility attempts written notice by mail to the last known address of record indicating the intent to act or remove vegetation and secures agreement from the affected property owner of record for the cutting, removing, and disposition of the vegetation. Such notice shall include a brief statement of the need and nature of the work intended that will impact the owner's property or vegetation, a good faith estimate of the time frame in which such work will occur, and how the utility can be contacted regarding the cutting or removal of vegetation. If the affected property owner fails to respond to a notice from the electric utility within two weeks of the date the electric utility provided notice, the electric utility may secure agreement from a resident of the affected

property for the cutting, removing, and disposition of vegetation.

(2)(a) A hazard to the general public health, safety, or welfare is deemed to exist when:

(i) Vegetation has encroached upon electric facilities by overhanging or growing in such close proximity to overhead electric facilities that it constitutes an electrical hazard under applicable electrical construction codes or state and federal health and safety regulations governing persons who are employed or retained by, or on behalf of, an electric utility to construct, maintain, inspect, and repair electric facilities or to trim or remove vegetation; or

(ii) Vegetation is visibly diseased, dead, or dying and has been determined by a qualified forester or certified arborist employed or retained by, or on behalf of, an electric utility to be of such proximity to electric facilities that trimming or removal of the vegetation is necessary to avoid contact between the vegetation and electric facilities.

(b) The factors to be considered in determining the extent of trimming required to remove a hazard to the general public health, safety, or welfare may include normal tree growth, the combined movement of trees and conductors under adverse weather conditions, voltage, and sagging of conductors at elevated temperatures.

(3) A potential threat to damage electric facilities exists when vegetation is of such size, condition, and proximity to electric facilities that it can be reasonably expected to cause damage to electric facilities and, based upon this standard, the vegetation has been determined to pose a potential threat by a qualified forester or certified arborist employed or retained by or on behalf of an electric utility.

(4) For the purposes of this section:

(a) "Electric facilities" means lines, conduits, ducts, poles, wires, pipes, conductors, cables, cross-arms, receivers, transmitters, transformers, instruments, machines, appliances, instrumentalities, and all devices and apparatus used, operated, owned, or controlled by an electric utility, for the purposes of manufacturing, transforming, transmitting, distributing, selling, or furnishing electricity.

(b) "Electric utility" means an electrical company, as defined under RCW 80.04.010, a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, and a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity in the state.

(c) "Vegetation" means trees, timber, or shrubs. [1999 c 248 § 1.]

Severability—1999 c 248: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 248 § 3.]

64.12.040 Mitigating circumstances—Damages. If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the pur-

pose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages. [Code 1881 § 603; 1877 p 125 § 608; 1869 p 143 § 557; RRS § 940.]

64.12.045 Cutting, breaking, removing Christmas trees from state lands—Compensation. See RCW 79.02.340.

64.12.050 Injunction to prevent waste on public land.

When any two or more persons are opposing claimants under the laws of the United States to any land in this state, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders. [Code 1881 § 604; 1877 p 125 § 609; 1869 p 144 § 558; 1854 p 206 § 404; RRS § 941.]

Injunction, generally: Chapter 7.40 RCW.

64.12.060 Action by occupant of unsurveyed land.

Any person now occupying and settled upon, or who may hereafter occupy or settle upon any of the unsurveyed public lands not to exceed one hundred sixty acres in this territory, for the purpose of holding and cultivating the same, may commence and maintain any action, in any court of competent jurisdiction, for interference with or injuries done to his or her possessions of said lands, against any person or persons so interfering with or injuring such lands or possessions: PROVIDED, ALWAYS, That if any of the aforesaid class of settlers are absent from their claims continuously, for a period of six months in any one year, the said person or persons shall be deemed to have forfeited all rights under this act. [1883 p 70 § 1; RRS § 942.]

Reviser's note: The preamble and sections 2 and 3 of the 1883 act, section 1 of which is codified above as RCW 64.12.060, read as follows:

Preamble: "WHEREAS, A great many citizens of the United States are now settling upon and cultivating the unsurveyed government lands in this territory; and, as many years may elapse before the government surveys will be extended over the said lands, so that the settlers upon the same, can take them under the laws of the United States, and defend them against the trespass of others, therefore:"

"Sec. 2. Any person or persons, who shall wilfully and maliciously disturb, or in any wise injure, or destroy the dwelling house or other building, or any fence inclosing, or being on the claim of any of the aforesaid class of settlers, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than one hundred (\$100) dollars, for each and every offense, to which may be added imprisonment in the county jail, not exceeding ninety (90) days." [1883 p 71 § 2.]

"Sec. 3. Any person or persons, who shall wilfully or maliciously set fire to any dwelling, or other building, of any of the aforesaid class of settlers, shall be deemed guilty of arson, and subject to the penalties of the law in such cases, made and provided." [1883 p 71 § 3.]

**Chapter 64.16 RCW
ALIEN LAND LAW**

Sections

- 64.16.005 Aliens' rights and interests in lands same as native citizens'.
- 64.16.140 Certain titles confirmed.

64.16.005 Aliens' rights and interests in lands same as native citizens'. Any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise or descent; and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs, and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of this state or of the United States. [1967 c 163 § 2.]

1967 c 163 adopted to implement Amendment 42: "This act is adopted by the legislature to implement amendment 42 to the state Constitution approved by the voters of the state on November 8, 1966. Amendment 42 removed constitutional restrictions against alien ownership of land by repealing Article II, section 33 of the state Constitution, as amended and Amendments 24 and 29." [1967 c 163 § 1.]

Severability—1967 c 163: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 163 § 9.]

The above two annotations apply to 1967 c 163. For codification of that act, see Codification Tables, Volume 0.

64.16.140 Certain titles confirmed. All lands and all estates or interests in lands, within the state of Washington, which were conveyed or attempted to be conveyed to, or acquired or attempted to be acquired by, any alien or aliens, prior to the date of the adoption of this act, are hereby confirmed to the respective persons at present owning or claiming to own the title thereto derived by, through or under any such alien ownership or attempted ownership, to the extent that title was vested in or conveyed by said alien or aliens: PROVIDED, That nothing in this section shall be construed to affect, adversely or otherwise, any title to any such lands, or to any interest or estate therein, held or claimed by any private person or corporation adversely to the title hereby confirmed. [1967 c 163 § 3; 1895 c 111 § 1; RRS § 10589.]

Reviser's note: 1967 c 163 carried an emergency clause and was approved by the governor on March 21, 1967.

**Chapter 64.20 RCW
ALIENATION OF LAND BY INDIANS**

Sections

- 64.20.010 Puyallup Indians—Right of alienation.
- 64.20.025 Puyallup Indians—Right of alienation—When effective.
- 64.20.030 Sale of land or materials authorized.

Indian graves and records: Chapter 27.44 RCW.

Indians and Indian lands, jurisdiction: Chapter 37.12 RCW.

64.20.010 Puyallup Indians—Right of alienation. The said Indians who now hold, or who may hereafter hold, any of the lands of any reservation, in severalty, located in this state by virtue of treaties made between them and the United States, shall have power to lease, incumber, grant and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this

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state, and all restrictions in reference thereto are hereby removed. [1890 p 500 § 1; RRS § 10593.]

Preamble: "WHEREAS, It was and is provided by and in the treaty made with and between the chiefs, head men and delegates of the Indian tribes (including the Puyallup tribe) and the United States of America, which treaty is dated on the 26th day of December, 1854, among other things as follows: 'That the president, at his discretion, should cause the whole or any portion of the lands thereby reserved, or such land as might be selected in lieu thereof, to be surveyed into lots and assign the same to such individuals or families as are willing to avail themselves of the privilege and will locate on the same as a permanent home, on the same terms, and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable; and

'WHEREAS, It was and is provided by and in the sixth article of the treaty with the Omahas aforesaid, among other things, that said tracts of land shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a state constitution embracing such lands within its boundaries shall have been formed, and the legislature of the state shall remove the restrictions, but providing that no state legislature shall remove the restrictions* * * without the consent of the Congress;' and

'WHEREAS, The President of the United States, on the 30th day of January, 1866, made and issued patents to the Puyallup Indians, in severalty, for the lands of said reservation, which are now of record in the proper office in Pierce county, in the State of Washington; and

'WHEREAS, All the conditions now exist which said treaties contain, and which make it desirable and proper to remove the restrictions in respect to the alienation and disposition of said lands by the Indians, who now hold them in severalty: now, therefore,"

64.20.025 Puyallup Indians—Right of alienation—When effective. *This act shall take effect and be in force from and after the consent to such removal of the restrictions shall have been given by the congress of the United States. [1890 p 501 § 3; no RRS.]

Reviser's note: *(1) The language "this act" appears in 1890 p 501 § 3, which act is codified herein as RCW 64.20.010 through 64.20.025.

(2) An act of congress of March 3, 1893, removed the restriction on transfer (Wilson Act, 27 Stat. p 633) but postponed the right to transfer for ten years, that is, until March 3, 1903.

64.20.030 Sale of land or materials authorized. Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of congress, either special or general, sell and convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this section to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate. [1899 c 96 § 1; RRS § 10595.]

**Chapter 64.28 RCW
JOINT TENANCIES**

Sections

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64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved. Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law, including the unilateral right of each tenant to sever the joint tenancy. Joint tenancy shall be created only by written instrument, which instrument shall expressly declare the interest created to be a joint tenancy. It may be created by a single agreement, transfer, deed, will, or other instrument of conveyance, or by agreement, transfer, deed or other instrument from a sole owner to himself or herself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from both spouses or both domestic partners, when holding title as community property, or otherwise, to themselves or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as joint tenants: PROVIDED, That such transfer shall not derogate from the rights of creditors. [2008 c 6 § 625; 1993 c 19 § 1; 1963 ex.s. c 16 § 1; 1961 c 2 § 1 (Initiative Measure No. 208, approved November 8, 1960).]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property. (1) Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010, or unless acquired by executors or trustees.

(2) Interests in common held in the names of both spouses or both domestic partners, whether or not in conjunction with others, are presumed to be their community property.

(3) Subsection (2) of this section applies as of June 9, 1988, to all existing or subsequently created interests in common. [2008 c 6 § 626; 1988 c 29 § 10; 1961 c 2 § 2 (Initiative Measure No. 208, approved November 8, 1960).]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

64.28.030 Bank deposits, choses in action, community property agreements not affected. The provisions of this chapter shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as heretofore or hereafter provided by law, nor restrict the power of both spouses or both domestic partners to make agreements as provided in RCW 26.16.120. [2008 c 6 § 627; 1961 c 2 § 3 (Initiative Measure No. 208, approved November 8, 1960).]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

64.28.040 Character of joint tenancy interests held by both spouses or both domestic partners. (1) Joint tenancy interests held in the names of both spouses or both domestic partners, whether or not in conjunction with others,

are presumed to be their community property, the same as other property held in the name of both spouses or both domestic partners. Any such interest passes to the survivor of the spouse or survivor of the domestic partner as provided for property held in joint tenancy, but in all other respects the interest is treated as community property.

(2) Either person in a marriage or either person in a state registered domestic partnership, or both, may sever a joint tenancy. When a joint tenancy is severed, the property, or proceeds of the property, shall be presumed to be their community property, whether it is held in the name of either spouse, or both, or in the name of either domestic partner, or both.

(3) This section applies as of January 1, 1985, to all existing or subsequently created joint tenancies. [2008 c 6 § 628; 1993 c 19 § 2; 1985 c 10 § 2. Prior: 1984 c 149 § 174.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Purpose—1985 c 10: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 10 § 1.]

Severability—1985 c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 10 § 3.]

Short title—Application—1985 c 30: See RCW 11.02.900 and 11.02.901.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 64.32 RCW HORIZONTAL PROPERTY REGIMES ACT (CONDOMINIUMS)

Sections

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Condominiums created after July 1, 1990: Chapter 64.34 RCW.

Conversion of apartments into condominiums, notice required: RCW 59.18.200.

Mutual savings banks, powers as to condominiums: RCW 32.04.025.

64.32.010 Definitions. As used in this chapter unless the context otherwise requires:

(1) "Apartment" means a part of the property intended for any type of independent use, including one or more rooms or spaces located on one or more floors (or part or parts thereof) in a building, or if not in a building, a separately delineated place of storage or moorage of a boat, plane, or motor vehicle, regardless of whether it is destined for a residence, an office, storage or moorage of a boat, plane, or motor vehicle, the operation of any industry or business, or for any other use not prohibited by law, and which has a direct exit to a public street or highway, or to a common area leading to such street or highway. The boundaries of an apartment located in a building are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed. If the apartment is a separately delineated place of storage or moorage of a boat, plane, or motor vehicle the boundaries are those specified in the declaration. In interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment as originally constructed or as reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building.

(2) "Apartment owner" means the person or persons owning an apartment, as herein defined, in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, together with an undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the declaration as duly recorded or as it may be lawfully amended.

(3) "Apartment number" means the number, letter, or combination thereof, designating the apartment in the declaration as duly recorded or as it may be lawfully amended.

(4) "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and with the declaration as it is duly recorded or as they may be lawfully amended.

(5) "Building" means a building, containing two or more apartments, or two or more buildings each containing one or more apartments, and comprising a part of the property.

(6) "Common areas and facilities", unless otherwise provided in the declaration as duly recorded or as it may be lawfully amended, includes:

- (a) The land on which the building is located;
- (b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and storage spaces;

(d) The premises for the lodging of janitors or persons in charge of the property;

(e) The installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(f) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(g) Such community and commercial facilities as may be provided for in the declaration as duly recorded or as it may be lawfully amended;

(h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Common expenses" include:

(a) All sums lawfully assessed against the apartment owners by the association of apartment owners;

(b) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(c) Expenses agreed upon as common expenses by the association of apartment owners;

(d) Expenses declared common expenses by the provisions of this chapter, or by the declaration as it is duly recorded, or by the bylaws, or as they may be lawfully amended.

(8) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(9) "Declaration" means the instrument by which the property is submitted to provisions of this chapter, as herein-after provided, and as it may be, from time to time, lawfully amended.

(10) "Land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, whether or not submerged, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of the airspace granted, by the laws of this state or of the United States.

(11) "Limited common areas and facilities" includes those common areas and facilities designated in the declaration, as it is duly recorded or as it may be lawfully amended, as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(12) "Majority" or "majority of apartment owners" means the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes.

(13) "Person" includes any individual, corporation, partnership, association, trustee, or other legal entity.

(14) "Property" means the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection

therewith, which have been or are intended to be submitted to the provisions of this chapter.

(15) "Percent of the apartment owners" means the apartment owners with the stated percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes. [2008 c 114 § 3; 1987 c 383 § 1; 1981 c 304 § 34; 1965 ex.s. c 11 § 1; 1963 c 156 § 1.]

Applicability of RCW 64.32.010(1) to houseboat moorages: "The provisions of section 34 (1) shall not apply to moorages for houseboats without the approval of the local municipality." [1981 c 304 § 35.]

Severability—1981 c 304: See note following RCW 26.16.030.

64.32.020 Application of chapter. This chapter shall be applicable only to property, the sole owner or all of the owners, lessees or possessors of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided. [1963 c 156 § 2.]

64.32.030 Apartments and common areas declared real property. Each apartment, together with its undivided interest in the common areas and facilities shall not be considered as an intangible or a security or any interest therein but shall for all purposes constitute and be classified as real property. [1963 c 156 § 3.]

64.32.040 Ownership and possession of apartments and common areas. Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment but any apartment may be jointly or commonly owned by more than one person. Each apartment owner shall have the common right to a share, with other apartment owners, in the common areas and facilities. [1963 c 156 § 4.]

64.32.050 Common areas and facilities. (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered except in accordance with procedures set forth in the bylaws and by amending the declaration. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains even though such interest is not expressly mentioned or described in the conveyance or other instrument. Nothing in this section or this chapter shall be construed to detract from or limit the powers and duties of any assessing or taxing unit or official which is otherwise granted or imposed by law, rule, or regulation.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this chapter as provided in RCW 64.32.150 and 64.32.230. Any covenant to the contrary shall be void. Nothing in this chapter shall be construed as a limitation on the right of partition by

joint owners or owners in common of one or more apartments as to the ownership of such apartment or apartments.

(4) Each apartment owner shall have a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition or improvement thereto shall be carried out only as provided in this chapter and in the bylaws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments. [1965 ex.s. c 11 § 2; 1963 c 156 § 5.]

64.32.060 Compliance with covenants, bylaws and administrative rules and regulations. Each apartment owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his apartment. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or by a particularly aggrieved apartment owner. [1963 c 156 § 6.]

64.32.070 Liens or encumbrances—Enforcement—Satisfaction. (1) Subsequent to recording the declaration as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period, liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities and appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership: PROVIDED, That no labor performed or materials furnished with the consent of or at the request of the owner of any apartment, or such owner's agent, contractor, or subcontractor, shall be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by any apartment owner in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of apartment owners, the manager or board of directors shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien against each of the apartments and

shall be subject to the provisions of subsection (2) of this section.

(2) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge, or satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied, or discharged. [1963 c 156 § 7.]

64.32.080 Common profits and expenses. The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities. [1963 c 156 § 8.]

64.32.090 Contents of declaration. The declaration shall contain the following:

- (1) A description of the land on which the building and improvement are or are to be located;
- (2) A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed;
- (3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;
- (4) A description of the common areas and facilities;
- (5) A description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;
- (6) The value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting;
- (7) A statement of the purposes for which the building and each of the apartments are intended and restricted as to use;
- (8) The name of a person to receive service of process in the cases provided for in this chapter, together with a residence or place of business of such person which shall be within the county in which the building is located;
- (9) A provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in event of damage or destruction of all or part of the property;
- (10) A provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the

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accomplishment thereof through means of a metes and bounds description;

(11) A provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter, which may include whether administration of the property shall be by a board of directors elected from among the apartment owners, by a manager, or managing agent, or otherwise, and the procedures for the adoption thereof and amendments thereto;

(12) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter; and

(13) The method by which the declaration may be amended, consistent with this chapter: PROVIDED, That not less than sixty percent of the apartment owners shall consent to any amendment except that any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous consent of the apartment owners. [1963 c 156 § 9.]

64.32.100 Copy of survey map, building plans to be filed—Contents of plans. Simultaneously with the recording of the declaration there shall be filed in the office of the county auditor of the county in which the property is located a survey map of the surface of the land submitted to the provisions of this chapter showing the location or proposed location of the building or buildings thereon.

There also shall be filed simultaneously, a set of plans of the building or buildings showing as to each apartment:

- (1) The vertical and horizontal boundaries, as defined in RCW 64.32.010(1), in sufficient detail to identify and locate such boundaries relative to the survey map of the surface of the land by the use of standard survey methods;
- (2) The number of the apartment and its dimensions;
- (3) The approximate square footage of each unit;
- (4) The number of bathrooms, whole or partial;
- (5) The number of rooms to be used primarily as bedrooms;
- (6) The number of built-in fireplaces;
- (7) A statement of any scenic view which might affect the value of the apartment; and
- (8) The initial value of the apartment relative to the other apartments in the building.

The set of plans shall bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor certifying that the plans accurately depict the location and dimensions of the apartments as built.

If such plans do not include such verified statement there shall be recorded prior to the first conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the apartment numbers, dimensions, and locations of the apartments as built.

Such plans shall each contain a reference to the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration. Correspondingly, the record of the declaration or amendment

thereof shall contain a reference to the file number of the plans of the building affected thereby.

All plans filed shall be in such style, size, form and quality as shall be prescribed by the county auditor of the county where filed, and a copy shall be delivered to the county assessor. [1987 c 383 § 2; 1965 ex.s. c 11 § 3; 1963 c 156 § 10.]

Fees for filing condominium surveys, maps, or plats: RCW 58.24.070.

64.32.110 Ordinances, resolutions, or zoning laws—Construction. Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of apartments under this chapter rather than by lease of apartments. [1963 c 156 § 11.]

64.32.120 Contents of deeds or other conveyances of apartments. Deeds or other conveyances of apartments shall include the following:

(1) A description of the land as provided in RCW 64.32.090, or the post office address of the property, including in either case the date of recording of the declaration and the volume and page or county auditor's recording number of the recorded declaration;

(2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification;

(3) A statement of the use for which the apartment is intended;

(4) The percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining thereto, if any;

(5) Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and with this chapter. [1999 c 233 § 9; 1965 ex.s. c 11 § 4; 1963 c 156 § 12.]

Effective date—1999 c 233: See note following RCW 4.28.320.

64.32.130 Mortgages, liens or encumbrances affecting an apartment at time of first conveyance. At the time of the first conveyance of each apartment, every mortgage, lien, or other encumbrance affecting such apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released therefrom by partial release duly recorded. [1963 c 156 § 13.]

64.32.140 Recording. The declaration, any amendment thereto, any instrument by which the property may be removed from this chapter and every instrument affecting the property or any apartment shall be entitled to be recorded in the office of the auditor of the county in which the property is located. Neither the declaration nor any amendment thereof shall be valid unless duly recorded. [1963 c 156 § 14.]

64.32.150 Removal of property from provisions of chapter. (1) All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect duly recorded: PROVIDED, That the mortgage-

ees and holders of all liens affecting any of the apartments consent thereto or agree, in either case by instrument duly recorded, that their mortgages and liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided;

(2) Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owners in the common areas and facilities.

(3) Subject to RCW 64.34.010 (1) and (2) and the rights of mortgagees and the holders of all liens affecting any of the apartments, the apartment owners may remove a property from the provisions of this chapter and terminate the condominium in the manner set forth in RCW 64.34.268 (1) through (7) and (10), in which event all of the provisions of RCW 64.34.268 (1) through (7) and (10) shall apply to such removal in lieu of subsections (1) and (2) of this section. [2008 c 114 § 2; 1963 c 156 § 15.]

64.32.160 Removal of property from provisions of chapter—No bar to subsequent resubmission. The removal provided for in RCW 64.32.150 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter. [1963 c 156 § 16.]

64.32.170 Records and books—Availability for examination—Audits. The manager or board of directors, as the case may be, shall keep complete and accurate books and records of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such books and records and the vouchers authorizing payments shall be available for examination by the apartment owners, their agents or attorneys, at any reasonable time or times. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization. [1965 ex.s. c 11 § 5; 1963 c 156 § 17.]

64.32.180 Exemption from liability for contribution for common expenses prohibited. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment. [1963 c 156 § 18.]

64.32.190 Separate assessments and taxation. Each apartment and its undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, nor the property, nor any of the common areas and facilities shall be deemed to be a security or a parcel for any purpose. [1963 c 156 § 19.]

64.32.200 Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser. (1) The declaration may provide for the collection of all sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment and the collection may be enforced in any manner provided in the declaration including but not limited to (a) ten days notice shall be given the delinquent apartment owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid, or (b) collection of such assessment may be made by such lawful method of enforcement, judicial or extra-judicial, as may be provided in the declaration and/or bylaws.

(2) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) all sums unpaid on all mortgages of record. Such lien is not subject to the ban against execution or forced sales of homesteads under RCW 6.13.080 and may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid on the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment, the period of redemption shall be eight months after the sale. Suit to recover any judgment for any unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same.

(3) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains possession of the apartment as a result of foreclosure of the mortgage, such possessor, his successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to such apartment which became due prior to such possession. Such unpaid share of common expenses of assessments shall be deemed to be common expenses collectible from all of the apartment owners including such possessor, his successors and assigns. [1988 c 192 § 2; 1965 ex.s. c 11 § 6; 1963 c 156 § 20.]

64.32.210 Conveyance—Liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assess-

ments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. [1963 c 156 § 21.]

64.32.220 Insurance. The manager or board of directors, if required by the declaration, bylaws, or by a majority of the apartment owners, or at the request of a mortgagee having a mortgage of record covering an apartment, shall obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of the manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment and/or the personal contents thereof for his benefit. [1963 c 156 § 22.]

64.32.230 Destruction or damage to all or part of property—Disposition. If, within ninety days of the date of damage or destruction to all or part of the property it is not determined by the apartment owners to repair, reconstruct, or rebuild in accordance with the original plan, or by a unanimous vote of all apartment owners to do otherwise, then and in that event:

(1) The property shall be owned in common by the apartment owners;

(2) The undivided interest in the property owned in common which appertains to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(3) Any mortgages or liens affecting any of the apartments shall be deemed transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

(4) The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance of the property, if any, shall be considered as one fund; such fund shall be divided into separate shares one for each apartment owner in a percentage equal to the percentage of undivided interest owned by each such owner in the property; then, after first paying out of the respective share of each apartment owner, to the extent sufficient for the purpose, all mortgages and liens on the undivided interest in the property owned by such apartment owner, the balance remaining in each share shall then be distributed to each apartment owner respectively. [1965 ex.s. c 11 § 7; 1963 c 156 § 23.]

64.32.240 Actions. Without limiting the rights of any apartment owner, actions may be brought as provided by law and by the rules of court by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities or more

than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the declaration to receive service of process. Actions relating to the common areas and facilities for damages arising out of tortious conduct shall be maintained only against the association of apartment owners and any judgment lien or other charge resulting therefrom shall be deemed a common expense, which judgment lien or other charge shall be removed from any apartment and its percentage of undivided interest in the common areas and facilities upon payment by the respective owner of his proportionate share thereof based on the percentage of undivided interest owned by such apartment owner. [1963 c 156 § 24.]

64.32.250 Application of chapter, declaration and bylaws. (1) All apartment owners, tenants of such owners, employees of such owners and tenants, and any other person that may in any manner use the property or any part thereof submitted to the provisions of this chapter, shall be subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this chapter.

(2) All agreements, decisions and determinations made by the association of apartment owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established in this chapter, the declaration, or the bylaws, shall be deemed to be binding on all apartment owners. [1963 c 156 § 25.]

64.32.900 Short title. This chapter shall be known as the horizontal property regimes act. [1963 c 156 § 26.]

64.32.910 Construction of term "this chapter." The term "this chapter" means RCW 64.32.010 through 64.32.250 and 64.32.900 through 64.32.920, and as they may hereafter be amended or supplemented by subsequent legislation. [1963 c 156 § 27.]

64.32.920 Severability—1963 c 156. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1963 c 156 § 28.]

Chapter 64.34 RCW CONDOMINIUM ACT

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Condominiums created prior to July 1, 1990: Chapter 64.32 RCW.

ARTICLE 1
 GENERAL PROVISIONS

64.34.005 Findings—Intent—2004 c 201. (1) The legislature finds, declares, and determines that:

(a) Washington’s cities and counties under the growth management act are required to encourage urban growth in urban growth areas at densities that accommodate twenty-year growth projections;

(b) The growth management act’s planning goals include encouraging the availability of affordable housing for all residents of the state and promoting a variety of housing types;

(c) Quality condominium construction needs to be encouraged to achieve growth management act mandated urban densities and to ensure that residents of the state, particularly in urban growth areas, have a broad range of ownership choices.

(2) It is the intent of the legislature that limited changes be made to the condominium act to ensure that a broad range of affordable homeownership opportunities continue to be available to the residents of the state, and to assist cities’ and counties’ efforts to achieve the density mandates of the growth management act. [2004 c 201 § 1.]

64.34.010 Applicability. (1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.268 (1) through (7) and (10) (termination of condominium), RCW 64.34.212 (description of units), *RCW 64.34.304(1)(a) through (f) and (k) through (r) (powers of unit owners’ association), RCW 64.34.308(1) (board of directors and officers), RCW 64.34.340 (voting—proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common expenses—assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney’s fees), RCW 64.34.380 through 34.34.390 (reserve studies and accounts), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsis-

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tent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—conversion condominiums), RCW 64.34.420 (purchaser’s right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums—notice—tenants[-relocation assistance]), and RCW 64.34.455 (effect of violations on rights of action—attorney’s fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1, 1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium. [2008 c 115 § 7; 2008 c 114 § 1; 1993 c 429 § 12; 1992 c 220 § 1; 1989 c 43 § 1-102.]

Reviser’s note: *(1) RCW 64.34.304 was amended by 2008 c 115 § 9, changing subsection (1)(q) and (r) to subsection (1)(s) and (t).

(2) This section was amended by 2008 c 114 § 1 and by 2008 c 115 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

64.34.020 Definitions. In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate" means any person who controls, is controlled by, or is under common control with the referenced person. A person "controls" another person if the person: (a) Is a general partner, officer, director, or employer of the referenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the referenced person; (c) controls in any manner the election of a majority of the directors of the referenced person; or (d) has contributed more than twenty percent of the capital of the referenced person. A person "is controlled by" another person if the other person: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors

of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Contribution rate" means, in a reserve study as described in RCW 64.34.380, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(11) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(12) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(13) "Dealer" means a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

(14) "Declarant" means:

(a) Any person who executes as declarant a declaration as defined in subsection (16) of this section; or

(b) Any person who reserves any special declarant right in the declaration; or

(c) Any person who exercises special declarant rights or to whom special declarant rights are transferred; or

(d) Any person who is the owner of a fee interest in the real property which is subjected to the declaration at the time of the recording of an instrument pursuant to RCW 64.34.316 and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the condominium created by the recording of the instrument.

(15) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors, or to veto or approve a proposed action of the board or association, pursuant to RCW 64.34.308 (4) or (5).

(16) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(17) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; (d) withdraw real property from a condominium; or (e) reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(18) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(19) "Effective age" means the difference between useful life and remaining useful life.

(20) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(21) "Foreclosure" means a forfeiture or judicial or non-judicial foreclosure of a mortgage or a deed in lieu thereof.

(22) "Fully funded balance" means the value of the deteriorated portion of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of that reserve component by its effective age, then dividing the result by that reserve component's useful life. The sum total of all reserve

components' fully funded balances is the association's fully funded balance.

(23) "Identifying number" means the designation of each unit in a condominium.

(24) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(25) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(26) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(27) "Mortgage" means a mortgage, deed of trust or real estate contract.

(28) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(29) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(30) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(31) "Remaining useful life" means the estimated time, in years, that a reserve component can be expected to continue to serve its intended function.

(32) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(33) "Residential purposes" means use for dwelling or recreational purposes, or both.

(34) "Reserve components" means common elements whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(35) "Reserve study professional" means an independent person suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.34.380 and 64.34.382.

(36) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e)

make the condominium part of a larger condominium or a development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308(4).

(37) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(38) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(39) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

(40) "Useful life" means the estimated time, in years, that a reserve component can be expected to serve its intended function. [2008 c 115 § 8; 2004 c 201 § 9; 1992 c 220 § 2; 1990 c 166 § 1; 1989 c 43 § 1-103.]

Effective date—1990 c 166: "This act shall take effect July 1, 1990." [1990 c 166 § 16.]

64.34.030 Variation by agreement. Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration. [1989 c 43 § 1-104.]

64.34.040 Separate interests—Taxation. (1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(2) If there is any unit owner other than a declarant, each unit together with its interest in the common elements must be separately taxed and assessed.

(3) If a development right has an ascertainable market value, the development right shall constitute a separate parcel of real property for property tax purposes and must be separately taxed and assessed to the declarant.

(4) If there is no unit owner other than a declarant, the real property comprising the condominium may be taxed and assessed in any manner provided by law. [1992 c 220 § 3; 1989 c 43 § 1-105.]

64.34.050 Local ordinances, regulations, and building codes—Applicability. (1) A zoning, subdivision, building code, or other real property law, ordinance, or regulation

may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

(2) This section shall not prohibit a county legislative authority from requiring the review and approval of declarations and amendments thereto and termination agreements executed pursuant to RCW 64.34.268(2) by the county assessor solely for the purpose of allocating the assessed value and property taxes. The review by the assessor shall be done in a reasonable and timely manner. [1989 c 43 § 1-106.]

64.34.060 Condemnation. (1) If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant of a unit which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for the owner's unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and (b) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by condemnation the portion of the award attributable to the common elements taken shall be paid to the owners based on their respective interests in the common elements unless the declaration provides otherwise. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(4) The court judgment shall be recorded in every county in which any portion of the condominium is located.

(5) Should the association not act, based on a right reserved to the association in the declaration, on the owners' behalf in a condemnation process, the affected owners may individually or jointly act on their own behalf. [1989 c 43 § 1-107.]

64.34.070 Law applicable—General principles. The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, condemnation, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter. [1989 c 43 § 1-108.]

64.34.073 Application of chapter 64.55 RCW. Chapter 64.55 RCW includes requirements for: The inspection of the building enclosures of multiunit residential buildings, as defined in RCW 64.55.010, which includes condominiums and conversion condominiums; for provision of inspection and repair reports; and for the resolution of implied or express warranty disputes under chapter 64.34 RCW. [2005 c 456 § 21.]

Captions not law—Effective date—2005 c 456: See RCW 64.55.900 and 64.55.901.

64.34.080 Contracts—Unconscionability. (1) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations;

(b) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the real property and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable. [1989 c 43 § 1-111.]

64.34.090 Obligation of good faith. Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement. [1989 c 43 § 1-112.]

64.34.100 Remedies liberally administered. (1) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(2) Except as otherwise provided in RCW 64.55.100 through 64.55.160 or chapter 64.35 RCW, any right or obligation declared by this chapter is enforceable by judicial proceeding. The arbitration proceedings provided for in RCW 64.55.100 through 64.55.160 shall be considered judicial proceedings for the purposes of this chapter. [2005 c 456 § 20; 2004 c 201 § 2; 1989 c 43 § 1-113.]

Captions not law—Effective date—2005 c 456: See RCW 64.55.900 and 64.55.901.

ARTICLE 2 CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

64.34.200 Creation of condominium. (1) A condominium may be created pursuant to this chapter only by recording a declaration executed by the owner of the interest subject to this chapter in the same manner as a deed and by simultaneously recording a survey map and plans pursuant to RCW 64.34.232. The declaration and survey map and plans must be recorded in every county in which any portion of the condominium is located, and the condominium shall not have the same name as any other existing condominium, whether created under this chapter or under chapter 64.32 RCW, in any county in which the condominium is located.

(2) A declaration or an amendment to a declaration adding units to a condominium may not be recorded unless (a) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed as evidenced by a recorded certificate of completion executed by the declarant which certificate may be included in the declaration or the amendment, the survey map and plans to be recorded pursuant to RCW 64.34.232, or a separately recorded written instrument, and (b) all horizontal and vertical boundaries of such units are substantially completed in accordance with the plans required to be recorded by RCW 64.34.232, as evidenced by a recorded certificate of completion executed by a licensed surveyor. [1992 c 220 § 4; 1990 c 166 § 2; 1989 c 43 § 2-101.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.202 Reservation of condominium name. Upon the filing of a written request with the county office in which the declaration is to be recorded, using such form of written request as may be required by the county office and paying such fee as the county office may establish not in excess of fifty dollars, a person may reserve the exclusive right to use a particular name for a condominium to be created in that county. The name being reserved shall not be identical to any other condominium or subdivision plat located in that county, and such name reservation shall automatically lapse unless within three hundred sixty-five days from the date on which the name reservation is filed the person reserving that name either records a declaration using the reserved name or files a new name reservation request. [1992 c 220 § 5.]

64.34.204 Unit boundaries. Except as provided by the declaration:

(1) The walls, floors, or ceilings are the boundaries of a unit, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any

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other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit. [1992 c 220 § 6; 1989 c 43 § 2-102.]

64.34.208 Declaration and bylaws—Construction and validity. (1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to RCW 64.34.304(1)(a).

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(4) The creation of a condominium shall not be impaired and title to a unit and common elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the declaration or survey map and plans or any amendment thereto to comply with this chapter. Whether a significant failure impairs marketability shall not be determined by this chapter. [1989 c 43 § 2-103.]

64.34.212 Description of units. A description of a unit which sets forth the name of the condominium, the recording number for the declaration, the county in which the condominium is located, and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. [1989 c 43 § 2-104.]

64.34.216 Contents of declaration. (1) The declaration for a condominium must contain:

(a) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium," and the name of the association;

(b) A legal description of the real property included in the condominium;

(c) A statement of the number of units which the declarant has created and, if the declarant has reserved the right to create additional units, the number of such additional units;

(d) The identifying number of each unit created by the declaration and a description of the boundaries of each unit if

and to the extent they are different from the boundaries stated in RCW 64.34.204(1);

(e) With respect to each existing unit:

(i) The approximate square footage;

(ii) The number of bathrooms, whole or partial;

(iii) The number of rooms designated primarily as bedrooms;

(iv) The number of built-in fireplaces; and

(v) The level or levels on which each unit is located.

The data described in (ii), (iii), and (iv) of this subsection (1)(e) may be omitted with respect to units restricted to non-residential use;

(f) The number of parking spaces and whether covered, uncovered, or enclosed;

(g) The number of moorage slips, if any;

(h) A description of any limited common elements, other than those specified in RCW 64.34.204 (2) and (4), as provided in RCW 64.34.232(2)(j);

(i) A description of any real property which may be allocated subsequently by the declarant as limited common elements, other than limited common elements specified in RCW 64.34.204 (2) and (4), together with a statement that they may be so allocated;

(j) A description of any development rights and other special declarant rights under *RCW 64.34.020(29) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised;

(k) If any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect together with: (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and (ii) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(l) Any other conditions or limitations under which the rights described in (j) of this subsection may be exercised or will lapse;

(m) An allocation to each unit of the allocated interests in the manner described in RCW 64.34.224;

(n) Any restrictions in the declaration on use, occupancy, or alienation of the units;

(o) A cross-reference by recording number to the survey map and plans for the units created by the declaration; and

(p) All matters required or permitted by RCW 64.34.220 through 64.34.232, 64.34.256, 64.34.260, 64.34.276, and 64.34.308(4).

(2) All amendments to the declaration shall contain a cross-reference by recording number to the declaration and to any prior amendments thereto. All amendments to the declaration adding units shall contain a cross-reference by recording number to the survey map and plans relating to the added units and set forth all information required by RCW 64.34.216(1) with respect to the added units.

(3) The declaration may contain any other matters the declarant deems appropriate. [1992 c 220 § 7; 1989 c 43 § 2-105.]

*Reviser's note: RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (29) to subsection (36).

64.34.220 Leasehold condominiums. (1) Any lease, the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(a) The recording number of the lease or a statement of where the complete lease may be inspected;

(b) The date on which the lease is scheduled to expire;

(c) A legal description of the real property subject to the lease;

(d) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(e) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(2) The declaration may provide for the collection by the association of the proportionate rents paid on the lease by the unit owners and may designate the association as the representative of the unit owners on all matters relating to the lease.

(3) If the declaration does not provide for the collection of rents by the association, the lessor may not terminate the interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants other than the payment of rent which, if violated, would entitle the lessor to terminate the lease.

(4) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired and the owner thereof records a document confirming the merger.

(5) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with RCW 64.34.060(1) as though those units had been taken by condemnation. Reallocations shall be confirmed by an amendment to the declaration and survey map and plans prepared, executed, and recorded by the association. [1989 c 43 § 2-106.]

64.34.224 Common element interests, votes, and expenses—Allocation. (1) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas or methods used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) If units may be added to or withdrawn from the condominium, the declaration shall state the formulas or methods to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(3) The declaration may provide: (a) For cumulative voting only for the purpose of electing members of the board of directors; and (b) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(4) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(5) Except where permitted by other sections of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void. [1992 c 220 § 8; 1989 c 43 § 2-107.]

64.34.228 Limited common elements. (1) Except for the limited common elements described in RCW 64.34.204 (2) and (4), the declaration shall specify to which unit or units each limited common element is allocated.

(2) Except in the case of a reallocation being made by a declarant pursuant to a development right reserved in the declaration, a limited common element may only be reallocated between units with the approval of the board of directors and by an amendment to the declaration executed by the owners of the units to which the limited common element was and will be allocated. The board of directors shall approve the request of the owner or owners under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed reallocation does not comply with this chapter or the declaration. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the condominium.

(3) Unless otherwise provided in the declaration, the owners of units to which at least sixty-seven percent of the votes are allocated, including the owner of the unit to which the limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a common element or a limited common element into an existing unit. Such reallocation or incorporation shall be reflected in an amendment to the declaration, survey map, or plans. [1992 c 220 § 9; 1989 c 43 § 2-108.]

64.34.232 Survey maps and plans. (1) A survey map and plans executed by the declarant shall be recorded simultaneously with, and contain cross-references by recording number to, the declaration and any amendments. The survey map and plans must be clear and legible and contain a certification by the person making the survey or the plans that all information required by this section is supplied. All plans

filed shall be in such style, size, form and quality as shall be prescribed by the recording authority of the county where filed, and a copy shall be delivered to the county assessor.

(2) Each survey map shall show or state:

(a) The name of the condominium and a legal description and a survey of the land in the condominium and of any land that may be added to the condominium;

(b) The boundaries of all land not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing buildings containing units on that land;

(c) The boundaries of any land subject to development rights, labeled "SUBJECT TO DEVELOPMENT RIGHTS SET FORTH IN THE DECLARATION"; any land that may be added to the condominium shall also be labeled "MAY BE ADDED TO THE CONDOMINIUM"; any land that may be withdrawn from the condominium shall also be labeled "MAY BE WITHDRAWN FROM THE CONDOMINIUM";

(d) The extent of any encroachments by or upon any portion of the condominium;

(e) To the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the condominium and any unrecorded easements of which a surveyor knows or reasonably should have known, based on standard industry practices, while conducting the survey;

(f) Subject to the provisions of subsection (8) of this section, the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(g) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(h) The location and dimensions of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(i) The distance between any noncontiguous parcels of real property comprising the condominium;

(j) The general location of any existing principal common amenities listed in a public offering statement under RCW 64.34.410(1)(j) and any limited common elements, including limited common element porches, balconies, patios, parking spaces, and storage facilities, but not including the other limited common elements described in RCW 64.34.204 (2) and (4);

(k) In the case of real property not subject to development rights, all other matters customarily shown on land surveys.

(3) A survey map may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(4) To the extent not shown or projected on the survey map, plans of the existing units must show or project:

(a) Subject to the provisions of subsection (8) of this section, the location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any units in which the declarant has reserved the right to create additional units or common elements under RCW 64.34.236(3), identified appropriately.

(5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and in such case need not be depicted on the survey map and plans.

(6) Upon exercising any development right, the declarant shall record either a new survey map and plans necessary to conform to the requirements of subsections (1), (2), and (3) of this section or new certifications of a survey map and plans previously recorded if the documents otherwise conform to the requirements of those subsections.

(7) Any survey map, plan, or certification required by this section shall be made by a licensed surveyor.

(8) In showing or projecting the location and dimensions of the vertical boundaries of a unit under subsections (2)(f) and (4)(a) of this section, it is not necessary to show the thickness of the walls constituting the vertical boundaries or otherwise show the distance of those vertical boundaries either from the exterior surface of the building containing that unit or from adjacent vertical boundaries of other units if: (a) The walls are designated to be the vertical boundaries of that unit; (b) the unit is located within a building, the location and dimensions of the building having been shown on the survey map under subsection (2)(b) of this section; and (c) the graphic general location of the vertical boundaries are shown in relation to the exterior surfaces of that building and to the vertical boundaries of other units within that building. [1997 c 400 § 2; 1992 c 220 § 10; 1989 c 43 § 2-109.]

64.34.236 Development rights. (1) To exercise any development right reserved under RCW 64.34.216(1)(j), the declarant shall prepare, execute, and record an amendment to the declaration under RCW 64.34.264, and comply with RCW 64.34.232. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (2) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by RCW 64.34.228.

(2) Development rights may be reserved within any real property added to the condominium if the amendment adding that real property includes all matters required by RCW 64.34.216 or 64.34.220, as the case may be, and the survey map and plans include all matters required by RCW 64.34.232. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to RCW 64.34.216(1)(j).

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as

if that unit had been taken by condemnation under RCW 64.34.060.

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable and equitable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to RCW 64.34.216(1)(j), that all or a portion of the real property is subject to the development right of withdrawal:

(a) If all the real property is subject to withdrawal, and the declaration or survey map or amendment thereto does not describe separate portions of real property subject to that right, none of the real property may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant; and

(b) If a portion or portions are subject to withdrawal as described in the declaration or in the survey map or in any amendment thereto, no portion may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant. [1989 c 43 § 2-110.]

64.34.240 Alterations of units. Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to the owner's unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium;

(2) May not change the appearance of the common elements or the exterior appearance of a unit without permission of the association;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit may, with approval of the board of directors, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries. The board of directors shall approve a unit owner's request, which request shall include the plans and specifications for the proposed removal or alteration, under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed alteration does not comply with this chapter or the declaration or impairs the structural integrity or mechanical or electrical systems in the condominium. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. [1989 c 43 § 2-111.]

64.34.244 Relocation of boundaries—Adjoining units. (1) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may only be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations.

Unless the board of directors determines within thirty days, or such other period provided in the declaration, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee.

(2) The association shall obtain and record survey maps or plans complying with the requirements of RCW 64.34.232(4) necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers. [1989 c 43 § 2-112.]

64.34.248 Subdivision of units. (1) If the declaration permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including survey maps and plans, subdividing that unit.

(2) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable and equitable manner prescribed by the owner of the subdivided unit. [1989 c 43 § 2-113.]

64.34.252 Monuments as boundaries. The physical boundaries of a unit constructed in substantial accordance with the original survey map and set of plans thereof become its boundaries rather than the metes and bounds expressed in the survey map or plans, regardless of settling or lateral movement of the building or minor variance between boundaries shown on the survey map or plans and those of the building. This section does not relieve a declarant or any other person of liability for failure to adhere to the survey map and plans. [1989 c 43 § 2-114.]

64.34.256 Use by declarant. A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element and, if a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances. [1992 c 220 § 11; 1989 c 43 § 2-115.]

64.34.260 Easement rights—Common elements. Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether

arising under this chapter or reserved in the declaration. [1989 c 43 § 2-116.]

64.34.264 Amendment of declaration. (1) Except in cases of amendments that may be executed by a declarant under RCW 64.34.232(6) or 64.34.236; the association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8); or certain unit owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or 64.34.268(2), and except as limited by subsection (4) of this section, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the condominium and shall contain a cross-reference by recording number to the declaration and each previously recorded amendment thereto.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant. [1989 c 43 § 2-117.]

64.34.268 Termination of condominium. (1) Except in the case of a taking of all the units by condemnation under RCW 64.34.060, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to non-residential uses.

(2) An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the association will be paid or provided for. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording. A termination agreement may be amended by complying with all of the requirements of this section.

(3) A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real property in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real property in the condominium is to be sold following termination, title to that real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (7) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(5) If the real property constituting the condominium is not to be sold following termination, title to all the real property in the condominium vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (7) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit.

(6) Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and creditors of the association as their interests may appear. No such proceeds or assets may be disbursed to the owners until all of the creditors of the association have been paid or provided for. Following termination, creditors of the association holding liens on the units, which were recorded or perfected under RCW 4.64.020

before termination, may enforce those liens in the same manner as any lien holder.

(7) The respective interests of unit owners referred to in subsections (4), (5), and (6) of this section are as follows:

(a) Except as provided in (b) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved, within thirty days after distribution, by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(8) Except as provided in subsection (9) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real property, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real property does not of itself withdraw that real property from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real property from the condominium.

(9) If a lien or encumbrance against a portion of the real property that is withdrawable from the condominium has priority over the declaration, and the lien or encumbrance has not been partially released as to a unit, the purchaser at the foreclosure or such purchaser's successors may, upon foreclosure, record an instrument exercising the right to withdraw the real property subject to that lien or encumbrance from the condominium. The board of directors shall reallocate interests as if the foreclosed portion were condemned.

(10) The right of partition under chapter 7.52 RCW shall be suspended if an agreement to sell the property is provided for in the termination agreement pursuant to subsection (3) of this section. The suspension of the right to partition shall continue unless and until no binding obligation to sell exists three months after the recording of the termination agreement, the binding sale agreement is terminated, or one year after the termination agreement is recorded, whichever first occurs. [1992 c 220 § 12; 1989 c 43 § 2-118.]

64.34.272 Rights of secured lenders. The declaration may require that all or a specified number or percentage of the holders of mortgages encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by

the unit owners or the board of directors, or (2) prevent the association or the board of directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to RCW 64.34.352. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only eligible mortgagees holding a first lien mortgage need be obtained and the percentage shall be based upon the votes attributable to units with respect to which eligible mortgagees have an interest. [1989 c 43 § 2-119.]

64.34.276 Master associations. (1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation which exercises those or other powers on behalf of a development consisting of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(2) Unless a master association is acting in the capacity of an association described in RCW 64.34.300, it may exercise the powers set forth in RCW 64.34.304(1)(b) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(3) If the declaration of any condominium provides that the board of directors may delegate certain powers to a master association, the members of the board of directors have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.308, 64.34.332, 64.34.336, 64.34.340, and 64.34.348 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in RCW 64.34.300, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, must provide that the board of directors of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of that board of directors.

(b) All members of the boards of directors of all condominiums subject to the master association may elect all members of that board of directors.

(c) All unit owners of each condominium subject to the master association may elect specified members of that board of directors.

(d) All members of the board of directors of each condominium subject to the master association may elect specified members of that board of directors. [1989 c 43 § 2-120.]

64.34.278 Delegation of power to subassociations. (1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of unit owners owning less than all of the units in a condominium, and where those unit owners share the exclusive use of one or more limited common elements within the condominium or share some property or other interest in the condominium in common that is not shared by the remainder of the unit owners in the condominium, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section. The delegation of powers to a subassociation shall not be used to discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) A subassociation may exercise the powers set forth in RCW 64.34.304(1) only to the extent expressly permitted by the declaration of the condominium of which the units in the subassociation are a part of or expressly described in the delegations of power from that condominium to the subassociation.

(3) If the declaration of any condominium contains a delegation of certain powers to a subassociation, or provides that the board of directors of the condominium may make such a delegation, the members of the board of directors have no liability for the acts or omissions of the subassociation with respect to those powers so exercised by the subassociation following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.300 through 64.34.376 apply to the conduct of the affairs of a subassociation.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends, the board of directors of the subassociation shall be elected after the period of declarant control by the unit owners of all of the units in the condominium subject to the subassociation.

(6) The declaration of the condominium creating the subassociation may provide that the authority of the board of directors of the subassociation is exclusive with regard to the powers and responsibilities delegated to it. In the alternative, the declaration may provide as to some or all such powers that the authority of the board of directors of a subassociation is concurrent with and subject to the authority of the board of directors of the unit owners' association, in which case the declaration shall also contain standards and procedures for the review of the decisions of the board of directors of the subassociation and procedures for resolving any dispute between the board of the unit owners' association and the board of the subassociation. [1992 c 220 § 13.]

64.34.280 Merger or consolidation. (1) Any two or more condominiums, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or con-

solidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (a) by stating the reallocations or the formulas upon which they are based or (b) by stating the portion of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the percentages allocated to each unit formerly comprising a part of the preexisting condominium in such portion must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

(4) All merged or consolidated condominiums under this section shall comply with this chapter. [1989 c 43 § 2-121.]

ARTICLE 3 MANAGEMENT OF CONDOMINIUM

64.34.300 Unit owners' association—Organization.

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between Title 23B RCW, the business corporation act, chapter 24.03 RCW, the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control. [1992 c 220 § 14; 1989 c 43 § 3-101.]

64.34.304 Unit owners' association—Powers. (1)

Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:

- (a) Adopt and amend bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;
- (c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

(d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(e) Make contracts and incur liabilities;

(f) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(g) Cause additional improvements to be made as a part of the common elements;

(h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;

(i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;

(j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in RCW 64.34.204 (2) and (4), and for services provided to unit owners;

(k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(13) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;

(l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by RCW 64.34.425, and statements of unpaid assessments;

(m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;

(o) Join in a petition for the establishment of a parking and business improvement area, participate in the rate payers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the condominium property for activities and projects which benefit the condominium directly or indirectly;

(p) Establish and administer a reserve account as described in RCW 64.34.380;

(q) Prepare a reserve study as described in RCW 64.34.380;

(r) Exercise any other powers conferred by the declaration or bylaws;

(s) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons. [2008 c 115 § 9; 1993 c 429 § 11; 1990 c 166 § 3; 1989 c 43 § 3-102.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.308 Board of directors and officers. (1) Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners pursuant to RCW 64.34.264, to terminate the condominium pursuant to RCW 64.34.268, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection (6) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4)(a) Subject to subsection (5) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may: (i) Appoint and remove the officers and members of the board of directors; or (ii) veto or approve a proposed action of the board or association. A declarant's failure to veto or approve such proposed action in writing within thirty days after receipt of written notice of the proposed action shall be deemed approval by the declarant.

(b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after the last conveyance or transfer of record of a unit except as security for a debt; (iii) two years after any development right to add new units was last exercised; or (iv) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A

declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (i), (ii), and (iii) of this subsection (4)(b), but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(5) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

(6) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

(7) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners. [1992 c 220 § 15; 1989 c 43 § 3-103.]

64.34.312 Control of association—Transfer. (1) Within sixty days after the termination of the period of declarant control provided in RCW 64.34.308(4) or, in the absence of such period, within sixty days after the first conveyance of a unit in the condominium, the declarant shall deliver to the association all property of the unit owners and of the association held or controlled by the declarant including, but not limited to:

(a) The original or a photocopy of the recorded declaration and each amendment to the declaration;

(b) The certificate of incorporation and a copy or duplicate original of the articles of incorporation of the association as filed with the secretary of state;

(c) The bylaws of the association;

(d) The minute books, including all minutes, and other books and records of the association;

(e) Any rules and regulations that have been adopted;

(f) Resignations of officers and members of the board who are required to resign because the declarant is required to relinquish control of the association;

(g) The financial records, including canceled checks, bank statements, and financial statements of the association,

and source documents from the time of incorporation of the association through the date of transfer of control to the unit owners;

(h) Association funds or the control of the funds of the association;

(i) All tangible personal property of the association, represented by the declarant to be the property of the association or ostensibly the property of the association, and an inventory of the property;

(j) Except for alterations to a unit done by a unit owner other than the declarant, a copy of the declarant's plans and specifications utilized in the construction or remodeling of the condominium, with a certificate of the declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized by the declarant in the construction or remodeling of the condominium;

(k) Insurance policies or copies thereof for the condominium and association;

(l) Copies of any certificates of occupancy that may have been issued for the condominium;

(m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year before the date of transfer of control to the unit owners;

(n) All written warranties that are still in effect for the common elements, or any other areas or facilities which the association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the declarant with respect to installed equipment or building systems;

(o) A roster of unit owners and eligible mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records and the date of closing of the first sale of each unit sold by the declarant;

(p) Any leases of the common elements or areas and other leases to which the association is a party;

(q) Any employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;

(r) A copy of any qualified warranty issued to the association as provided for in RCW 64.35.505; and

(s) All other contracts to which the association is a party.

(2) Upon the transfer of control to the unit owners, the records of the association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the unit owners, other than the declarant, by two-thirds vote elect to waive the audit. The cost of the audit shall be a common expense unless otherwise provided in the declaration. The accountant performing the audit shall examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine if the declarant was charged for and paid the proper amount of assessments. [2004 c 201 § 10; 1989 c 43 § 3-104.]

64.34.316 Special declarant rights—Transfer. (1) No special declarant right, as described in *RCW 64.34.020(29), created or reserved under this chapter may be transferred except by an instrument evidencing the transfer executed by the declarant or the declarant's successor and the transferee is recorded in every county in which any portion of the condominium is located. Each unit owner shall receive a copy of the recorded instrument, but the failure to furnish the copy shall not invalidate the transfer.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant as described in RCW 64.34.020(1), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(c) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) In case of foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of any unit owned by a declarant or real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold succeeds to all special declarant rights related to that real property held by that declarant and to any rights reserved in the declaration pursuant to RCW 64.34.256 and held by that declarant to maintain models, sales offices, and signs, unless such person requests that all or any of such rights not be transferred. The instrument conveying title shall describe any special declarant rights not being transferred.

(4) Upon foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of all units and other real property in a condominium owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control as described in RCW 64.34.308(4) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(5) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(b) A successor to any special declarant right, other than a successor described in (c) or (d) of this subsection, who is

not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to such successor's exercise or nonexercise of special declarant rights; or

(ii) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the condominium was created;

(C) Breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the board of directors; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs as described in RCW 64.34.256, if the successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof;

(d) A successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a foreclosure, a deed in lieu of foreclosure, or a judgment or instrument conveying title to units under subsection (3) of this section may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the successor's transferor to control the board of directors in accordance with the provisions of RCW 64.34.308(4) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under RCW 64.34.308(4);

(e) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration. [1989 c 43 § 3-105.]

*Reviser's note: RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (29) to subsection (36).

64.34.320 Contracts and leases—Declarant—Termination. If entered into before the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the board of directors elected by the unit

owners pursuant to RCW 64.34.308(6) takes office upon not less than ninety days' notice to the other party or within such lesser notice period provided for without penalty in the contract or lease. This section does not apply to any lease, the termination of which would terminate the condominium or reduce its size, unless the real property subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. [1989 c 43 § 3-106.]

64.34.324 Bylaws. (1) Unless provided for in the declaration, the bylaws of the association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(b) Election by the board of directors of such officers of the association as the bylaws specify;

(c) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(d) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(e) The method of amending the bylaws; and

(f) A statement of the standard of care for officers and members of the board of directors imposed by RCW 64.34.308(1).

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) In determining the qualifications of any officer or director of the association, notwithstanding the provision of *RCW 64.34.020(32) the term "unit owner" in such context shall, unless the declaration or bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner. Any officer or director of the association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person. [2004 c 201 § 3; 1992 c 220 § 16; 1989 c 43 § 3-107.]

*Reviser's note: RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (32) to subsection (39).

64.34.328 Upkeep of condominium. (1) Except to the extent provided by the declaration, subsection (2) of this section, or RCW 64.34.352(7), the association is responsible for maintenance, repair, and replacement of the common elements, including the limited common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit and limited common elements reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, shall be liable for the repair thereof.

(2) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real property subject to development rights except that the declaration may provide that the expenses associated with the operation, maintenance, repair, and replacement of a common element that the owners have a right to use shall be paid by the association as a common expense. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real property subject to development rights inures to the declarant. [1989 c 43 § 3-108.]

64.34.332 Meetings. A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by unit owners having twenty percent or any lower percentage specified in the declaration or bylaws of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer. [1989 c 43 § 3-109.]

64.34.336 Quorums. (1) Unless the bylaws specify a larger percentage, a quorum is present throughout any meeting of the association if the owners of units to which twenty-five percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent of the votes on the board of directors are present at the beginning of the meeting. [1989 c 43 § 3-110.]

64.34.340 Voting—Proxies. (1) If only one of the multiple owners of a unit is present at a meeting of the association or has delivered a written ballot or proxy to the association secretary, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present or has delivered a written ballot or proxy to the association secretary, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(2) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not

revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

(3) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (a) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners; (b) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (c) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in RCW 64.34.332, of all meetings at which lessees may be entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to units owned by the association shall be disregarded. [1992 c 220 § 17; 1989 c 43 § 3-111.]

64.34.344 Tort and contract liability. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner or any officer or director of the association. Unless the wrong was done by a unit owner other than the declarant, if the wrong by the association occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) For all tort losses not covered by insurance suffered by the association or that unit owner; and (2) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission by the association. If the declarant does not defend the action and is determined to be liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association in such defense. Any statute of limitations affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by RCW 64.34.368. [1989 c 43 § 3-112.]

64.34.348 Common elements—Conveyance—Encumbrance. (1) Portions of the common elements which are not necessary for the habitability of a unit may be conveyed or subjected to a security interest by the association if the owners of units to which at least eighty percent of the votes in the association are allocated, including eighty percent of the votes allocated to units not owned by a declarant

or an affiliate of a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage, but not less than sixty-seven percent of the votes not held by a declarant or an affiliate of a declarant, only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale or financing are an asset of the association. The declaration may provide for a special allocation or distribution of the proceeds of the sale or refinancing of a limited common element.

(2) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording.

(3) The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(4) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(5) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances. [1989 c 43 § 3-113.]

64.34.352 Insurance. (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(2) If the insurance described in subsection (1) of this section is not reasonably available, or is modified, canceled, or not renewed, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first-class United States mail to all unit owners, to each eligible mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner, member of the owner's household, and lessee of the owner;

(c) No act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(4) Any loss covered by the property insurance under subsection (1)(a) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a mortgage. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (7) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(5) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy without complying with this section.

(7) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (a) The condominium is terminated; (b) repair or replacement would be illegal under any state or local health

or safety statute or ordinance; or (c) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If all of the damaged or destroyed portions of the condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under RCW 64.34.060(1), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, RCW 64.34.268 governs the distribution of insurance proceeds if the condominium is terminated.

(8) The provisions of this section may be varied or waived as provided in the declaration if all units of a condominium are restricted to nonresidential use. [1992 c 220 § 18; 1990 c 166 § 4; 1989 c 43 § 3-114.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.354 Insurance—Conveyance. Promptly upon the conveyance of a unit, the new unit owner shall notify the association of the date of the conveyance and the unit owner's name and address. The association shall notify each insurance company that has issued an insurance policy to the association for the benefit of the owners under RCW 64.34.352 of the name and address of the new owner and request that the new owner be made a named insured under such policy. [1990 c 166 § 8.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.356 Surplus funds. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall, in the discretion of the board of directors, either be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. [1989 c 43 § 3-115.]

64.34.360 Common expenses—Assessments. (1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made against all units, based on a budget adopted by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the alloca-

tions set forth in the declaration pursuant to RCW 64.34.224(1). Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to RCW 64.34.364.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

(c) The costs of insurance must be assessed in proportion to risk; and

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to RCW 64.34.368(1) may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. [1990 c 166 § 5; 1989 c 43 § 3-116.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.364 Lien for assessments. (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter 6.13 RCW.

(3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

(4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written

request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

(6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

(8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.

(10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply

the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law. [1990 c 166 § 6; 1989 c 43 § 3-117.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.368 Liens—General provisions. (1) Except as provided in subsection (2) of this section, a judgment for money against the association perfected under RCW 4.64.020 is a lien in favor of the judgment lienholder against all of the units in the condominium and their interest in the common elements at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to RCW 64.34.348, the holder of that security interest shall exercise its right first against such common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the condominium, if a lien other than a mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's allocated common expense liability bears to the allocated common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association shall be filed in the name of the condominium and the association and, when so filed, is notice of the lien against the units. [1989 c 43 § 3-118.]

64.34.372 Association records—Funds. (1) The association shall keep financial records sufficiently detailed to enable the association to comply with RCW 64.34.425. All financial and other records of the association, including but not limited to checks, bank records, and invoices, are the property of the association, but shall be made reasonably available for examination and copying by the manager of the association, any unit owner, or the owner's authorized agents. At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association in accordance with generally accepted accounting principles. The financial statements of condominiums consisting of fifty or more units shall be audited at least annually by a certified public accountant. In the case of a condominium consisting of fewer than fifty units, an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which sixty percent of the votes are allocated, excluding the votes allocated to units owned by the declarant.

(2) The funds of an association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. Any reserve funds of an association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who

are officers or directors of the association. [1992 c 220 § 19; 1990 c 166 § 7; 1989 c 43 § 3-119.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.376 Association as trustee. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. [1989 c 43 § 3-120.]

64.34.380 Reserve account—Reserve study—Annual update. (1) An association is encouraged to establish a reserve account to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. A reserve account shall be established in the name of the association. The board of directors is responsible for administering the reserve account.

(2) Unless doing so would impose an unreasonable hardship, an association shall prepare and update a reserve study, in accordance with the association's governing documents and RCW 64.34.224(1). The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.

(3) Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.

(4) This section and RCW 64.34.382 through 64.34.390 apply to condominiums governed by chapter 64.32 RCW or this chapter and intended in whole or in part for residential purposes. These sections do not apply to condominiums consisting solely of units that are restricted in the declaration to nonresidential use. An association's governing documents may contain stricter requirements. [2008 c 115 § 1.]

64.34.382 Reserve study—Contents. (1) A reserve study as described in RCW 64.34.380 is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study shall include:

(a) A reserve component list, including quantities and estimates for useful life of each reserve component, remaining useful life of each reserve component, and current repair and replacement cost for each component;

(b) The date of the study and a statement that the study meets the requirements of this section;

(c) The level of reserve study performed:

- (i) Level I: Full reserve study funding analysis and plan;
 - (ii) Level II: Update with visual site inspection;
 - (iii) Level III: Update with no visual site inspection;
 - (d) The association’s reserve account balance;
 - (e) The percentage of the fully funded balance that the reserve account is funded;
 - (f) Special assessments already implemented or planned;
 - (g) Interest and inflation assumptions;
 - (h) Current reserve account contribution rate;
 - (i) Recommended reserve account contribution rate;
 - (j) Projected reserve account balance for thirty years and a funding plan to pay for projected costs from those reserves without reliance on future unplanned special assessments; and
 - (k) Whether the reserve study was prepared with the assistance of a reserve study professional.
- (3) A reserve study shall include the following disclosure:

"This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a reserve component."

[2008 c 115 § 2.]

64.34.384 Reserve account—Withdrawals. An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the unit owners. [2008 c 115 § 3.]

64.34.386 Reserve study—Demand by owners—Study not timely prepared. (1) Where more than three years have passed since the date of the last reserve study prepared by a reserve study professional, the owners of the units to which at least twenty percent of the votes are allocated may demand, in writing, to the association that the cost of a reserve study be included in the next budget and that the study be obtained by the end of that budget year. The written demand must refer to this section. The board of directors shall, upon receipt of the written demand, provide unit owners making the demand reasonable assurance that the board of directors will include a reserve study in the next budget and,

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if the budget is not rejected by the owners, will arrange for the completion of a reserve study.

(2) In the event a written demand is made and a reserve study is not timely prepared, a court may order specific performance and award reasonable attorneys’ fees to the prevailing party in any legal action brought to enforce this section. An association may assert unreasonable hardship as an affirmative defense in any action brought against it under this section. Without limiting this affirmative defense, an unreasonable hardship exists where the cost of preparing a reserve study would exceed ten percent of the association’s annual budget.

(3) A unit owner’s duty to pay for common expenses shall not be excused because of the association’s failure to comply with this section or RCW 64.34.382 through 64.34.390. A budget ratified by the unit owners under RCW 64.34.308(3) may not be invalidated because of the association’s failure to comply with this section or RCW 64.34.382 through 64.34.390. [2008 c 115 § 4.]

64.34.388 Reserve study—Decision making. Subject to RCW 64.34.386, the decisions relating to the preparation and updating of a reserve study must be made by the board of directors of the association in the exercise of the reasonable discretion of the board. Such decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized. [2008 c 115 § 5.]

64.34.390 Reserve study—Reserve account—Immunity from liability. Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its officers or directors, for failure to: Establish a reserve account; have a current reserve study prepared or updated in accordance with RCW 64.34.380 through 64.34.388; or make the reserve disclosures in accordance with RCW 64.34.382 and 64.34.410(1)(oo) and 64.34.425(1)(s). [2008 c 115 § 6.]

ARTICLE 4
PROTECTION OF CONDOMINIUM PURCHASERS

64.34.400 Applicability—Waiver. (1) This article applies to all units subject to this chapter, except as provided in subsection (2) of this section and unless and to the extent otherwise agreed to in writing by the seller and purchasers of those units that are restricted to nonresidential use in the declaration.

- (2) This article shall not apply in the case of:
 - (a) A conveyance by gift, devise, or descent;
 - (b) A conveyance pursuant to court order;
 - (c) A disposition by a government or governmental agency;
 - (d) A conveyance by foreclosure;
 - (e) A disposition of all of the units in a condominium in a single transaction;
 - (f) A disposition to other than a purchaser as defined in *RCW 64.34.020(26); or

(g) A disposition that may be canceled at any time and for any reason by the purchaser without penalty. [1992 c 220 § 20; 1990 c 166 § 9; 1989 c 43 § 4-101.]

*Reviser's note: RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (26) to subsection (29).

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.405 Public offering statement—Requirements—Liability. (1) Except as provided in subsection (2) of this section or when no public offering statement is required, a declarant shall prepare a public offering statement conforming to the requirements of RCW 64.34.410 and 64.34.415.

(2) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to RCW 64.34.316 or to a dealer who intends to offer units in the condominium for the person's own account.

(3) Any declarant or dealer who offers a unit for the person's own account to a purchaser shall deliver a public offering statement in the manner prescribed in RCW 64.34.420(1). Any agent, attorney, or other person assisting the declarant or dealer in preparing the public offering statement may rely upon information provided by the declarant or dealer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The declarant or dealer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the declarant or dealer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(4) If a unit is part of a condominium and is part of another real property regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement, conforming to the requirements of RCW 64.34.410 and 64.34.415 as those requirements relate to all real property regimes in which the unit is located and conforming to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements. [1989 c 43 § 4-102.]

64.34.410 Public offering statement—General provisions. (1) A public offering statement shall contain the following information:

- (a) The name and address of the condominium;
- (b) The name and address of the declarant;
- (c) The name and address of the management company, if any;
- (d) The relationship of the management company to the declarant, if any;
- (e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condo-

minium is "completed" when any one unit therein has been rented or sold;

(f) The nature of the interest being offered for sale;

(g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;

(h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;

(i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;

(j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;

(k) A list of the limited common elements assigned to the units being offered for sale;

(l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;

(m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;

(n) The status of construction of the units and common elements, including estimated dates of completion if not completed;

(o) The estimated current common expense liability for the units being offered;

(p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;

(u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate

vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in RCW 64.34.020(11);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant;

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995;

(ll) A notice that is substantially in the form required by RCW 64.50.050;

(mm) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty;

(nn) A statement that the building enclosure has been designed and inspected as required by RCW 64.55.010 through 64.55.090, and, if required, repaired in accordance with the requirements of RCW 64.55.090; and

(oo) If the association does not have a reserve study that has been prepared in accordance with RCW 64.34.380 and 64.34.382 or its governing documents, the following disclosure:

"This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element."

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more, the association's current reserve study, if any, and the inspection and repair report or reports prepared in accordance with the requirements of RCW 64.55.090.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), (ii), and (ll) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section. [2008 c 115 § 10; 2005 c 456 § 19; 2004 c 201 § 11; 2002 c 323 § 10; 1997 c 400 § 1; 1992 c 220 § 21; 1989 c 43 § 4-103.]

Captions not law—Effective date—2005 c 456: See RCW 64.55.900 and 64.55.901.

64.34.415 Public offering statement—Conversion condominiums. (1) The public offering statement of a conversion condominium shall contain, in addition to the information required by RCW 64.34.410:

(a) Either a copy of a report prepared by an independent, licensed architect or engineer, or a statement by the declarant based on such report, which report or statement describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

(b) A copy of the inspection and repair report prepared by an independent, licensed architect, engineer, or qualified building inspector in accordance with the requirements of RCW 64.55.090;

(c) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(d) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to condominiums containing units that may be occupied for residential use. [2005 c 456 § 18; 1992 c 220 § 22; 1990 c 166 § 10; 1989 c 43 § 4-104.]

Captions not law—Effective date—2005 c 456: See RCW 64.55.900 and 64.55.901.

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.417 Public offering statement—Use of single disclosure document. If a unit is offered for sale for which the delivery of a public offering statement or other disclosure document is required under the laws of any state or the United States, a single disclosure document conforming to the requirements of RCW 64.34.410 and 64.34.415 and conforming to any other requirement imposed under such laws, may be prepared and delivered in lieu of providing two or more disclosure documents. [1990 c 166 § 11.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.418 Public offering statement—Contract of sale—Restriction on interest conveyed. In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until (1) the declaration and survey map and plans which create the condominium in which that unit is located are recorded pursuant to RCW 64.34.200 and 64.34.232 and (2) the unit is substantially completed and available for occupancy, unless the declarant and purchaser have otherwise specifically agreed in writing as to the extent to which the unit will not be substantially completed and available for occupancy at the time of conveyance. [1990 c 166 § 15.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.420 Purchaser's right to cancel. (1) A person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall provide a purchaser of a unit with a copy of the public offering statement and all material amendments thereto before conveyance of that unit. Unless a purchaser is given the public offering statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, shall have the right to cancel the contract within seven days after first receiving the public offering statement and, if necessary to have seven days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not

more than seven days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles.

(2) If a purchaser elects to cancel a contract pursuant to subsection (1) of this section, the purchaser may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(3) If a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all material amendments thereto as required by subsection (1) of this section, the purchaser is entitled to receive from that person an amount equal to the greater of (a) actual damages, or (b) ten percent of the sales price of the unit for a willful failure by the declarant or three percent of the sales price of the unit for any other failure. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the unit had the undisclosed information been evident to the purchaser before the closing of the purchase. [1989 c 43 § 4-106.]

64.34.425 Resale of unit. (1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate, signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement of any special assessments that have been levied against the unit which have not been paid even though not yet due;

(c) A statement, which shall be current to within forty-five days, of any common expenses or special assessments against any unit in the condominium that are past due over thirty days;

(d) A statement, which shall be current to within forty-five days, of any obligation of the association which is past due over thirty days;

(e) A statement of any other fees payable by unit owners;

(f) A statement of any anticipated repair or replacement cost in excess of five percent of the annual budget of the association that has been approved by the board of directors;

(g) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year;

(i) A balance sheet and a revenue and expense statement of the association prepared on an accrual basis, which shall be current to within one hundred twenty days;

(j) The current operating budget of the association;

(k) A statement of any unsatisfied judgments against the association and the status of any pending suits or legal proceedings in which the association is a plaintiff or defendant;

(l) A statement describing any insurance coverage provided for the benefit of unit owners;

(m) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(o) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium;

(p) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof;

(q) A copy of the declaration, the bylaws, the rules or regulations of the association, the association's current reserve study, if any, and any other information reasonably requested by mortgagees of prospective purchasers of units. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association;

(r) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty; and

(s) If the association does not have a reserve study that has been prepared in accordance with RCW 64.34.380 and 64.34.382 or its governing documents, the following disclosure:

"This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element."

(2) The association, within ten days after a request by a unit owner, and subject to payment of any fee imposed pursuant to RCW 64.34.304(1)(l), shall furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the unit owner to comply with this section. For the purposes of this chapter, a reasonable charge for the preparation of a resale certificate may not exceed one hundred fifty dollars. The

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association may charge a unit owner a nominal fee for updating a resale certificate within six months of the unit owner's request. The unit owner shall also sign the certificate but the unit owner is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first. [2008 c 115 § 11; 2004 c 201 § 4; 1992 c 220 § 23; 1990 c 166 § 12; 1989 c 43 § 4-107.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.430 Escrow of deposits. Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall be placed in escrow and held in this state in an escrow or trust account designated solely for that purpose by a licensed title insurance company, an attorney, a real estate broker, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; (3) refunded to the purchaser; or (4) delivered to a court in connection with the filing of an interpleader action. [1992 c 220 § 24; 1989 c 43 § 4-108.]

64.34.435 Release of liens—Conveyance. (1) At the time of the first conveyance of each unit, every mortgage, lien, or other encumbrance affecting that unit and any other unit or units or real property, other than the percentage of undivided interest of that unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its undivided interest in the common elements shall be released therefrom by partial release duly recorded or the purchaser of that unit shall receive title insurance from a licensed title insurance company against such mortgage, lien or other encumbrance. This subsection does not apply to any real property which a declarant has the right to withdraw.

(2) Before conveying real property to the association the declarant shall have that real property released from: (a) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and (b) all other liens on that real property unless the public offering statement describes certain real property which may be conveyed subject to liens in specified amounts. [1989 c 43 § 4-109.]

64.34.440 Conversion condominiums—Notice—Tenants—Relocation assistance. (1)(a) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residen-

tial tenants and any residential subtenant in possession of a portion of a conversion condominium notice of the conversion and provide those persons with the public offering statement no later than one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must:

(i) Set forth generally the rights of tenants and subtenants under this section;

(ii) Be delivered pursuant to notice requirements set forth in RCW 59.12.040; and

(iii) Expressly state whether there is a county or city relocation assistance program for tenants or subtenants of conversion condominiums in the jurisdiction in which the property is located. If the county or city does have a relocation assistance program, the following must also be included in the notice:

(A) A summary of the terms and conditions under which relocation assistance is paid; and

(B) Contact information for the city or county relocation assistance program, which must include, at a minimum, a telephone number of the city or county department that administers the relocation assistance program for conversion condominiums.

(b) No tenant or subtenant may be required to vacate upon less than one hundred twenty days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period except as provided in (c) of this subsection.

(c) At the declarant's option, the declarant may provide all tenants in a single building with an option to terminate their lease or rental agreements without cause or consequence after providing the declarant with thirty days' notice. In such case, tenants continue to have access to relocation assistance under subsection (6)(e) of this section.

(d) Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(e) The city or county in which the property is located may require the declarant to forward a copy of the conversion notice required in (a) of this subsection to the appropriately designated department or agency in the city or county for the purpose of maintaining a list of conversion condominium projects proposed in the jurisdiction.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant only if: (a) Such offeror, by written notice mailed to the tenant's last known address, offers to sell an interest in that unit at the more favorable price and terms, and (b) such tenant fails to accept such offer in writing within ten days following the mailing of the offer to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted

exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said inspection being made. Such inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months; and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection (6)(a);

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be

used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and such city or county as to the location of such account and any disbursements therefrom;

(e)(i) A declarant shall pay relocation assistance, in an amount to be determined by the city or county, which may not exceed a sum equal to three months of the tenant's or subtenant's rent at the time the conversion notice required under subsection (1) of this section is received, to tenants and subtenants:

(A) Who do not elect to purchase a unit;

(B) Who are in lawful occupancy for residential purposes of a unit; and

(C) Whose annual household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of:

(I) The annual median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located; or

(II) If the condominium is not within a standard metropolitan statistical area, the annual median income for comparably sized households in the state of Washington, as defined and determined by said department.

The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by the tenant or subtenant to the landlord may be offset against the relocation assistance;

(ii) Elderly or special needs tenants who otherwise meet the requirements of (e)(i)(A) of this subsection shall receive relocation assistance, the greater of:

(A) The sum described in (e)(i) of this subsection; or

(B) The sum of actual relocation expenses of the tenant, up to a maximum of one thousand five hundred dollars in excess of the sum described in (e)(i) of this subsection, which may include costs associated with the physical move, first month's rent, and the security deposit for the dwelling unit to which the tenant is relocating, rent differentials for up to a six-month period, and any other reasonable costs or fees associated with the relocation. Receipts for relocation expenses must be provided to the declarant by eligible tenants, and declarants shall provide the relocation assistance to tenants in a timely manner. The city or county may provide additional guidelines for the relocation assistance;

(iii) For the purposes of this subsection (6)(e):

(A) "Special needs" means, but is not limited to, a chronic mental illness or physical disability, a developmental disability, or other condition affecting cognition, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long lasting, and severely

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limits a person's mental or physical capacity for self-care; and

(B) "Elderly" means a person who is at least sixty-five years of age;

(f) Except as authorized under (g) of this subsection, a declarant and any dealer shall not begin any construction, remodeling, or repairs to any interior portion of an occupied building that is to be converted to a condominium during the one hundred twenty-day notice period provided for in subsection (1) of this section unless all residential tenants and residential subtenants who have elected not to purchase a unit and who are in lawful occupancy in the building have vacated the premises. For the purposes of this subsection:

(i) "Construction, remodeling, or repairs" means the work that is done for the purpose of converting the condominium, not work that is done to maintain the building or lot for the residential use of the existing tenants or subtenants;

(ii) "Occupied building" means a stand-alone structure occupied by tenants and does not include other stand-alone buildings located on the property or detached common area facilities; and

(g)(i) If a declarant or dealer has offered existing tenants an option to terminate an existing lease or rental agreement without cause or consequence as authorized under subsection (1)(c) of this section, a declarant and any dealer may begin construction, remodeling, or repairs to interior portions of an occupied building (A) to repair or remodel vacant units to be used as model units, if the repair or remodel is limited to one model for each unit type in the building, (B) to repair or remodel a vacant unit or common area for use as a sales office, or (C) to do both.

(ii) The work performed under this subsection (6)(g) must not violate the tenant's or subtenant's rights of quiet enjoyment during the one hundred twenty-day notice period.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate the creation of the condominium or the conveyance of any interest therein. [2008 c 113 § 1; 1992 c 220 § 25; 1990 c 166 § 13; 1989 c 43 § 4-110.]

Application—2008 c 113: "This act does not apply to any conversion condominiums for which a notice required under RCW 64.34.440(1) has been delivered before August 1, 2008." [2008 c 113 § 5.]

Effective date—2008 c 113: "This act takes effect August 1, 2008." [2008 c 113 § 6.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.442 Conversion condominium projects—Report. (1) All cities and counties planning under RCW 36.70A.040, which have allowed any conversion condominiums within the jurisdiction within the previous twelve-month period, must report annually to the department of community, trade, and economic development the following information:

(a) The total number of apartment units converted into condominiums;

(b) The total number of conversion condominium projects; and

(c) The total number of apartment tenants who receive relocation assistance.

(2) Upon completion of a conversion condominium project, a city or county may require the declarant to provide the information described in subsection (1) of this section to the appropriately designated department or agency in the city or county for the purpose of complying with subsection (1) of this section. [2008 c 113 § 3.]

Application—Effective date—2008 c 113: See notes following RCW 64.34.440.

64.34.443 Express warranties of quality. (1) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description except pursuant to *RCW 64.34.410(1)(v);

(c) Any written description of the quantity or extent of the real property comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty. A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or declarant's agent identified in the public offering statement.

(3) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers. [1989 c 428 § 2.]

***Reviser's note:** RCW 64.34.410 was amended by 1997 c 400 § 1, changing subsection (1)(v) to subsection (1)(w).

Captions—1989 c 428: "Section captions as used in this act do not constitute any part of the law." [1989 c 428 § 6.]

Effective date—1989 c 428: "*Sections 1 through 4 of this act shall take effect July 1, 1990." [1989 c 428 § 7.]

***Reviser's note:** Sections 1, 3, and 4 of this act were vetoed by the governor.

64.34.445 Implied warranties of quality—Breach.

(1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.

(2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

(a) Free from defective materials;

(b) Constructed in accordance with sound engineering and construction standards;

(c) Constructed in a workmanlike manner; and

(d) Constructed in compliance with all laws then applicable to such improvements.

(3) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed by this section may be excluded or modified as specified in RCW 64.34.450.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are made or contracted for by the declarant.

(6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

(7) In a judicial proceeding for breach of any of the obligations arising under this section, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach. As used in this subsection, an "adverse effect" must be more than technical and must be significant to a reasonable person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

(8) Proof of breach of any obligation arising under this section is not proof of damages. Damages awarded for a breach of an obligation arising under this section are the cost of repairs. However, if it is established that the cost of such repairs is clearly disproportionate to the loss in market value caused by the breach, then damages shall be limited to the loss in market value. [2004 c 201 § 5; 1992 c 220 § 26; 1989 c 43 § 4-112.]

Application—2004 c 201 §§ 5 and 6: "Sections 5 and 6 of this act apply only to condominiums created by declarations recorded on or after July 1, 2004." [2004 c 201 § 12.]

64.34.450 Implied warranties of quality—Exclusion—Modification—Disclaimer—Express written warranty. (1) For units intended for nonresidential use, implied warranties of quality:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(2) For units intended for residential use, no disclaimer of implied warranties of quality is effective, except that a declarant or dealer may disclaim liability in writing, in type that is bold faced, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous, and

separately signed by the purchaser, for a specified defect or specified failure to comply with applicable law, if: (a) The declarant or dealer knows or has reason to know that the specific defect or failure exists at the time of disclosure; (b) the disclaimer specifically describes the defect or failure; and (c) the disclaimer includes a statement as to the effect of the defect or failure.

(3) A declarant or dealer may offer an express written warranty of quality only if the express written warranty does not reduce protections provided to the purchaser by the implied warranty set forth in RCW 64.34.445. [2004 c 201 § 6; 1989 c 43 § 4-113.]

Application—2004 c 201 §§ 5 and 6: See note following RCW 64.34.445.

64.34.452 Warranties of quality—Breach—Actions for construction defect claims. (1) A judicial proceeding for breach of any obligations arising under RCW 64.34.443, 64.34.445, and 64.34.450 must be commenced within four years after the cause of action accrues: PROVIDED, That the period for commencing an action for a breach accruing pursuant to subsection (2)(b) of this section shall not expire prior to one year after termination of the period of declarant control, if any, under RCW 64.34.308(4). Such periods may not be reduced by either oral or written agreement, or through the use of contractual claims or notice procedures that require the filing or service of any claim or notice prior to the expiration of the period specified in this section.

(2) Subject to subsection (3) of this section, a cause of action or [for] breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the date the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or the date of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the latest of (i) the date the first unit in the condominium was conveyed to a bona fide purchaser, (ii) the date the common element was completed, or (iii) the date the common element was added to the condominium.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(4) If a written notice of claim is served under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the statutes of limitation in this chapter and any applicable statutes of repose for construction-related claims are tolled until sixty days after the period of time during which the filing of an action is barred under RCW 64.50.020.

(5) Nothing in this section affects the time for filing a claim under chapter 64.35 RCW. [2004 c 201 § 7; 2002 c 323 § 11; 1990 c 166 § 14.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.455 Effect of violations on rights of action—Attorney's fees. If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of

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persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party. [1989 c 43 § 4-115.]

64.34.460 Labeling of promotional material. If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a survey map or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT." [1989 c 43 § 4-116.]

64.34.465 Improvements—Declarant's duties. (1) The declarant shall complete all improvements labeled "MUST BE BUILT" on survey maps or plans prepared pursuant to RCW 64.34.232.

(2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium damaged by the exercise of rights reserved pursuant to or created by RCW 64.34.236, 64.34.240, 64.34.244, 64.34.248, 64.34.256, and 64.34.260. [1989 c 43 § 4-117.]

ARTICLE 5 MISCELLANEOUS

64.34.900 Short title. This chapter shall be known and may be cited as the Washington condominium act or the condominium act. [1989 c 43 § 1-101.]

64.34.910 Section captions. Section captions as used in this chapter do not constitute any part of the law. [1989 c 43 § 4-119.]

64.34.920 Severability—1989 c 43. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 43 § 4-120.]

64.34.921 Severability—2004 c 201. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2004 c 201 § 13.]

64.34.930 Effective date—1989 c 43. This act shall take effect July 1, 1990. [1989 c 43 § 4-124.]

64.34.931 Effective date—2004 c 201 §§ 1-13. Sections 1 through 13 of this act take effect July 1, 2004. [2004 c 201 § 14.]

64.34.940 Construction against implicit repeal. This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be

impliedly repealed by subsequent legislation if that construction can reasonably be avoided. [1989 c 43 § 1-109.]

64.34.950 Uniformity of application and construction. This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1989 c 43 § 1-110.]

Chapter 64.35 RCW

CONDOMINIUMS—QUALIFIED WARRANTIES

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ARTICLE 1 GENERAL PROVISIONS

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

- (1) "Affiliate" has the meaning in RCW 64.34.020.
- (2) "Association" has the meaning in RCW 64.34.020.
- (3) "Building envelope" means the assemblies, components, and materials of a building that are intended to separate and protect the interior space of the building from the adverse effects of exterior climatic conditions.
- (4) "Common element" has the meaning in RCW 64.34.020.
- (5) "Condominium" has the meaning in RCW 64.34.020.
- (6) "Construction professional" has the meaning in RCW 64.50.010.
- (7) "Conversion condominium" has the meaning in RCW 64.34.020.
- (8) "Declarant" has the meaning in RCW 64.34.020.
- (9) "Declarant control" has the meaning in RCW 64.34.020.
- (10) "Defect" means any aspect of a condominium unit or common element which constitutes a breach of the implied warranties set forth in RCW 64.34.445.
- (11) "Limited common element" has the meaning in RCW 64.34.020.
- (12) "Material" means substantive, not simply formal; significant to a reasonable person; not trivial or insignificant. When used with respect to a particular construction defect, "material" does not require that the construction defect render the unit or common element unfit for its intended purpose or uninhabitable.
- (13) "Mediation" means a collaborative process in which two or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them.
- (14) "Mediation session" means a meeting between two or more parties to a dispute during which they are engaged in mediation.
- (15) "Mediator" means a neutral and impartial facilitator with no decision-making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them.
- (16) "Person" has the meaning in RCW 64.34.020.
- (17) "Public offering statement" has the meaning in RCW 64.34.410.
- (18) "Qualified insurer" means an entity that holds a certificate of authority under RCW 48.05.030, or an eligible insurer under chapter 48.15 RCW.
- (19) "Qualified warranty" means an insurance policy issued by a qualified insurer that complies with the requirements of this chapter. A qualified warranty includes coverage for repair of physical damage caused by the defects covered by the qualified warranty, except to the extent of any exclusions and limitations under this chapter.
- (20) "Resale certificate" means the statement to be delivered by the association under RCW 64.34.425.
- (21) "Transition date" means the date on which the declarant is required to deliver to the association the property of the association under RCW 64.34.312.
- (22) "Unit" has the meaning in RCW 64.34.020.

(23) "Unit owner" has the meaning in RCW 64.34.020. [2004 c 201 § 101.]

64.35.106 Qualified warrantees—Application of RCW 48.01.040. All qualified warrantees shall be deemed to be "insurance" for purposes of RCW 48.01.040, and shall be regulated as such. [2004 c 201 § 2001.]

64.35.110 No duty to offer a qualified warranty—Insurer sets terms—Scope of inquiry—Conditions. (1) No insurer is bound to offer a qualified warranty to any person. Except as specifically set forth in this section, the terms of any qualified warranty are set in the sole discretion of the qualified insurer. Without limiting the generality of this subsection, a qualified insurer may make inquiries about the applicant as follows:

(a) Does the applicant have the financial resources to undertake the construction of the number of units being proposed by the applicant's business plan for the following twelve months;

(b) Does the applicant and its directors, officers, employees, and consultants possess the necessary technical expertise to adequately perform their individual functions with respect to their proposed role in the construction and sale of units;

(c) Does the applicant and its directors and officers have sufficient experience in business management to properly manage the unit construction process;

(d) Does the applicant and its directors, officers, and employees have sufficient practical experience to undertake the proposed unit construction;

(e) Does the past conduct of the applicant and its directors, officers, employees, and consultants provide a reasonable indication of good business practices, and reasonable grounds for belief that its undertakings will be carried on in accordance with all legal requirements; and

(f) Is the applicant reasonably able to provide, or to cause to be provided, after-sale customer service for the units to be constructed.

(2) A qualified insurer may charge a fee to make the inquiries permitted by subsection (1) of this section.

(3) Before approving a qualified warranty for a condominium, a qualified insurer may make such inquiries and impose such conditions as it deems appropriate in its sole discretion, including without limitation the following:

(a) To determine if the applicant has the necessary capitalization or financing in place, including any reasonable contingency reserves, to undertake construction of the proposed unit;

(b) To determine if the applicant or, in the case of a corporation, its directors, officers, employees, and consultants possess reasonable technical expertise to construct the proposed unit, including specific technical knowledge or expertise in any building systems, construction methods, products, treatments, technologies, and testing and inspection methods proposed to be employed;

(c) To determine if the applicant or, in the case of a corporation, its directors, officers, employees, and consultants have sufficient practical experience in the specific types of construction to undertake construction of the proposed unit;

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(d) To determine if the applicant has sufficient personnel and other resources to adequately undertake the construction of the proposed unit in addition to other units which the applicant may have under construction or is currently marketing;

(e) To determine if:

(i) The applicant is proposing to engage a general contractor to undertake all or a significant portion of the construction of the proposed unit; and

(ii) The general contractor meets the criteria set out in this section;

(f) Requiring that a declarant provide security in a form suitable to the qualified insurer;

(g) Establishing or requiring compliance with specific construction standards for the unit;

(h) Restricting the applicant from constructing some types of units or using some types of construction or systems;

(i) Requiring the use of specific types of systems, consultants, or personnel for the construction;

(j) Requiring an independent review of the unit building plans or consultants' reports or any part thereof;

(k) Requiring third-party verification or certification of the construction of the unit or any part thereof;

(l) Providing for inspection of the unit or any part thereof during construction;

(m) Requiring ongoing monitoring of the unit, or one or more of its components, following completion of construction;

(n) Requiring that the declarant or any of the design professionals, engineering professionals, consultants, general contractors, or subcontractors maintain minimum levels of insurance, bonding, or other security naming the potential owners and qualified insurer as loss payees or beneficiaries of the insurance, bonding, or security to the extent possible;

(o) Requiring that the declarant provide a list of all design professionals and other consultants who are involved in the design or construction inspection, or both, of the unit;

(p) Requiring that the declarant provide a list of trades employed in the construction of the unit, and requiring evidence of their current trade's certification, if applicable. [2004 c 201 § 1901.]

64.35.115 Attorneys' fees. In any judicial proceeding or arbitration brought to enforce the terms of a qualified warranty, the court or arbitrator may award reasonable attorneys' fees to the substantially prevailing party. In no event may such fees exceed the reasonable hourly value of the attorney's work. [2004 c 201 § 1701.]

64.35.120 Change of ownership—Coverage transfers. (1) A qualified warranty pertains solely to the unit and common elements for which it provides coverage and no notice to the qualified insurer is required on a change of ownership.

(2) All of the applicable unused benefits under a qualified warranty with respect to a unit are automatically transferred to any subsequent owner on a change of ownership. [2004 c 201 § 1801.]

ARTICLE 2

REMEDY, PROCEDURE, AND DISCLOSURE UNDER
A QUALIFIED WARRANTY

64.35.205 Qualified warranty—Remedy and procedure—Application of chapter 64.50 RCW. No declarant, affiliate of a declarant, or construction professional is liable to a unit owner or an association for damages awarded for repair of construction defects and resulting physical damage, and chapter 64.50 RCW shall not apply if: (1) Every unit is the subject of a qualified warranty; and (2) the association has been issued a qualified warranty with respect to the common elements. If a construction professional agrees on terms satisfactory to the qualified insurer to partially or fully indemnify the qualified insurer with respect to a defect caused by the construction professional, the liability of the construction professional for the defect and resulting physical damage caused by him or her shall not exceed damages recoverable under the terms of the qualified warranty for the defect. Any indemnity claim by the qualified insurer shall be by separate action or arbitration, and no unit owner or association shall be joined therein. A qualified warranty may also be provided in the case of improvements made or contracted for by a declarant as part of a conversion condominium, and in such case, declarant's liability with respect to such improvements shall be limited as set forth in this section. [2004 c 201 § 201.]

64.35.210 Notice of qualified warranty—History of claims. (1) Every public offering statement and resale certificate shall affirmatively state whether or not the unit and/or the common elements are covered by a qualified warranty, and shall provide to the best knowledge of the person preparing the public offering statement or resale certificate a history of claims under the warranty.

(2) The history of claims must include, for each claim, not less than the following information for the unit and/or the common elements, as applicable, to the best knowledge of the person providing the information:

- (a) The type of claim that was made;
- (b) The resolution of the claim;
- (c) The type of repair performed;
- (d) The date of the repair;
- (e) The cost of the repair; and
- (f) The name of the person or entity who performed the repair. [2004 c 201 § 301.]

ARTICLE 3

MINIMUM COVERAGE STANDARDS FOR
QUALIFIED WARRANTIES

64.35.305 Two-year materials and labor warranty—Noncompliance with building code. (1) The minimum coverage for the two-year materials and labor warranty is:

- (a) In the first twelve months, for other than the common elements, (i) coverage for any defect in materials and labor; and (ii) subject to subsection (2) of this section, coverage for a violation of the building code;
- (b) In the first fifteen months, for the common elements, (i) coverage for any defect in materials and labor; and (ii)

subject to subsection (2) of this section, coverage for a violation of the building code;

(c) In the first twenty-four months, (i) coverage for any defect in materials and labor supplied for the electrical, plumbing, heating, ventilation, and air conditioning delivery and distribution systems; (ii) coverage for any defect in materials and labor supplied for the exterior cladding, caulking, windows, and doors that may lead to detachment or material damage to the unit or common elements; (iii) coverage for any defect in materials and labor which renders the unit unfit to live in; and (iv) subject to subsection (2) of this section, coverage for a violation of the building code.

(2) Noncompliance with the building code is considered a defect covered by a qualified warranty if the noncompliance:

- (a) Constitutes an unreasonable health or safety risk; or
- (b) Has resulted in, or is likely to result in, material damage to the unit or common elements. [2004 c 201 § 401.]

64.35.310 Five-year building envelope warranty. The minimum coverage for the building envelope warranty is five years for defects in the building envelope of a condominium, including a defect which permits unintended water penetration so that it causes, or is likely to cause, material damage to the unit or common elements. [2004 c 201 § 402.]

64.35.315 Ten-year structural defects warranty. The minimum coverage for the structural defects warranty is ten years for:

- (1) Any defect in materials and labor that results in the failure of a load-bearing part of the condominium; and
- (2) Any defect which causes structural damage that materially and adversely affects the use of the condominium for residential occupancy. [2004 c 201 § 403.]

64.35.320 Beginning dates for warranty coverage. (1) For the unit, the beginning date of the qualified warranty coverage is the earlier of:

- (a) Actual occupancy of the unit; or
 - (b) Transfer of legal title to the unit.
- (2) For the common elements, the beginning date of a qualified warranty is the date a temporary or final certificate of occupancy is issued for the common elements in each separate multiunit building, comprised by the condominium. [2004 c 201 § 404.]

64.35.325 Beginning dates for warranty coverage—Special cases—Declarant control. (1) If an unsold unit is occupied as a rental unit, the qualified warranty beginning date for such unit is the date the unit is first occupied.

(2) If the declarant subsequently offers to sell a unit which is rented, the declarant must disclose, in writing, to each prospective purchaser, the date on which the qualified warranty expires.

(3) If the declarant retains any declarant control over the association on the date that is fourteen full calendar months following the month in which the beginning date for common element warranty coverage commences, the declarant shall within thirty days thereafter cause an election to be held in which the declarant may not vote, for the purpose of electing

one or more board members who are empowered to make warranty claims. If at such time, one or more independent board members hold office, no additional election need be held, and such independent board members are empowered to make warranty claims. The declarant shall inform all independent board members of their right to make warranty claims at no later than sixteen full calendar months following the beginning date of the common element warranty. [2004 c 201 § 405.]

64.35.330 Living expense allowance. (1) If repairs are required under the qualified warranty and damage to the unit, or the extent of the repairs renders the unit uninhabitable, the qualified warranty must cover reasonable living expenses incurred by the owner to live elsewhere in an amount commensurate with the nature of the unit.

(2) If a qualified insurer establishes a maximum amount per day for claims for living expenses, the limit must be the greater of one hundred dollars per day or a reasonable amount commensurate with the nature of the unit for the complete reimbursement of the actual accommodation expenses incurred by the owner at a hotel, motel, or other rental accommodation up to the day the unit is ready for occupancy, subject to the owner receiving twenty-four hours' advance notice. [2004 c 201 § 406.]

64.35.335 Warranty on repairs and replacements. (1) All repairs and replacements made under a qualified warranty must be warranted by the qualified warranty against defects in materials and labor until the later of:

- (a) The first anniversary of the date of completion of the repair or replacement; or
 - (b) The expiration of the applicable qualified warranty coverage.
- (2) All repairs and replacements made under a qualified warranty must be completed in a reasonable manner using materials and labor conforming to the building code and industry standards. [2004 c 201 § 407.]

ARTICLE 4
QUALIFIED WARRANTY TERMS

64.35.405 Provisions a qualified insurer may include. A qualified insurer may include any of the following provisions in a qualified warranty:

(1) If the qualified insurer makes a payment or assumes liability for any payment or repair under a qualified warranty, the owner and association must fully support and assist the qualified insurer in pursuing any rights that the qualified insurer may have against the declarant, and any construction professional that has contractual or common law obligations to the declarant, whether such rights arose by contract, subrogation, or otherwise.

(2) Warranties or representations made by a declarant which are in addition to the warranties set forth in this chapter are not binding on the qualified insurer unless and to the extent specifically provided in the text of the warranty; and disclaimers of specific defects made by agreement between the declarant and the unit purchaser under RCW 64.34.450

act as an exclusion of the specified defect from the warranty coverage.

(3) An owner and the association must permit the qualified insurer or declarant, or both, to enter the unit at reasonable times, after reasonable notice to the owner and the association:

- (a) To monitor the unit or its components;
- (b) To inspect for required maintenance;
- (c) To investigate complaints or claims; or
- (d) To undertake repairs under the qualified warranty.

If any reports are produced as a result of any of the activities referred to in (a) through (d) of this subsection, the reports must be provided to the owner and the association.

(4) An owner and the association must provide to the qualified insurer all information and documentation that the owner and the association have available, as reasonably required by the qualified insurer to investigate a claim or maintenance requirement, or to undertake repairs under the qualified warranty.

(5) To the extent any damage to a unit is caused or made worse by the unreasonable refusal of the association, or an owner or occupant to permit the qualified insurer or declarant access to the unit for the reasons in subsection (3) of this section, or to provide the information required by subsection (4) of this section, that damage is excluded from the qualified warranty.

(6) In any claim under a qualified warranty issued to the association, the association shall have the sole right to prosecute and settle any claim with respect to the common elements. [2004 c 201 § 501.]

64.35.410 Authorized exclusions—General. (1) A qualified insurer may exclude from a qualified warranty:

- (a) Landscaping, both hard and soft, including plants, fencing, detached patios, planters not forming a part of the building envelope, gazebos, and similar structures;
 - (b) Any commercial use area and any construction associated with a commercial use area;
 - (c) Roads, curbs, and lanes;
 - (d) Subject to subsection (2) of this section, site grading and surface drainage except as required by the building code;
 - (e) Municipal services operation, including sanitary and storm sewer;
 - (f) Septic tanks or septic fields;
 - (g) The quality or quantity of water, from either a piped municipal water supply or a well;
 - (h) A water well, but excluding equipment installed for the operation of a water well used exclusively for a unit, which equipment is part of the plumbing system for that unit for the purposes of the qualified warranty.
- (2) The exclusions permitted by subsection (1) of this section do not include any of the following:
- (a) A driveway or walkway;
 - (b) Recreational and amenity facilities situated in, or included as the common property of, a unit;
 - (c) A parking structure in a multiunit building;
 - (d) A retaining wall that:
 - (i) An authority with jurisdiction requires to be designed by a professional engineer; or

(ii) Is reasonably required for the direct support of, or retaining soil away from, a unit, driveway, or walkway. [2004 c 201 § 601.]

64.35.415 Authorized exclusions—Defects. A qualified insurer may exclude any or all of the following items from a qualified warranty:

(1) Weathering, normal wear and tear, deterioration, or deflection consistent with normal industry standards;

(2) Normal shrinkage of materials caused by drying after construction;

(3) Any loss or damage which arises while a unit is being used primarily or substantially for nonresidential purposes;

(4) Materials, labor, or design supplied by an owner;

(5) Any damage to the extent caused or made worse by an owner or third party, including:

(a) Negligent or improper maintenance or improper operation by anyone other than the declarant or its employees, agents, or subcontractors;

(b) Failure of anyone, other than the declarant or its employees, agents, or subcontractors, to comply with the warranty requirements of the manufacturers of appliances, equipment, or fixtures;

(c) Alterations to the unit, including converting nonliving space into living space or converting a unit into two or more units, by anyone other than the declarant or its employees, agents, or subcontractors while undertaking their obligations under the sales contract; and

(d) Changes to the grading of the ground by anyone other than the declarant or its employees, agents, or subcontractors;

(6) An owner failing to take timely action to prevent or minimize loss or damage, including failing to give prompt notice to the qualified insurer of a defect or discovered loss, or a potential defect or loss;

(7) Any damage caused by insects, rodents, or other animals, unless the damage results from noncompliance with the building code by the declarant or its employees, agents, or subcontractors;

(8) Accidental loss or damage from acts of nature including, but not limited to, fire, explosion, smoke, water escape, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquake, avalanche, landslide, and changes in the level of the underground water table which are not reasonably foreseeable by the declarant;

(9) Bodily injury or damage to personal property or real property which is not part of a unit;

(10) Any defect in, or caused by, materials or work supplied by anyone other than the declarant, an affiliate of a declarant, or their respective contractors, employees, agents, or subcontractors;

(11) Changes, alterations, or additions made to a unit by anyone after initial occupancy, except those performed by the declarant or its employees, agents, or subcontractors as required by the qualified warranty or under the construction contract or sales agreement;

(12) Contaminated soil;

(13) Subsidence of the land around a unit or along utility lines, other than subsidence beneath footings of a unit or under driveways or walkways;

(14) Diminution in the value of the unit. [2004 c 201 § 701.]

64.35.420 Limits on amounts—Calculation of costs—Adjustments. (1) A qualified insurer may establish a monetary limit on the amount of the warranty. Any limit must not be less than:

(a) For a unit, the lesser of (i) the original purchase price paid by the owner, or (ii) one hundred thousand dollars;

(b) For common elements, the lesser of (i) the total original purchase price for all components of the multiunit building, or (ii) one hundred fifty thousand dollars times the number of units of the condominium.

(2) When calculating the cost of warranty claims under the standard limits under a qualified warranty, a qualified insurer may include:

(a) The cost of repairs;

(b) The cost of any investigation, engineering, and design required for the repairs; and

(c) The cost of supervision of repairs, including professional review, but excluding legal costs.

(3) The minimum amounts in subsections (1) and (2) of this section shall be adjusted at the end of each calendar year after the effective date by an amount equal to the percentage change in the consumer price index for all urban consumers, all items, as published from time to time by the United States department of labor. The adjustment does not affect any qualified warranty issued before the adjustment date. [2004 c 201 § 801.]

64.35.425 Prohibited policy provisions—Exclusions.

(1) A qualified insurer must not include in a qualified warranty any provision that requires an owner or the association:

(a) To sign a release before repairs are performed under the qualified warranty; or

(b) To pay a deductible in excess of five hundred dollars for the repair of any defect in a unit covered by the qualified warranty, or in excess of the lesser of five hundred dollars per unit or ten thousand dollars in the aggregate for any defect in the common elements.

(2) All exclusions must be permitted by this chapter and stated in the qualified warranty. [2004 c 201 § 901.]

ARTICLE 5

DUTIES OF PARTIES REGARDING COVERAGE AND CLAIMS

64.35.505 Failure to provide information—Conditions or exclusions may not apply. (1) If coverage under a qualified warranty is conditional on an owner undertaking proper maintenance, or if coverage is excluded for damage caused by negligence by the owner or association with respect to maintenance or repair by the owner or association, the conditions or exclusions apply only to maintenance requirements or procedures: (a) Provided to the original owner in the case of the unit warranty, and to the association for the common element warranty with an estimation of the required cost thereof for the common element warranty provided in the budget prepared by the declarant; or (b) that would be obvious to a reasonable and prudent layperson. Recommended maintenance requirements and procedures are sufficient for purposes of this subsection if consistent with knowledge generally available in the construction industry at the time the qualified warranty is issued.

(2) If an original owner or the association has not been provided with the manufacturer's documentation or warranty information, or both, or with recommended maintenance and repair procedures for any component of a unit, the relevant exclusion does not apply. The common element warranty is included in the written warranty to be provided to the association under RCW 64.34.312. [2004 c 201 § 1001.]

64.35.510 Schedule of expiration dates must be provided. (1) A qualified insurer must, as soon as reasonably possible after the beginning date for the qualified warranty, provide an owner and association with a schedule of the expiration dates for coverages under the qualified warranty as applicable to the unit and the common elements, respectively.

(2) The expiration date schedule for a unit must set out all the required dates on an adhesive label that is a minimum size of four inches by four inches and is suitable for affixing by the owner in a conspicuous location in the unit. [2004 c 201 § 1101.]

64.35.515 Duty to mitigate may be required. (1) The qualified insurer may require an owner or association to mitigate any damage to a unit or the common elements, including damage caused by defects or water penetration, as set out in the qualified warranty.

(2) Subject to subsection (3) of this section, for defects covered by the qualified warranty, the duty to mitigate is met through timely notice in writing to the qualified insurer.

(3) The owner must take all reasonable steps to restrict damage to the unit if the defect requires immediate attention.

(4) The owner's duty to mitigate survives even if:

- (a) The unit is unoccupied;
- (b) The unit is occupied by someone other than the owner;
- (c) Water penetration does not appear to be causing damage; or
- (d) The owner advises the homeowners' association corporation about the defect.

(5) If damage to a unit is caused or made worse by the failure of an owner to take reasonable steps to mitigate as set out in this section, the damage may, at the option of the qualified insurer, be excluded from qualified warranty coverage. [2004 c 201 § 1201.]

64.35.520 Notice of claim—Reasonable timeliness and detail—Contents. (1) Within a reasonable time after the discovery of a defect and before the expiration of the applicable qualified warranty coverage, a claimant must give to the qualified insurer and the declarant written notice in reasonable detail that provides particulars of any specific defects covered by the qualified warranty.

(2) The qualified insurer may require the notice under subsection (1) of this section to include:

- (a) The qualified warranty number; and
- (b) Copies of any relevant documentation and correspondence between the claimant and the declarant, to the extent any such documentation and correspondence is in the control or possession of the claimant. [2004 c 201 § 1301.]

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64.35.525 Handling of claim—Prompt response—Procedures. A qualified insurer must, on receipt of a notice of a claim under a qualified warranty, promptly make reasonable attempts to contact the claimant to arrange an evaluation of the claim. Claims shall be handled in accordance with the claims procedures set forth in rules by the insurance commissioner, and as follows:

(1) The qualified insurer must make all reasonable efforts to avoid delays in responding to a claim under a qualified warranty, evaluating the claim, and scheduling any required repairs.

(2) If, after evaluating a claim under a qualified warranty, the qualified insurer determines that the claim is not valid, or not covered under the qualified warranty, the qualified insurer must: (a) Notify the claimant of the decision in writing; (b) set out the reasons for the decision; and (c) set out the rights of the parties under the third-party dispute resolution process for the warranty.

(3) Repairs must be undertaken in a timely manner, with reasonable consideration given to weather conditions and the availability of materials and labor.

(4) On completing any repairs, the qualified insurer must deliver a copy of the repair specifications to the claimant along with a letter confirming the date the repairs were completed and referencing the repair warranty provided for in RCW 64.35.335. [2004 c 201 § 1401.]

ARTICLE 6

MEDIATION OR ARBITRATION OF DISPUTES

64.35.605 Disputed claim—Notice—Mediation procedures—Duties of parties. (1) If a dispute between a qualified insurer and a claimant arising under a qualified warranty cannot be resolved by informal negotiation within a reasonable time, the claimant or qualified insurer may require that the dispute be referred to mediation by delivering written notice to the other to mediate.

(2) If a party delivers a request to mediate under subsection (1) of this section, the qualified insurer and the party must attend a mediation session in relation to the dispute and may invite to participate in the mediation any other party to the dispute who may be liable.

(3) Within twenty-one days after the party has delivered a request to mediate under subsection (1) of this section, the parties must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable mediator.

(4) If the parties do not jointly appoint a mutually acceptable mediator within the time required by subsection (3) of this section, the party may apply to the superior court of the county where the project is located, which must appoint a mediator taking into account:

- (a) The need for the mediator to be neutral and independent;
- (b) The qualifications of the mediator;
- (c) The mediator's fees;
- (d) The mediator's availability; and
- (e) Any other consideration likely to result in the selection of an impartial, competent, and effective mediator.

(5) After selecting the mediator under subsection (4) of this section, the superior court must promptly notify the parties in writing of that selection.

(6) The mediator selected by the superior court is deemed to be appointed by the parties effective the date of the notice sent under subsection (5) of this section.

(7) The first mediation session must occur within twenty-one days of the appointment of the mediator at the date, time, and place selected by the mediator.

(8) A party may attend a mediation session by representative if:

(a) The party is under a legal disability and the representative is that party's guardian ad litem;

(b) The party is not an individual; or

(c) The party is a resident of a jurisdiction other than Washington and will not be in Washington at the time of the mediation session.

(9) A representative who attends a mediation session in the place of a party as permitted by subsection (8) of this section:

(a) Must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely; and

(b) Must have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.

(10) A party or a representative who attends the mediation session may be accompanied by counsel.

(11) Any other person may attend a mediation session on consent of all parties or their representatives.

(12) At least seven days before the first mediation session is to be held, each party must deliver to the mediator a statement briefly setting out:

(a) The facts on which the party intends to rely; and

(b) The matters in dispute.

(13) The mediator must promptly send each party's statement to each of the other parties.

(14) Before the first mediation session, the parties must enter into a retainer agreement with the mediator which must:

(a) Disclose the cost of the mediation services; and

(b) Provide that the cost of the mediation will be paid:

(i) Equally by the parties; or

(ii) On any other specified basis agreed by the parties.

(15) The mediator may conduct the mediation in any manner he or she considers appropriate to assist the parties to reach a resolution that is timely, fair, and cost-effective.

(16) A person may not disclose, or be compelled to disclose, in any proceeding, oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made in anticipation of or during a mediation session.

(17) Nothing in subsection (16) of this section precludes a party from introducing into evidence in a proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

(18) A mediation session is concluded when:

(a) All issues are resolved;

(b) The mediator determines that the process will not be productive and so advises the parties or their representatives; or

(c) The mediation session is completed and there is no agreement to continue.

(19) If the mediation resolves some but not all issues, the mediator may, at the request of all parties, complete a report setting out any agreements made as a result of the mediation, including, without limitation, any agreements made by the parties on any of the following:

(a) Facts;

(b) Issues; and

(c) Future procedural steps. [2004 c 201 § 1501.]

64.35.610 Disputed claim—Notice—Arbitration procedures—Duties of parties. A qualified warranty may include mandatory binding arbitration of all disputes arising out of or in connection with a qualified warranty. The provision may provide that all claims for a single condominium be heard by the same arbitrator, but shall not permit the joinder or consolidation of any other person or entity. The arbitration shall comply with the following minimum procedural standards:

(1) Any demand for arbitration shall be delivered by certified mail return receipt requested, and by ordinary first-class mail. The party initiating the arbitration shall address the notice to the address last known to the initiating party in the exercise of reasonable diligence, and also, for any entity which is required to have a registered agent in the state of Washington, to the address of the registered agent. Demand for arbitration is deemed effective three days after the date deposited in the mail;

(2) All disputes shall be heard by one qualified arbitrator, unless the parties agree to use three arbitrators. If three arbitrators are used, one shall be appointed by each of the disputing parties and the first two arbitrators shall appoint the third, who will chair the panel. The parties shall select the identity and number of the arbitrator or arbitrators after the demand for arbitration is made. If, within thirty days after the effective date of the demand for arbitration, the parties fail to agree on an arbitrator or the agreed number of arbitrators fail to be appointed, then an arbitrator or arbitrators shall be appointed under *RCW 7.04.050 by the presiding judge of the superior court of the county in which the condominium is located;

(3) In any arbitration, at least one arbitrator must be a lawyer or retired judge. Any additional arbitrator must be either a lawyer or retired judge or a person who has experience with construction and engineering standards and practices, written construction warranties, or construction dispute resolution. No person may serve as an arbitrator in any arbitration in which that person has any past or present financial or personal interest;

(4) The arbitration hearing must be conducted in a manner that permits full, fair, and expeditious presentation of the case by both parties. The arbitrator is bound by the law of Washington state. Parties may be, but are not required to be, represented by attorneys. The arbitrator may permit discovery to ensure a fair hearing, but may limit the scope or manner of discovery for good cause to avoid excessive delay and costs to the parties. The parties and the arbitrator shall use all reasonable efforts to complete the arbitration within six months of the effective date of the demand for arbitration or, when applicable, the service of the list of defects in accordance with RCW 64.50.030;

(5) Except as otherwise set forth in this section, arbitration shall be conducted under *chapter 7.04 RCW, unless the parties elect to use the construction industry arbitration rules of the American arbitration association, which are permitted to the extent not inconsistent with this section. The expenses of witnesses including expert witnesses shall be paid by the party producing the witnesses. All other expenses of arbitration shall be borne equally by the parties, unless all parties agree otherwise or unless the arbitrator awards expenses or any part thereof to any specified party or parties. The parties shall pay the fees of the arbitrator as and when specified by the arbitrator;

(6) Demand for arbitration given pursuant to subsection (1) of this section commences a judicial proceeding for purposes of RCW 64.34.452;

(7) The arbitration decision shall be in writing and must set forth findings of fact and conclusions of law that support the decision. [2004 c 201 § 1601.]

*Reviser's note: Chapter 7.04 RCW was repealed in its entirety by 2005 c 433 § 50, effective January 1, 2006.

ARTICLE 3
MISCELLANEOUS

64.35.900 Captions not law—2004 c 201. Captions and part headings used in this act are not any part of the law. [2004 c 201 § 2002.]

64.35.901 Severability—2004 c 201. See RCW 64.34.921.

Chapter 64.36 RCW
TIMESHARE REGULATION

Sections

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64.36.340	Uniform regulation of business and professions act.
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64.36.901	Severability—1983 1st ex.s. c 22.

64.36.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Advertisement" means any written, printed, audio, or visual communication which is published in whole or part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate of a promoter" means any person who controls, is controlled by, or is under the control of a promoter.

(3) "Commercial promotional programs" mean packaging or putting together advertising or promotional materials involving promises of gifts, prizes, awards, or other items of value to solicit prospective purchasers to purchase a product or commodity.

(4) "Director" means the director of licensing.

(5) "Interval" means that period of time when a timeshare owner is entitled to the possession and use of the timeshare unit.

(6) "Offer" means any inducement, solicitation, or attempt to encourage any person to acquire a timeshare.

(7) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(8) "Promoter" means any person directly or indirectly instrumental in organizing, wholly or in part, a timeshare offering.

(9) "Purchaser" means any person, other than a promoter, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a timeshare for value.

(11) "Timeshare" means a right to occupy a unit or any of several units during three or more separate time periods over a period of at least three years, including renewal options, whether or not coupled with an estate in land.

(12) "Timeshare expenses" means expenditures, fees, charges, or liabilities: (a) Incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and (b) imposed on the timeshare units by the entity governing a project of which the timeshare property is a part, together with any allocations to reserves but excluding purchase money payable for timeshares.

(13) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(14) "Timeshare owner" means a person who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, "timeshare owner" means the beneficiary of the trust.

(15) "Timeshare salesperson" means any natural person who offers a timeshare unit for sale.

(16) "Unit" means the real or personal property, or portion thereof, in which the timeshare exists and which is designated for separate use. [1987 c 370 § 1; 1985 c 358 § 1; 1983 1st ex.s. c 22 § 1.]

64.36.020 Registration required before advertisement, solicitation, or offer—Requirements for registration—Exemption authorized—Penalties. (1) A timeshare offering registration must be effective before any advertisement, solicitation of an offer, or any offer or sale of a timeshare may be made in this state.

(2) An applicant shall apply for registration by filing with the director:

(a) A copy of the disclosure document prepared in accordance with RCW 64.36.140 and signed by the applicant;

(b) An application for registration prepared in accordance with RCW 64.36.030;

(c) An irrevocable consent to service of process signed by the applicant;

(d) The prescribed registration fee; and

(e) Any other information the director may by rule require in the protection of the public interest.

(3) The registration requirements do not apply to:

(a) An offer, sale, or transfer of not more than one timeshare in any twelve-month period;

(b) A gratuitous transfer of a timeshare;

(c) A sale under court order;

(d) A sale by a government or governmental agency;

(e) A sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or

(f) A sale of a timeshare property or all timeshare units therein to any one purchaser.

(4) The director may by rule or order exempt any potential registrant from the requirements of this chapter if the director finds registration is unnecessary for the protection of the public interest.

(5)(a) Except as provided in (b) of this subsection, any person who violates this section is guilty of a gross misdemeanor.

(b) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(c) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 289; 1983 1st ex.s. c 22 § 2.]

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

64.36.025 Timeshare interest reservation—Definition—Registration required—Promoter's obligations—Deposits—Escrow—Purchaser cancellation rights—Insolvency prior to completion. (1) For the purpose of this section, "timeshare interest reservation" means a revocable right to purchase an interest in a timeshare project for which construction has not yet been completed and an effective registration has been obtained under this chapter.

(2) An effective registration pursuant to this chapter is required for any party to offer to sell a timeshare interest reservation. Promoters offering a timeshare interest reservation under this section must provide the registered disclosure document required by RCW 64.36.140 to each prospective purchaser before he or she enters into a timeshare interest reservation. Prior to the signing of a purchase agreement, the subject property or properties must be completed, the timeshare offering registration required by RCW 64.36.020 must be amended to reflect any changes to the property and must be reapproved by the department, the disclosure document required by RCW 64.36.140 must be revised, and the new version of the disclosure document must be provided to the prospective purchaser.

(3) Deposits accepted by promoters on a timeshare interest reservation may be no more than twenty percent of the total purchase price of the timeshare interest that is being purchased. Within one business day after being accepted by the promoter, any deposit on a timeshare interest reservation shall be deposited in an account in a federally insured depository located in the state of Washington. This account must be an escrow account wherein the deposited funds are held for the benefit of the purchaser. The department may request that deposits be placed in impoundment under RCW 64.36.130.

(4) In addition to the cancellation rights provided in RCW 64.36.150, the purchaser has the right to cancel the purchase at any time before the signing of a purchase agreement. If the purchaser notifies the promoter that he or she wishes to cancel the timeshare interest reservation, the promoter must refund the full amount of the deposit minus any account fees within ten days of the notice.

(5) If prior to signing a purchase agreement the purchaser learns that the promoter proposes to raise the purchase price above the price agreed to in the written reservation agreement for the timeshare interest reservation, the written reservation agreement is void and all deposit moneys including account fees shall be returned to the purchaser within ten days after the purchaser learns of the proposed price increase.

(6) If the promoter charges account fees to pay for administrative costs of holding the purchaser's funds in escrow, these fees may be no more than one percent of the total deposit paid towards the timeshare interest reservation by the purchaser.

(7) The promoter shall provide instructions to the escrow company for release of the funds to be held in escrow in compliance with this section and rules of the department.

(8) The purchaser's right to cancel and the amount of the deposit proposed to be retained for account fees in the event of cancellation must be included in the contract for the sale of a timeshare interest reservation and the contract must state:

PURCHASER CANCELLATION RIGHTS

As a purchaser of a timeshare interest reservation, you have the right to cancel this timeshare interest reservation and receive a refund of all consideration paid (less only those account fee deductions which were fully disclosed at the time of the agreement) by providing written notice of the cancellation to the promoter or the promoter's agent at any time prior to signing a purchase agreement. You also have a right to cancel your purchase within seven days of signing a purchase agreement.

(9) If it appears that the timeshare project will become or does become insolvent prior to completion, the promoter shall instruct the escrow company to immediately return all deposits to purchasers of timeshare interest reservations. If funds are returned under this subsection, the promoter may not retain any portion of the deposits for account fees. [2002 c 226 § 2.]

64.36.028 Timeshare interest—Incomplete projects or facilities—Promoter's obligations—Funds—Purchaser's rights. (1) An effective registration pursuant to this chapter is required for any party to offer to sell a timeshare interest. A promoter who offers to sell or sells revocable timeshare interests in incomplete projects or facilities is limited by and must comply with all of the requirements of RCW 64.36.025. If a promoter seeks to enter into irrevocable purchase agreements with purchasers for timeshare interests in incomplete projects or facilities, the promoter must meet the requirements in this section in addition to RCW 64.36.020 and the following limitations and conditions apply:

(a) The promoter is limited to offering or selling only fee simple deeded timeshare interests;

(b) Construction on the project must have begun by the time the irrevocable purchase agreement is signed and the purchaser must have the right to occupy the unit and use all contracted for amenities no later than within two years of the date that the irrevocable purchase agreement is signed;

(c) The promoter must establish an independent third-party escrow account for the purpose of protecting the funds or other property paid, pledged, or deposited by purchasers;

(d) The promoter's solicitations, advertisements, and promotional materials must clearly and conspicuously disclose that "THE PROJECT IS NOT YET COMPLETED; IT IS STILL UNDER CONSTRUCTION"; and

(e) The promoter's solicitations, advertisements, and promotional materials and the timeshare interest purchase agreement must clearly and conspicuously provide for and disclose the last possible estimated date for completion of construction of any building the promoter is contractually obligated to the purchaser to complete.

(2) The timeshare interest purchase agreement must contain the following language in fourteen-point bold face type: "If the building in which the timeshare interest is located and all contracted for amenities are not completed by [estimated date of completion], the purchaser has the right to void the purchase agreement and is entitled to a full, unqualified refund of all moneys paid."

(3) One hundred percent of all funds or other property that is received from or on behalf of purchasers of timeshare

interests prior to the occurrence of events required in this section must be deposited pursuant to a third-party escrow agreement approved by the director. For purposes of this section, "purchasers" includes all persons solicited, offered, or who purchased a timeshare interest by a promoter within the state of Washington. An escrow agent shall maintain the account only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent has a fiduciary duty to each purchaser to maintain the escrow accounts in accordance with good accounting practices and to release the purchaser's funds or other property from escrow only in accordance with this chapter. If the escrow agent receives conflicting demands for funds or property held in escrow, the escrow agent shall immediately notify the department of licensing of the dispute and the department shall determine if and how the funds should be distributed. If the purchaser, promoter, or escrow agent disagrees with the department's determination, the parties have the right to request an administrative hearing under chapter 34.05 RCW. Funds may be released from the escrow account to the purchaser if the purchaser cancels within the cancellation period, or to the promoter only when all three of the following conditions occur:

(a) The purchaser's cancellation period has expired;

(b) Closing has occurred; and

(c) Construction is complete and the building is ready to occupy.

(4) In lieu of depositing purchaser funds into an escrow account, the promoter may post with the department a bond in an amount equal to or greater than the amount that would otherwise be required to be placed into the escrow account.

(5) Any purchaser has the right to void the timeshare purchase agreement and request a full, unqualified refund if construction of the building in which the timeshare interest is located or all contracted for amenities are not completed within two years from the date that the irrevocable purchase agreement is signed or by the last estimated date of construction contained in the irrevocable purchase agreement, whichever is earlier.

(6) If the completed timeshare building or contracted for amenities are materially and adversely different from the building or amenities that were promised to purchasers at the time that the purchase agreements were signed, the director may declare any or all of the purchaser contracts void. Before declaring the contracts void, the director shall give the promoter the opportunity for a hearing in accordance with chapters 34.05 and 18.235 RCW.

(7) If the promoter intends to or does pledge or borrow against funds or properties, that are held in escrow or protected by a bond, to help finance in whole or in part the construction of the timeshare project or to help pay for operating costs, this must be fully, plainly, and conspicuously disclosed in all written advertising, in all written solicitations for the sale of the timeshare interests, in the registration with the director, and in the purchase agreement or contract.

(8) A promoter who obtains an effective registration for a revocable timeshare interest reservation must meet the requirements of this section in order to complete an irrevocable purchase agreement. [2003 c 348 § 1.]

64.36.030 Application for registration—Contents.

The application for registration signed by the promoter shall contain the following information on a form prescribed by the director:

(1) The following financial statements showing the financial condition of the promoter and any affiliate:

(a) A balance sheet as of a date within four months before the filing of the application for registration; and

(b) Statements of income, shareholders' equity, and material changes in financial position as of the end of the last fiscal year and for any period between the end of the last fiscal year and the date of the last balance sheet;

(2) A projected budget for the timeshare project for two years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) A statement of the selling costs per unit and total sales costs for the project, including sales commissions, advertisement fees, and fees for promotional literature;

(4) A description of the background of the promoters for the previous ten years, including information about the business experience of the promoter and any relevant criminal convictions, civil law suits, or administrative actions related to such promotion during that period;

(5) A statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(6) A statement disclosing when and where the promoter or an affiliate has previously sold timeshares;

(7) A statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(8) Copies of all timeshare instruments; and

(9) Any additional information to describe the risks which the director considers appropriate. [1983 1st ex.s. c 22 § 4.]

64.36.035 Applications for registration, consents to service, affidavits, and permits to market—Authorized signatures required—Corporate shield disclaimer prohibited. (1) Applications, consents to service of process, affidavits, and permits to market shall be signed by the promoter, unless a trustee or person with power of attorney is specifically authorized to make such signatures. If the signature of a person with a power of attorney or trustee is used, the filing of the signature shall include a copy of the authorizations for the signature. No promoter or other person responsible under this chapter shall disclaim responsibility because the signature of a trustee or attorney-in-fact, or other substitute was used.

(2) If the promoter is a corporation or a general partnership, each natural person therein, with a ten percent or greater interest or share in the promoter, shall, in addition to the promoter, be required to sign as required in this section, but may authorize a trustee or a person with power of attorney to make the signatures.

(3) All persons required to use or authorizing the use of their signatures in this section, individually or otherwise, shall be responsible for affidavits, applications, and permits signed, and for compliance with the provisions of this chapter. Individuals whose signatures are required under this sec-

tion shall not disclaim their responsibilities because of any corporate shield. [1987 c 370 § 2.]

64.36.040 Application for registration—When effective. If no stop order is in effect and no proceeding is pending under RCW 64.36.100, a complete registration application becomes effective at 3:00 p.m. Pacific Standard Time on the afternoon of the thirtieth calendar day after the filing of the application or the last amendment or at such earlier time as the director determines. [2002 c 86 § 297; 1983 1st ex.s. c 22 § 5.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.050 Timeshare offering—Duration of registration—Renewal—Amendment—Penalties. (1) A timeshare offering is registered for a period of one year from the effective date of registration unless the director specifies a different period.

(2) Registration of a timeshare offering may be renewed for additional periods of one year each, unless the director by rule specifies a different period, by filing a renewal application with the director no later than thirty days before the expiration of the period in subsection (1) of this section and paying the prescribed fees. A renewal application shall contain any information the director requires to indicate any material changes in the information contained in the original application.

(3) If a material change in the condition of the promoter, the promoter's affiliates, the timeshare project, or the operation or management of the timeshare project occurs during any year, an amendment to the documents filed under RCW 64.36.030 shall be filed, along with the prescribed fees, as soon as reasonably possible and before any further sales occur.

(4) The promoter shall keep the information in the written disclosures reasonably current at all times by amending the registration. If the promoter fails to amend and keep current the written disclosures or the registrations in instances of material change, the director may require compliance under RCW 64.36.100 and assess penalties. [1987 c 370 § 3; 1983 1st ex.s. c 22 § 6.]

64.36.060 Application for registration—Acceptance of disclosure documents—Waiver of information—Additional information. (1) In lieu of the documents required to be filed under RCW 64.36.030, the director may by rule accept:

(a) Any disclosure document filed with agencies of the United States or any other state;

(b) Any disclosure document compiled in accordance with any rule of any agency of the United States or any other state; or

(c) Any documents submitted pursuant to registration of a timeshare offering under chapter 58.19 RCW before August 1, 1983.

(2) The director may by rule waive disclosure of information which the director considers unnecessary for the protection of timeshare purchasers.

(3) The director may by rule require the provision of any other information the director considers necessary to protect timeshare purchasers. [1983 1st ex.s. c 22 § 7.]

64.36.070 Registration as timeshare salesperson required—Exemption. Any individual offering timeshare units or timeshare interest reservations for the individual's own account or for the account of others shall be registered as a timeshare salesperson unless the timeshare offering is exempt from registration under RCW 64.36.020. Registration may be obtained by filing an application with the department of licensing on a form prescribed by the director. The director may require that the applicant demonstrate sufficient knowledge of the timeshare industry and this chapter. A timeshare salesperson who is licensed as a real estate broker or salesperson under chapter 18.85 RCW is exempt from the registration requirement of this section. [2002 c 226 § 1; 1983 1st ex.s. c 22 § 8.]

64.36.081 Fees. (1) Applicants or registrants under this chapter shall pay fees determined by the director as provided in RCW 43.24.086. These fees shall be prepaid and the director may establish fees for the following:

(a) Processing an original application for registration of a timeshare offering, along with an additional fee for each interval registered or in the timeshare program;

(b) Processing consolidations or adding additional inventory into the program;

(c) Reviewing and granting exemptions;

(d) Processing annual or periodic renewals;

(e) Initially and annually processing and administering any required impound, trust, or escrow arrangement;

(f) The review of advertising or promotional materials;

(g) Registering persons in the business of selling promotional programs for use in timeshare offerings or sales presentations;

(h) Registrations and renewal of registrations of salespersons;

(i) The transfer of salespersons' permits to other promoters;

(j) Administering and processing examinations for salespersons;

(k) Conducting site inspections of registered projects and projects for which registration is pending.

(2) The director may establish penalties for registrants in any situation where a registrant has failed to file an amendment to the registration or the disclosure document in a timely manner for material changes, as required in this chapter and rules adopted under this chapter. [1987 c 370 § 4.]

64.36.085 Inspections of projects—Identification of inspectors. (1) The director may require inspections of projects registered under this chapter and promoters and their agents shall cooperate by permitting staff of the department to conduct the inspections.

(2) The director may perform "spot checks" or inspections of sales offices, during tours or sales presentations or normal business hours, for purposes of enforcing this chapter and determining compliance by the operator and salespersons in the sales, advertising, and promotional activities regulated

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under this chapter. These inspections or spot checks may be conducted during or at the time of sales presentations or during the hours during which sales are ordinarily scheduled.

(3) The department employee making the inspections shall show identification upon request. It is a violation of this chapter for the operator or its sales representatives to refuse an inspection or refuse to cooperate with employees of the department conducting the inspection. [1987 c 370 § 5.]

64.36.090 Disciplinary action against a timeshare salesperson's application, registration, or license—Unprofessional conduct. The director may take disciplinary action against a timeshare salesperson's registration or application for registration or a salesperson's license under chapter 18.85 RCW who is selling under this chapter, if the director finds that the applicant or registrant has committed unprofessional conduct as described in RCW 18.235.130. In addition, the director may take disciplinary action if the applicant or registrant:

(1) Has filed an application for registration as a timeshare salesperson or as a licensee under chapter 18.85 RCW which, as of its effective date, is incomplete in any material respect;

(2) Has violated or failed to comply with any provision of this chapter or a predecessor act or any rule or order issued under this chapter or a predecessor act;

(3) Is permanently or temporarily enjoined by any court or administrative order from engaging in or continuing any conduct or practice involving any aspect of the timeshare business;

(4) Has engaged in dishonest or unethical practices in the timeshare, real estate, or camp resort business;

(5) Is insolvent either in the sense that the individual's liabilities exceed his or her assets or in the sense that the individual cannot meet his or her obligations as they mature; or

(6) Has not complied with any condition imposed by the director or is not qualified on the basis of such factors as training, experience, or knowledge of the timeshare business or this chapter. [2002 c 86 § 298; 1987 c 370 § 9; 1983 1st ex.s. c 22 § 9.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.100 Disciplinary action—Unprofessional conduct—Other conduct, acts, or conditions. The director may deny or take disciplinary action against any timeshare application or registration if the director finds that the applicant or registrant has engaged in unprofessional conduct as described in RCW 18.235.130. In addition, the director may deny or take disciplinary action based on the following conduct, acts, or conditions:

(1) The application, written disclosure, or registration is incomplete;

(2) The activities of the promoter include, or would include, activities which are unlawful or in violation of a law, rule, or ordinance in this state or another jurisdiction;

(3) The timeshare offering has worked or tended to work a fraud on purchasers, or would likely be adverse to the interests or the economic or physical welfare of purchasers;

(4) The protections and security arrangements to ensure future quiet enjoyment required under RCW 64.36.130 have not been provided as required by the director for the protection of purchasers; or

(5) The operating budget proposed by the promoter or promoter-controlled association appears inadequate to meet operating costs or funding of reserve accounts or fees for a consultant to determine adequacy have not been paid by the promoter. [2002 c 86 § 299; 1987 c 370 § 10; 1983 1st ex.s. c 22 § 10.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.110 Requirements of transfer of promoter's interest—Notice to purchaser. A promoter shall not sell, lease, assign, or otherwise transfer the promoter's interest in the timeshare program unless the transferee agrees in writing to honor the timeshare purchaser's right to use and occupy the timeshare unit, honor the purchaser's right to cancel, and comply with this chapter. In the event of a transfer, each timeshare purchaser whose contract may be affected shall be given written notice of the transfer when the transfer is made. [1983 1st ex.s. c 22 § 11.]

64.36.120 Good faith required—Provision relieving person from duty prohibited—Out-of-state jurisdiction or venue designation void. (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A timeshare promoter shall not require any timeshare purchaser to agree to a release, assignment, novation, waiver, or any other provision which relieves any person from a duty imposed by this chapter.

(3) Any provision in a timeshare contract or agreement which designates jurisdiction or venue in a forum outside this state is void with respect to any cause of action which is enforceable in this state. [1983 1st ex.s. c 22 § 12.]

64.36.130 Impoundment of proceeds from sales authorized—Establishment of trusts, escrows, etc. (1) The director may by rule require as a condition of registration under this chapter that the proceeds from the sale of the timeshares be impounded until the promoter receives an amount established by the director. The director may by rule determine the conditions of any impoundment required under this section, including the release of moneys for promotional purposes.

(2) The director, in lieu of or in addition to requiring impoundment under subsection (1) of this section, may require that the registrant establish trusts, escrows, or any other similar arrangement that assures the timeshare purchaser quiet enjoyment of the timeshare unit.

(3) Impounding will not be required for those timeshare offerors who are able to convey fee simple title, along with title insurance: PROVIDED, That no other facilities are promised in the offering. [1983 1st ex.s. c 22 § 13.]

64.36.140 Disclosure document—Contents. Any person who offers or sells a timeshare shall provide the prospective purchaser a written disclosure document before the pro-

spective purchaser signs an agreement for the purchase of a timeshare. The timeshare salesperson shall date and sign the disclosure document. The disclosure document shall include:

(1) The official name and address of the promoter, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) The location of the timeshare property;

(3) A general description of the timeshare property and the timeshare units;

(4) A list of all units offered by the promoter in the same project including:

(a) The types, prices, and number of units;

(b) Identification and location of units;

(c) The types and durations of the timeshares;

(d) The maximum number of units that may become part of the timeshare property; and

(e) A statement of the maximum number of timeshares that may be created or a statement that there is no maximum.

(5) A description of any financing offered by the promoter;

(6) A statement of ownership of all properties included in the timeshare offering including any liens or encumbrances affecting the property;

(7) Copies of any agreements or leases to be signed by timeshare purchasers at closing and a copy of the timeshare instrument;

(8) The identity of the managing entity and the manner, if any, whereby the promoter may change the managing entity;

(9) A description of the selling costs both per unit and for the total project at the time the sale is made;

(10) A statement disclosing when and where the promoter or its affiliate has previously sold timeshares;

(11) A description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including:

(a) The current amounts assessed;

(b) The method and formula for changes; and

(c) The formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(12) Any services which the promoter provides or expenses the promoter pays which the promoter expects may become a timeshare expense at any subsequent time;

(13) A statement in bold face type on the cover page of the disclosure document and the cover page of the timeshare purchase agreement that within seven days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare from a promoter or a timeshare salesperson and that the cancellation must be in writing and be either hand delivered or mailed to the promoter or the promoter's agent;

(14) Any restraints on transfer of a timeshare or portion thereof;

(15) A description of the insurance coverage provided for the benefit of timeshare owners;

(16) A full and accurate disclosure of whether the timeshare owners are to be permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare own-

ers of other timeshare units, or both, and a complete description of the program; and

(17) Any additional information the director finds necessary to fully inform prospective timeshare purchasers, including but not limited to information required by RCW 64.36.030. [1983 1st ex.s. c 22 § 3.]

64.36.150 Disclosure document to prospective purchasers—Cancellation and refund—Voidable agreement. The promoter or any person offering timeshare interest shall provide a prospective purchaser with a copy of the disclosure document described in RCW 64.36.140 before the execution of any agreement for the purchase of a timeshare. A purchaser may, for seven days following execution of an agreement to purchase a timeshare, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or the promoter's agent either by mail or hand delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for seven days thereafter. [1983 1st ex.s. c 22 § 14.]

64.36.160 Application of liability provisions. No provision of this chapter imposing any liability applies to any act or omission in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule, form, or order may later be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [1983 1st ex.s. c 22 § 15.]

64.36.170 Noncompliance—Unfair practice under chapter 19.86 RCW. Any failure to comply with this chapter constitutes an unfair and deceptive trade practice under chapter 19.86 RCW. [1983 1st ex.s. c 22 § 16.]

64.36.185 Director's powers—Employment of outside persons for advice on project operating budget—Reimbursement by promoter—Notice and hearing. (1) If it appears that the operating budget of a project fails to adequately provide for funding of reserve accounts, the director may employ outside professionals or consultants to provide advice or to develop an alternative budget. The promoter shall pay or reimburse the department for the costs incurred for such professional opinions.

(2) Before employing consultants under this section, the director shall provide the applicant with written notice and an opportunity for a hearing under chapter 34.05 RCW. [1987 c 370 § 6.]

64.36.195 Assurances of discontinuance—Violation of assurance constitutes unprofessional conduct. The director or persons to whom the director delegates such powers may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Viola-

tion or breaching of an assurance under this section shall constitute unprofessional conduct for which disciplinary action may be taken under RCW 18.235.110 and 18.235.130. [2002 c 86 § 300; 1987 c 370 § 7.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.200 Cease and desist order—Notification—Hearing. (1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Upon the entry of the temporary order to cease and desist, the director shall promptly notify the recipient of the order that it has been entered and the reasons therefor and that if requested in writing by such person within fifteen days after service of the director's notification, the matter will be scheduled for hearing which shall be held within a reasonable time and in accordance with chapter 34.05 RCW. The temporary order shall remain in effect until ten days after the hearing is held.

(3) If a person does not request a hearing, the order shall become final.

(4) Unlicensed timeshare activity is subject to RCW 18.235.150. [2002 c 86 § 301; 1983 1st ex.s. c 22 § 19.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.210 Unlawful acts—Penalties. (1) It is unlawful for any person in connection with the offer, sale, or lease of any timeshare in the state:

(a) To make any untrue or misleading statement of a material fact, or to omit a material fact;

(b) To employ any device, scheme, or artifice to defraud;

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(d) To file, or cause to be filed, with the director any document which contains any untrue or misleading information; or

(e) To violate any rule or order of the director.

(2)(a) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(b) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 290; 1983 1st ex.s. c 22 § 20.]

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

64.36.220 Injunction, restraining order, writ of mandamus—Costs and attorney's fees—Penalties—Appointment of receiver or conservator. (1) The attorney general, in the name of the state or the director, may bring an action to enjoin any person from violating any provision of this chapter. Upon a proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional orders or judgments which may be necessary to restore to any person

any interest in any money or property, real or personal, which may have been acquired by means of any act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(2) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(3) The attorney general, in the name of the state or the director, may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(4) Proceedings for injunctions for unlicensed timeshare activity must be conducted under the provisions of RCW 18.235.150. [2002 c 86 § 302; 1983 1st ex.s. c 22 § 21.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.225 Liability of registrant or applicant for costs of proceedings. A registrant or applicant against whom an administrative or legal proceeding authorized under this chapter has been filed, shall be liable for and reimburse to the state of Washington by payment into the business and professions account created in RCW 43.24.150, all administrative and legal costs, including attorneys' fees, incurred by the department in issuing and conducting administrative or legal proceedings that result in a final legal or administrative determination of any type or degree, in favor of the department or the state of Washington. [2005 c 25 § 4; 1987 c 370 § 8.]

Effective date—2005 c 25: See note following RCW 43.24.150.

64.36.240 Liability for violation of chapter. Any person who offers, sells, or materially aids in such offer or sale of a timeshare in violation of this chapter is liable to the person buying the timeshare who may sue either at law or in equity to recover the consideration paid for the timeshare, together with interest at ten percent per annum from date of payment and costs upon the tender of the timeshare, or for damages if the person no longer owns the timeshare. [1983 1st ex.s. c 22 § 23.]

64.36.250 Appointment of director to receive service—Requirements for effective service. Every applicant for registration under this chapter shall file with the director, in a form the director prescribes by rule, an irrevocable consent appointing the director to be the attorney of the applicant to receive service of any lawful process in any civil suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order issued under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless: (1) The plaintiff, who may be the director in a suit, action, or proceeding instituted by the director, forthwith sends notice of the service and

a copy of the process by certified mail to the defendant or respondent at the last address of the respondent or defendant on file with the director; and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1983 1st ex.s. c 22 § 24.]

64.36.260 Certain acts not constituting findings or approval by the director—Certain representations unlawful. Neither the fact that an application for registration nor a disclosure document under RCW 64.36.140 has been filed, nor the fact that a timeshare offering is effectively registered, constitutes a finding by the director that any document filed under this chapter is true, complete, and not misleading, nor does either fact mean that the director has determined in any way the merits of, qualifications of, or recommended or given approval to any person, timeshare, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser any representation inconsistent with this section. [1983 1st ex.s. c 22 § 25.]

64.36.270 Rules, forms, and orders—Interpretive opinions. The director may make, amend, and repeal rules, forms, and orders when necessary to carry out this chapter. The director may honor requests for interpretive opinions. [1983 1st ex.s. c 22 § 26.]

64.36.290 Application of chapters 21.20, 58.19, and 19.105 RCW—Exemption of certain camping and outdoor recreation enterprises. (1) All timeshares registered under this chapter are exempt from chapters 21.20, 58.19, and 19.105 RCW.

(2) This chapter shall not apply to any enterprise that has as its primary purpose camping and outdoor recreation and camping sites designed and promoted for the purpose of purchasers locating a trailer, tent, tent trailer, pick-up camper, or other similar device used for land-based portable housing. [1987 c 370 § 11; 1983 1st ex.s. c 22 § 28.]

64.36.310 Copy of advertisement to be filed with director before publication—Application of chapter limited. (1) No person may publish any advertisement in this state offering a timeshare which is subject to the registration requirements of RCW 64.36.020 unless a true copy of the advertisement has been filed in the office of the director at least seven days before publication or a shorter period which the director by rule may establish. The right to subsequently publish the advertisement is subject to the approval of the director within that seven day period.

(2) Nothing in this chapter applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter. This subsection does not apply, however, to any publication devoted primarily to the soliciting of resale timeshare offerings and where the publisher or owner of the publication collects advance fees for the purpose of locating or finding potential resale buyers or sellers. [1987 c 370 § 12; 1983 1st ex.s. c 22 § 31.]

64.36.320 Free gifts, awards, and prizes—Security arrangement required of promisor—Other requirements—Private causes of action. (1) No person, including a promoter, may advertise, sell, contract for, solicit, arrange, or promise a free gift, an award, a prize, or other item of value in this state as a condition for attending a sales presentation, touring a facility, or performing other activities in connection with the offer or sale of a timeshare under this chapter, without first providing the director with a bond, letter of credit, cash depository, or other security arrangement that will assure performance by the promisor and delivery of the promised gift, award, sweepstakes, prize, or other item of value.

(2) Promoters under this chapter shall be strictly liable for delivering promised gifts, prizes, awards, or other items of value offered or advertised in connection with the marketing of timeshares.

(3) Persons promised but not receiving gifts, prizes, awards, or other items of consideration covered under this section, shall be entitled in any cause of action in the courts of this state in which their causes prevail, to be awarded treble the stated value of the gifts, prizes, or awards, court costs, and reasonable attorney fees.

(4) The director may require that any fees or funds of any description collected from persons in advance, in connection with delivery by the promisor of gifts, prizes, awards, or other items of value covered under this section, be placed in a depository in this state, where they shall remain until performance by the promisor.

(5) The director may require commercial promotional programs to be registered and require the provision of whatever information, including financial information, the department deems necessary for protection of purchasers.

(6) Persons offering commercial promotional programs shall sign and present to the department a consent to service of process, in the manner required of promoters in this chapter.

(7) Registrants or their agents or other persons shall not take possession of promotional materials covered under this section and RCW 64.36.310, from recipients who have received the materials for attending a sales presentation or touring a project, unless the permission of the recipient is received and the recipient is provided with an accurate signed copy describing such promotional materials. The department shall adopt rules enforcing this subsection.

(8) Chapter 19.170 RCW applies to free gifts, awards, prizes, or other items of value regulated under this chapter. [1991 c 227 § 10; 1987 c 370 § 13.]

Severability—1991 c 227: See RCW 19.170.900.

64.36.330 Membership lists available for members and owners—Conditions—Exclusion of members' names from list—Commercial use of list. (1) Concerning any timeshare offered or sited in this state, it is unlawful and a violation of this chapter and chapter 19.86 RCW for any person, developer, promoter, operator, or other person in control of timeshares or the board of directors or appropriate officer of timeshares with such responsibilities, to fail to provide a member/owner of a timeshare with a membership list, including names, addresses, and lot, unit, or interval owned, under the following circumstances:

(a) Upon demand or by rule or order of the director of the department, for whatever purpose deemed necessary to administer this chapter;

(b) Upon written request sent by certified mail being made by a member of the timeshare, to a declarant, promoter, or other person who has established and is yet in control of the timeshare;

(c) Upon written request sent by certified mail of a member of a timeshare to the board of directors or appropriate officer of the timeshare or an affiliated timeshare.

(2) The board of directors of the timeshare may require that any applicant for a membership list, other than the department, pay reasonable costs for providing the list and an affidavit that the applicant will not use and will be responsible for any use of the list for commercial purposes.

(3) Upon request, a member's name shall be excluded from a membership list available to any person other than the director of licensing for purposes of administering statutes that are its responsibility. Such persons shall make their request for exclusion in writing by certified mail to the board of directors or the appropriate officer or director of the timeshare.

(4) It is unlawful for any person to use a membership list obtained under this section or otherwise, for commercial purposes, unless written permission to do so has been received from the board of directors or appropriate officer of the timeshare. Wilful use of a membership list for commercial purposes without such permission shall subject the violator to damages, costs, and reasonable attorneys' fees in any legal proceedings instituted by a member in which the member prevails alleging violation of this section. Members may petition the courts of this state for orders restraining such commercial use. [1987 c 370 § 14.]

64.36.340 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 304.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.900 Short title. This chapter may be known and cited as "The Timeshare Act." [1983 1st ex.s. c 22 § 32.]

64.36.901 Severability—1983 1st ex.s. c 22. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 22 § 35.]

Chapter 64.38 RCW

HOMEOWNERS' ASSOCIATIONS

Sections

64.38.005	Intent.
64.38.010	Definitions.
64.38.015	Association membership.
64.38.020	Association powers.

- 64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board.
- 64.38.028 Removal of discriminatory provisions in governing documents—Procedure.
- 64.38.030 Association bylaws.
- 64.38.033 Flag of the United States—Outdoor display—Governing documents.
- 64.38.034 Political yard signs—Governing documents.
- 64.38.035 Association meetings—Notice—Board of directors.
- 64.38.040 Quorum for meeting.
- 64.38.045 Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts.
- 64.38.050 Violation—Remedy—Attorneys' fees.

Speed enforcement: RCW 46.61.419.

64.38.005 Intent. The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners' associations. [1995 c 283 § 1.]

64.38.010 Definitions. For purposes of this chapter:

(1) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(2) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes. [1995 c 283 § 2.]

64.38.015 Association membership. The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped. [1995 c 283 § 3.]

64.38.020 Association powers. Unless otherwise provided in the governing documents, an association may:

- (1) Adopt and amend bylaws, rules, and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;

(3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common areas;

(7) Cause additional improvements to be made as a part of the common areas;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;

(9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;

(10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;

(11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;

(12) Exercise any other powers conferred by the bylaws;

(13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(14) Exercise any other powers necessary and proper for the governance and operation of the association. [1995 c 283 § 4.]

Speed enforcement: RCW 46.61.419.

64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board. (1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the

votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause. [1995 c 283 § 5.]

64.38.028 Removal of discriminatory provisions in governing documents—Procedure. (1) The association, acting through a simple majority vote of its board, may amend the association's governing documents for the purpose of removing:

(a) Every covenant, condition, or restriction that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service animal because they are blind or deaf or have a physical disability; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin; families with children status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or who is blind or deaf.

(2) Upon the board's receipt of a written request by a member of the association that the board exercise its amending authority granted under subsection (1) of this section, the board must, within a reasonable time, amend the governing documents, as provided under this section.

(3) Amendments under subsection (1) of this section may be executed by any board officer.

(4) Amendments made under subsection (1) of this section must be recorded in the public records and state the following:

"This amendment strikes from these covenants, conditions, and restrictions those provisions that are void under RCW 49.60.224. Specifically, this amendment strikes:

(a) Those provisions that forbid or restrict use, occupancy, conveyance, encumbrance, or lease of real property to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service animal because they are blind or deaf or have a physical disability; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use

or occupancy of real property on the basis of race, creed, color, sex, national origin; families with children status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or who is blind or deaf."

(5) Board action under this section does not require the vote or approval of the owners.

(6) As provided in RCW 49.60.227, any owner, occupant, or tenant in the association or board may bring an action in superior court to have any provision of a written instrument that is void pursuant to RCW 49.60.224 stricken from the public records.

(7) Nothing in this section prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this section authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(8) Except as otherwise provided in subsection (2) of this section, (a) nothing in this section creates a duty on the part of owners, occupants, tenants, associations, or boards to amend the governing documents as provided in this section, or to bring an action as authorized under this section and RCW 49.60.227; and (b) an owner, occupant, tenant, association, or board is not liable for failing to amend the governing documents or to pursue an action in court as authorized under this section and RCW 49.60.227. [2006 c 58 § 2.]

Finding—Intent—2006 c 58: "The legislature finds that some homeowners' associations have governing documents that contain discriminatory covenants, conditions, or restrictions that are void and unenforceable under both the federal fair housing amendments act of 1988 and RCW 49.60.224. The continued existence of these discriminatory covenants, conditions, or restrictions is contrary to public policy and repugnant to many property owners. It is the intent of chapter 58, Laws of 2006 to allow homeowners' associations to remove all remnants of discrimination from their governing documents." [2006 c 58 § 1.]

64.38.030 Association bylaws. Unless provided for in the governing documents, the bylaws of the association shall provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(2) Election by the board of directors of the officers of the association as the bylaws specify;

(3) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(4) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;

(5) The method of amending the bylaws; and

(6) Subject to the provisions of the governing documents, any other matters the association deems necessary and appropriate. [1995 c 283 § 6.]

64.38.033 Flag of the United States—Outdoor display—Governing documents. (1) The governing documents may not prohibit the outdoor display of the flag of the United States by an owner or resident on the owner's or resident's property if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. Sec. 1 et seq. The governing documents may include reasonable rules and regulations, consistent with 4 U.S.C. Sec. 1 et seq., regarding the placement and manner of display of the flag of the United States.

(2) The governing documents may not prohibit the installation of a flagpole for the display of the flag of the United States. The governing documents may include reasonable rules and regulations regarding the location and the size of the flagpole.

(3) For purposes of this section, "flag of the United States" means the flag of the United States as defined in federal flag display law, 4 U.S.C. Sec. 1 et seq., that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint, roofing, siding, paving materials, flora, or balloons, or of any similar building, landscaping, or decorative component.

(4) The provisions of this section shall be construed to apply retroactively to any governing documents in effect on June 10, 2004. Any provision in a governing document in effect on June 10, 2004, that is inconsistent with this section shall be void and unenforceable. [2004 c 169 § 1.]

64.38.034 Political yard signs—Governing documents. (1) The governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs.

(2) This section applies retroactively to any governing documents in effect on July 24, 2005. Any provision in a governing document in effect on July 24, 2005, that is inconsistent with this section is void and unenforceable. [2005 c 179 § 1.]

64.38.035 Association meetings—Notice—Board of directors. (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. Not less than fourteen nor more than sixty days in advance of any meeting, the secretary or other officers specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(2) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall not require the disclosure of information in violation of law or which is otherwise exempt from disclosure. [1995 c 283 § 7.]

64.38.040 Quorum for meeting. Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting. [1995 c 283 § 8.]

64.38.045 Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts. (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable

charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. [1995 c 283 § 9.]

64.38.050 Violation—Remedy—Attorneys' fees.

Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party. [1995 c 283 § 10.]

Chapter 64.40 RCW

PROPERTY RIGHTS—DAMAGES FROM GOVERNMENTAL ACTIONS

Sections

64.40.010	Definitions—Defense in action for damages.
64.40.020	Applicant for permit—Actions for damages from governmental actions.
64.40.030	Commencement of action—Time limitation.
64.40.040	Remedies cumulative.
64.40.900	Severability—1982 c 232.

64.40.010 Definitions—Defense in action for damages. As used in this chapter, the terms in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Agency" means the state of Washington, any of its political subdivisions, including any city, town, or county, and any other public body exercising regulatory authority or control over the use of real property in the state.

(2) "Permit" means any governmental approval required by law before an owner of a property interest may improve, sell, transfer, or otherwise put real property to use.

(3) "Property interest" means any interest or right in real property in the state.

(4) "Damages" means reasonable expenses and losses, other than speculative losses or profits, incurred between the time a cause of action arises and the time a holder of an interest in real property is granted relief as provided in RCW 64.40.020. Damages must be caused by an act, necessarily incurred, and actually suffered, realized, or expended, but are not based upon diminution in value of or damage to real property, or litigation expenses.

(5) "Regulation" means any ordinance, resolution, or other rule or regulation adopted pursuant to the authority provided by state law, which imposes or alters restrictions, limitations, or conditions on the use of real property.

(6) "Act" means a final decision by an agency which places requirements, limitations, or conditions upon the use

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of real property in excess of those allowed by applicable regulations in effect on the date an application for a permit is filed. "Act" also means the failure of an agency to act within time limits established by law in response to a property owner's application for a permit: PROVIDED, That there is no "act" within the meaning of this section when the owner of a property interest agrees in writing to extensions of time, or to the conditions or limitations imposed upon an application for a permit. "Act" shall not include lawful decisions of an agency which are designed to prevent a condition which would constitute a threat to the health, safety, welfare, or morals of residents in the area.

In any action brought pursuant to this chapter, a defense is available to a political subdivision of this state that its act was mandated by a change in statute or state rule or regulation and that such a change became effective subsequent to the filing of an application for a permit. [1982 c 232 § 1.]

64.40.020 Applicant for permit—Actions for damages from governmental actions.

(1) Owners of a property interest who have filed an application for a permit have an action for damages to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or relief from a failure to act within time limits established by law: PROVIDED, That the action is unlawful or in excess of lawful authority only if the final decision of the agency was made with knowledge of its unlawfulness or that it was in excess of lawful authority, or it should reasonably have been known to have been unlawful or in excess of lawful authority.

(2) The prevailing party in an action brought pursuant to this chapter may be entitled to reasonable costs and attorney's fees.

(3) No cause of action is created for relief from unintentional procedural or ministerial errors of an agency.

(4) Invalidation of any regulation in effect prior to the date an application for a permit is filed with the agency shall not constitute a cause of action under this chapter. [1982 c 232 § 2.]

Findings—Recommendations—Reports encouraged—2007 c 231: See note following RCW 43.155.070.

64.40.030 Commencement of action—Time limitation.

Any action to assert claims under the provisions of this chapter shall be commenced only within thirty days after all administrative remedies have been exhausted. [1982 c 232 § 3.]

64.40.040 Remedies cumulative. The remedies provided by this chapter are in addition to any other remedies provided by law. [1982 c 232 § 4.]

64.40.900 Severability—1982 c 232. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 232 § 5.]

Chapter 64.44 RCW

CONTAMINATED PROPERTIES

Sections

64.44.005	Legislative finding.
64.44.010	Definitions.
64.44.020	Reporting—Warning—Notice—Duties of local health officer.
64.44.030	Order declaring property unfit and prohibiting use—Notice—Hearing—Emergency order.
64.44.040	Orders declaring property unfit and prohibiting use—City, county action—Entrance upon property prohibited.
64.44.045	Vehicle and vessel titles—Notice of contamination or decontamination—Penalty.
64.44.050	Decontamination, demolition, or disposal by owner—Requirements and procedure—Costs—Decontamination timeline.
64.44.060	Certification of contractors, supervisors, or workers—Denial, suspension, revocation, or restrictions on certificate—Penalties—Fees—Decontamination account.
64.44.070	Rules and standards—Chapter administration, property decontamination, independent third party sampling.
64.44.075	Annual evaluation and inspection of decontamination projects.
64.44.080	Civil liability—Immunity.
64.44.900	Application—Other remedies.
64.44.901	Severability—1990 c 213.

64.44.005 Legislative finding. The legislature finds that some properties are being contaminated by hazardous chemicals used in unsafe or illegal ways in the manufacture of illegal drugs. Innocent members of the public may be harmed by the residue left by these chemicals when the properties are subsequently rented or sold without having been decontaminated. [1990 c 213 § 1.]

64.44.010 Definitions. The words and phrases defined in this section shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes of contaminated property as required by this chapter who is certified by the department as provided for in RCW 64.44.060.

(2) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."

(3) "Department" means the department of health.

(4) "Hazardous chemicals" means the following substances associated with the illegal manufacture of controlled substances: (a) Hazardous substances as defined in RCW 70.105D.020; (b) precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans; and (c) the controlled substance or substances being manufactured, as defined in RCW 69.50.101.

(5) "Officer" means a local health officer authorized under chapters 70.05, 70.08, and 70.46 RCW.

(6) "Property" means any real or personal property, or segregable part thereof, that is involved in or affected by the unauthorized manufacture, distribution, or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, boats, motor vehicles, trailers, manufactured housing, any shop, booth, garden, or storage shed, and all

contents of the items referenced in this subsection. [2006 c 339 § 201; 1999 c 292 § 2; 1990 c 213 § 2.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: "The legislature finds that the contamination of properties used for illegal drug manufacturing poses a threat to public health. The toxic chemicals left behind by the illegal drug manufacturing must be cleaned up to prevent harm to subsequent occupants of the properties. It is the intent of the legislature that properties are decontaminated in a manner that is efficient, prompt, and that makes them safe to reoccupy." [1999 c 292 § 1.]

Effective date—1990 c 213 §§ 2, 12: "Sections 2 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety or support of the state government and its public institutions, and shall take effect on the effective date of the 1989-91 supplemental omnibus appropriations act (SSB 6407) [April 23, 1990] if specific funding for this act is provided therein." [1990 c 213 § 17.]

64.44.020 Reporting—Warning—Notice—Duties of local health officer. Whenever a law enforcement agency becomes aware that property has been contaminated by hazardous chemicals, that agency shall report the contamination to the local health officer. The local health officer shall cause a posting of a written warning on the premises within one working day of notification of the contamination and shall inspect the property within fourteen days after receiving the notice of contamination. The warning posting for any property that includes a hotel or motel holding a current license under RCW 70.62.220, shall be limited to inside the room or on the door of the contaminated room and no written warning posting shall be posted in the lobby of the facility. The warning shall inform the potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe. If a property owner believes that a tenant has contaminated property that was being leased or rented, and the property is vacated or abandoned, then the property owner shall contact the local health officer about the possible contamination. Local health officers or boards may charge property owners reasonable fees for inspections of suspected contaminated property requested by property owners.

A local health officer may enter, inspect, and survey at reasonable times any properties for which there are reasonable grounds to believe that the property has become contaminated. If the property is contaminated, the local health officer shall post a written notice declaring that the officer intends to issue an order prohibiting use of the property as long as the property is contaminated.

If access to the property is denied, a local health officer in consultation with law enforcement may seek a warrant for the purpose of conducting administrative inspections. A superior, district, or municipal court within the jurisdiction of the property may, based upon probable cause that the property is contaminated, issue warrants for the purpose of conducting administrative inspections.

Local health officers must report all cases of contaminated property to the state department of health. The department may make the list of contaminated properties available to health associations, landlord and realtor organizations, prosecutors, and other interested groups. The department shall promptly update the list of contaminated properties to remove those which have been decontaminated according to provisions of this chapter.

The local health officer may determine when the services of an authorized contractor are necessary. [2006 c 339 § 202; 1999 c 292 § 3; 1990 c 213 § 3.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

64.44.030 Order declaring property unfit and prohibiting use—Notice—Hearing—Emergency order. (1) If after the inspection of the property, the local health officer finds that it is contaminated, then the local health officer shall issue an order declaring the property unfit and prohibiting its use. The local health officer shall cause the order to be served either personally or by certified mail, with return receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located. The local health officer shall also cause the order to be posted in a conspicuous place on the property. If the whereabouts of such persons is unknown and the same cannot be ascertained by the local health officer in the exercise of reasonable diligence, and the health officer makes an affidavit to that effect, then the serving of the order upon such persons may be made either by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located or at the address known to the county assessor, and the order shall be posted conspicuously at the residence. A copy of the order shall also be mailed, addressed to each person or party having a recorded right, title, estate, lien, or interest in the property. The order shall contain a notice that a hearing before the local health board or officer shall be held upon the request of a person required to be notified of the order under this section. The request for a hearing must be made within ten days of serving the order. The hearing shall then be held within not less than twenty days nor more than thirty days after the serving of the order. The officer shall prohibit use as long as the property is found to be contaminated. A copy of the order shall also be filed with the auditor of the county in which the property is located, where the order pertains to real property, and such filing of the complaint or order shall have the same force and effect as other *lis pendens* notices provided by law. In any hearing concerning whether property is fit for use, the property owner has the burden of showing that the property is decontaminated or fit for use. The owner or any person having an interest in the property may file an appeal on any order issued by the local health board or officer within thirty days from the date of service of the order with the appeals commission established pursuant to RCW 35.80.030. All proceedings before the appeals commission, including any subsequent appeals to superior court, shall be governed by the procedures established in chapter 35.80 RCW.

(2) If the local health officer determines immediate action is necessary to protect public health, safety, or the environment, the officer may issue or cause to be issued an emergency order, and any person to whom such an order is directed shall comply immediately. Emergency orders issued pursuant to this section shall expire no later than seventy-two hours after issuance and shall not impair the health officer

from seeking an order under subsection (1) of this section. [2006 c 339 § 203; 1999 c 292 § 4; 1990 c 213 § 4.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

64.44.040 Orders declaring property unfit and prohibiting use—City, county action—Entrance upon property prohibited. (1) Upon issuance of an order declaring property unfit and prohibiting its use, the city or county in which the contaminated property is located may take action to prohibit use, occupancy, or removal of such property; condemn, decontaminate, or demolish the property; or require that the property be vacated or the contents removed from the property. The city or county may use an authorized contractor if property is demolished, decontaminated, or removed under this section. The city, county, or contractor shall comply with all orders of the health officer during these processes. No city or county may condemn, decontaminate, or demolish property pursuant to this section until all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, but may prohibit use, occupancy, or removal of contaminated property pending appeal of the order.

(2)(a) It is unlawful for any person to enter upon any property, or to remove any property, that has been found unfit for use by a local health officer pursuant to RCW 64.44.030.

(b) This subsection does not apply to: (i) Health officials, law enforcement officials, or other government agents performing their official duties; (ii) authorized contractors or owners performing decontamination pursuant to authorization by the local health officer; and (iii) any person acting with permission of a local health officer, or of a superior court or hearing examiner following an appeal of a decision of the local health officer.

(c) Any person who violates this subsection is guilty of a misdemeanor.

(3) No provision of this section may be construed to limit the ability of the local health officer to permit occupants or owners of the property at issue to remove uncontaminated personal property from the premises. [2006 c 339 § 204; 1999 c 292 § 5; 1990 c 213 § 5.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

64.44.045 Vehicle and vessel titles—Notice of contamination or decontamination—Penalty. (1) The Washington state department of licensing shall take action to place notification on the title of any motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.010, that the vehicle or vessel has been declared unfit and prohibited from use by order of the local health officer under this chapter. When satisfactory decontamination has been completed and the contaminated property has been retested according to the written work plan approved by the local health officer, a release for reuse document shall be issued by the local health officer, and the department of licensing shall place notification on the title of that vehicle or vessel as having been decontaminated and released for reuse.

(2)(a) A person is guilty of a gross misdemeanor if he or she advertises for sale or sells a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.010, that has been declared unfit and prohibited from use by the local health officer under this chapter when:

(i) The person has knowledge that the local health officer has issued an order declaring the vehicle or vessel unfit and prohibiting its use; or

(ii) A notification has been placed on the title under subsection (1) of this section that the vehicle or vessel has been declared unfit and prohibited from use.

(b) A person may advertise or sell a vehicle or vessel when a release for reuse document has been issued by the local health officer under this chapter or a notification has been placed on the title under subsection (1) of this section that the vehicle or vessel has been decontaminated and released for reuse. [2008 c 201 § 2.]

64.44.050 Decontamination, demolition, or disposal by owner—Requirements and procedure—Costs—Decontamination timeline.

(1) An owner of contaminated property who desires to have the property decontaminated, demolished, or disposed of shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor and property owner shall prepare and submit a written work plan for decontamination, demolition, or disposal to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination, demolition, or disposal is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A release for reuse document shall be recorded in the real property records indicating the property has been decontaminated, demolished, or disposed of in accordance with rules of the state department of health. The property owner is responsible for: (a) The costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals; and (b) the costs of the property's decontamination, demolition, and disposal expenses, as well as costs incurred by the local health officer resulting from the enforcement of this chapter.

(2)(a) In a case where the contaminated property is a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.010, and the local health officer has issued an order declaring the property unfit and prohibiting its use, the city or county in which the property is located shall take action to prohibit use, occupancy, or removal, and shall require demolition, disposal, or decontamination of the property. The city, county, or local law enforcement agency may impound the vehicle or vessel to enforce this chapter.

(b) The property owner shall have the property demolished, disposed of, or decontaminated by an authorized contractor, or under a written work plan approved by the local health officer, within thirty days of receiving the order declaring the property unfit and prohibited from use. After all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, if the property owner has not demolished, disposed of, or decon-

taminated the property using an authorized contractor, or under a written work plan approved by the local health officer within thirty days, then the local health officer or the local law enforcement agency may demolish, dispose of, or decontaminate the property. The property owner is responsible for the costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, except as otherwise provided under this subsection.

(c) The legal owner of a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.010 whose sole basis of ownership is a bona fide security interest is responsible for costs under this subsection if the legal owner had knowledge of or consented to any act or omission that caused contamination of the vehicle or vessel.

(d) If the vehicle or vessel has been stolen and the property owner neither had knowledge of nor consented to any act or omission that contributed to the theft and subsequent contamination of the vehicle or vessel, the owner is not responsible for costs under this subsection. However, if the registered owner is insured, the registered owner shall, within fifteen calendar days of receiving an order declaring the property unfit and prohibiting its use, submit a claim to his or her insurer for reimbursement of costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, and shall provide proof of claim to the local health officer or the local law enforcement agency.

(e) If the property owner has not acted to demolish, dispose of, or decontaminate as set forth in this subsection regardless of responsibility for costs, and the local health officer or local law enforcement agency has taken responsibility for demolition, disposal, or decontamination, including all associated costs, then all rights, title, and interest in the property shall be deemed forfeited to the local health jurisdiction or the local law enforcement agency.

(f) This subsection may not be construed to limit the authority of a city, county, local law enforcement agency, or local health officer to take action under this chapter to require the owner of the real property upon which the contaminated vehicle or vessel is located to comply with the requirements of this chapter, including provisions for the right of notice and opportunity to appeal as provided in RCW 64.44.030.

(3) Except as provided in subsection (2) of this section, the local health officer has thirty days from the issuance of an order declaring a property unfit and prohibiting its use to establish a reasonable timeline for decontamination. The department of health shall establish the factors to be considered by the local health officer in establishing the appropriate amount of time.

The local health officer shall notify the property owner of the proposed time frame by United States mail to the last known address. Notice shall be postmarked no later than the thirtieth day from the issuance of the order. The property owner may request a modification of the time frame by submitting a letter identifying the circumstances which justify such an extension to the local health officer within thirty-five days of the date of the postmark on the notification regardless

of when received. [2008 c 201 § 1; 2006 c 339 § 205; 1999 c 292 § 6; 1990 c 213 § 6.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

64.44.060 Certification of contractors, supervisors, or workers—Denial, suspension, revocation, or restrictions on certificate—Penalties—Fees—Decontamination account. (1) A contractor, supervisor, or worker may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors, supervisors, and workers by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors, supervisors, and workers on the essential elements in assessing property used as an illegal controlled substances manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper decontamination, demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, and after a background check, the contractor, supervisor, or worker shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, revoke, or place restrictions on a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, revoked, or have restrictions placed on it on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;

(b) Failing to perform decontamination, demolition, or disposal work using department of health certified decontamination personnel;

(c) Failing to file a work plan;

(d) Failing to perform work pursuant to the work plan;

(e) Failing to perform work that meets the requirements of the department and the requirements of the local health officers;

(f) Failing to properly dispose of contaminated property;

(g) Committing fraud or misrepresentation in: (i) Applying for or obtaining a certification, recertification, or reinstatement; (ii) seeking approval of a work plan; and (iii) documenting completion of work to the department or local health officer;

(h) Failing the evaluation and inspection of decontamination projects pursuant to RCW 64.44.075; or

(i) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(5) A contractor, supervisor, or worker who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

(6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for: The issuance and renewal of certificates, conducting background checks of applicants, the administration of examinations, and the review of training courses.

(7) The decontamination account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in this account. Moneys in the account may only be spent after appropriation for costs incurred by the department in the administration and enforcement of this chapter. [2006 c 339 § 206; 1999 c 292 § 7; 1997 c 58 § 878; 1990 c 213 § 7.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

64.44.070 Rules and standards—Chapter administration, property decontamination, independent third party sampling. (1) The state board of health shall promulgate rules and standards for carrying out the provisions in this chapter in accordance with chapter 34.05 RCW, the administrative procedure act. The local board of health and the local health officer are authorized to exercise such powers as may be necessary to carry out this chapter. The department shall provide technical assistance to local health boards and health officers to carry out their duties under this chapter.

(2) The department shall adopt rules for decontamination of a property used as a laboratory for the production of controlled substances and methods for the testing of porous and nonporous surfaces, groundwater, surface water, soil, and septic tanks for contamination. The rules shall establish decontamination standards for hazardous chemicals, including but not limited to methamphetamine, lead, mercury, and total volatile organic compounds.

(3) The department shall adopt rules regarding independent third party sampling including those pertaining to:

(a) Verification of possible property contamination due to the illegal manufacture of controlled substances;

- (b) Verification of satisfactory decontamination of property deemed contaminated and unfit for use;
- (c) Certification of independent third party samplers;
- (d) Qualifications and performance standards for independent third party samplers;
- (e) Administration of background checks for third party sampler applicants; and
- (f) The denial, suspension, or revocation of independent third party sampler certification.

(4) For the purposes of this section, an independent third party sampler is a person who is not an employee, agent, representative, partner, joint venturer, shareholder, or parent or subsidiary company of the authorized contractor, the authorized contractor's company, or the property owner. [2006 c 339 § 207; 1999 c 292 § 8; 1990 c 213 § 9.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

64.44.075 Annual evaluation and inspection of decontamination projects. The department may evaluate annually a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work, using the services of an independent environmental contractor or state or local agency. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension, pursuant to RCW 64.44.060 (4) and (5); and the contractor is prohibited from performing additional work until deficiencies have been corrected. [2006 c 339 § 208.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

64.44.080 Civil liability—Immunity. Members of the state board of health and local boards of health, local health officers, and employees of the department of health and local health departments are immune from civil liability arising out of the performance of their duties under this chapter, unless such performance constitutes gross negligence or intentional misconduct. [1990 c 213 § 10.]

64.44.900 Application—Other remedies. This chapter shall not limit state or local government authority to act under any other statute, including chapter 35.80 or 7.48 RCW. [1990 c 213 § 11.]

64.44.901 Severability—1990 c 213. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 213 § 14.]

Chapter 64.50 RCW

CONSTRUCTION DEFECT CLAIMS

Sections

64.50.005	Finding—Intent.
64.50.010	Definitions.
64.50.020	Construction defect action—Notice of claim—Response—Procedure for negotiations—Commencing an action.

64.50.030	List of known construction defects—Requirements—Time limits.
64.50.040	Construction defect action brought by a board of directors—Notice.
64.50.050	Construction professional right to offer to cure defects—Notice to homeowner.
64.50.060	Interpretation of chapter regarding certain relationships and rights.

64.50.005 Finding—Intent. The legislature finds, declares, and determines that limited changes in the law are necessary and appropriate concerning actions claiming damages, indemnity, or contribution in connection with alleged construction defects. It is the intent of the legislature that this chapter apply to these types of civil actions while preserving adequate rights and remedies for property owners who bring and maintain such actions. [2002 c 323 § 1.]

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

(1) "Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction of a residence or in the substantial remodel of a residence. "Action" does not include any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means an association, master association, or subassociation as defined and provided for in RCW 64.34.020(4), 64.34.276, 64.34.278, and 64.38.010(1).

(3) "Claimant" means a homeowner or association who asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodel of a residence.

(4) "Construction professional" means an architect, builder, builder vendor, contractor, subcontractor, engineer, or inspector, including, but not limited to, a dealer as defined in *RCW 64.34.020(12) and a declarant as defined in *RCW 64.34.020(13), performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(5) "Homeowner" means: (a) Any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the construction, sale, or construction and sale of a residence; and (b) an "association" as defined in this section. "Homeowner" includes, but is not limited to, a subsequent purchaser of a residence from any homeowner.

(6) "Residence" means a single-family house, duplex, triplex, quadraplex, or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system, and shall include common elements as defined in RCW 64.34.020(6) and common areas as defined in RCW 64.38.010(4).

(7) "Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.

(8) "Substantial remodel" means a remodel of a residence, for which the total cost exceeds one-half of the assessed value of the residence for property tax purposes at the time the contract for the remodel work was made. [2002 c 323 § 2.]

*Reviser's note: RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsections (12) and (13) to subsections (13) and (14), respectively.

64.50.020 Construction defect action—Notice of claim—Response—Procedure for negotiations—Commencing an action. (1) In every construction defect action brought against a construction professional, the claimant shall, no later than forty-five days before filing an action, serve written notice of claim on the construction professional. The notice of claim shall state that the claimant asserts a construction defect claim against the construction professional and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect.

(2) Within twenty-one days after service of the notice of claim, the construction professional shall serve a written response on the claimant by registered mail or personal service. The written response shall:

(a) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) Offer to compromise and settle the claim by monetary payment without inspection. A construction professional's offer under this subsection (2)(b) to compromise and settle a homeowner's claim may include, but is not limited to, an express offer to purchase the claimant's residence that is the subject of the claim, and to pay the claimant's reasonable relocation costs; or

(c) State that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(3)(a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2) of this section, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at anytime thereafter the construction professional may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the construction professional for the construction defect claim described in the notice of claim.

(4)(a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2)(a) of this section, the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.

(b) Within fourteen days following completion of the inspection, the construction professional shall serve on the claimant:

(i) A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of such construction;

(ii) A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or

(iii) A written statement that the construction professional will not proceed further to remedy the defect.

(c) If the construction professional does not proceed further to remedy the construction defect within the agreed timetable, or if the construction professional fails to comply with the provisions of (b) of this subsection, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the construction professional pursuant to (b)(i) or (ii) of this subsection to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to (b)(i) or (ii) of this subsection, then at anytime thereafter the construction professional may terminate the offer by serving written notice to the claimant.

(5)(a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) of this section shall do so by serving the construction professional with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including, but not limited to, repair of additional defects.

(6) Any action commenced by a claimant prior to compliance with the requirements of this section shall be subject to dismissal without prejudice, and may not be recommenced

until the claimant has complied with the requirements of this section.

(7) Nothing in this section may be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform by the timetable agreed upon pursuant to subsection (2)(a) or (5) of this section.

(8) Prior to commencing any action alleging a construction defect, or after the dismissal of any action without prejudice pursuant to subsection (6) of this section, the claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim, and must otherwise comply with the requirements of this section for the additional claims. The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose. Claims for defects discovered after the commencement or recommencement of an action may be added to such action only after providing notice to the construction professional of the defect and allowing for response under subsection (2) of this section. [2002 c 323 § 3.]

64.50.030 List of known construction defects—Requirements—Time limits. (1) In every action brought against a construction professional, the claimant, including a construction professional asserting a claim against another construction professional, shall file with the court and serve on the defendant a list of known construction defects in accordance with this section.

(2) The list of known construction defects shall contain a description of the construction that the claimant alleges to be defective. The list of known construction defects shall be filed with the court and served on the defendant within thirty days after the commencement of the action or within such longer period as the court in its discretion may allow.

(3) The list of known construction defects may be amended by the claimant to identify additional construction defects as they become known to the claimant.

(4) The list of known construction defects must specify, to the extent known to the claimant, the construction professional responsible for each alleged defect identified by the claimant.

(5) If a subcontractor or supplier is added as a party to an action under this section, the party making the claim against such subcontractor or supplier shall serve on the subcontractor or supplier the list of construction defects in accordance with this section within thirty days after service of the complaint against the subcontractor or supplier or within such period as the court in its discretion may allow. [2002 c 323 § 4.]

64.50.040 Construction defect action brought by a board of directors—Notice. (1)(a) In the event the board of directors, pursuant to RCW 64.34.304(1)(d) or 64.38.020(4), institutes an action asserting defects in the construction of two or more residences, common elements, or common areas, this section shall apply. For purposes of this section, "action" has the same meaning as set forth in RCW 64.50.010.

(b) The board of directors shall substantially comply with the provisions of this section.

(2)(a) Prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the board of directors shall mail or deliver written notice of the commencement or anticipated commencement of such action to each homeowner at the last known address described in the association's records.

(b) The notice required by (a) of this subsection shall state a general description of the following:

(i) The nature of the action and the relief sought; and

(ii) The expenses and fees that the board of directors anticipates will be incurred in prosecuting the action.

(3) Nothing in this section may be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney-client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the board of directors to contract for legal services, or limit or impair the ability to enforce such a contract for legal services. [2002 c 323 § 5.]

64.50.050 Construction professional right to offer to cure defects—Notice to homeowner. (1) The construction professional shall provide notice to each homeowner upon entering into a contract for sale, construction, or substantial remodel of a residence, of the construction professional's right to offer to cure construction defects before a homeowner may commence litigation against the construction professional. Such notice shall be conspicuous and may be included as part of the underlying contract signed by the homeowner. In the sale of a condominium unit, the requirement for delivery of such notice shall be deemed satisfied if contained in a public offering statement delivered in accordance with chapter 64.34 RCW.

(2) The notice required by this subsection shall be in substantially the following form:

CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE SELLER OR BUILDER OF YOUR HOME. FORTY-FIVE DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE SELLER OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR SELLER OR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER OR SELLER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

(3) This chapter shall not preclude or bar any action if notice is not given to the homeowner as required by this section. [2002 c 323 § 6.]

64.50.060 Interpretation of chapter regarding certain relationships and rights. Nothing in this chapter shall be construed to hinder or otherwise affect the employment, agency, or contractual relationship between and among homeowners and construction professionals during the process of construction or remodeling and does not preclude the termination of those relationships as allowed under current law. Nothing in this chapter shall negate or otherwise restrict a construction professional's right to access or inspection provided by law, covenant, easement, or contract. [2002 c 323 § 7.]

Chapter 64.55 RCW

CONSTRUCTION DEFECT DISPUTES— MULTIUNIT RESIDENTIAL BUILDINGS

Sections

64.55.005	Application.
64.55.010	Definitions.
64.55.020	Building permit application—Submission of design documents.
64.55.030	Inspection required.
64.55.040	Inspectors—Qualifications.
64.55.050	Scope of inspection—Definition.
64.55.060	Certification—Certificate of occupancy.
64.55.070	Inspector, architect, and engineer—No private right of action or basis for liability against.
64.55.080	Inspector's report or testimony—No evidentiary presumption—Admissibility.
64.55.090	Sale of condominium unit subject to compliance—Inspection alternative.
64.55.100	Arbitration—Election—Number of arbitrators—Qualifications—Trial de novo.
64.55.110	Case schedule plan—Deadlines.
64.55.120	Mandatory mediation.
64.55.130	Appointment of neutral expert—Qualifications—Duties—Admissibility of report or testimony.
64.55.140	Payment of arbitrators, mediators, and neutral experts.
64.55.150	Subcontractors and suppliers—When party to arbitration.
64.55.160	Offers of judgment—Costs and fees.
64.55.900	Captions not law—2005 c 456.
64.55.901	Effective date—2005 c 456.

64.55.005 Application. (1)(a) RCW 64.55.010 through 64.55.090 apply to any multiunit residential building for which the permit for construction or rehabilitative construction of such building was issued on or after August 1, 2005.

(b) RCW 64.55.010 and 64.55.090 apply to conversion condominiums as defined in RCW 64.34.020, provided that RCW 64.55.090 shall not apply to a condominium conversion for which a public offering statement had been delivered pursuant to chapter 64.34 RCW prior to August 1, 2005.

(2) RCW 64.55.010 and 64.55.100 through 64.55.160 and 64.34.415 apply to any action that alleges breach of an implied or express warranty under chapter 64.34 RCW or that seeks relief that could be awarded for such breach, regardless of the legal theory pled, except that RCW 64.55.100 through 64.55.160 and 64.34.415 shall not apply to:

- (a) Actions filed or served prior to August 1, 2005;
- (b) Actions for which a notice of claim was served pursuant to chapter 64.50 RCW prior to August 1, 2005;
- (c) Actions asserting any claim regarding a building that is not a multiunit residential building;

(2008 Ed.)

(d) Actions asserting any claim regarding a multiunit residential building that was permitted on or after August 1, 2005, unless the letter required by RCW 64.55.060 has been submitted to the appropriate building department or the requirements of RCW 64.55.090 have been satisfied.

(3) Other than the requirements imposed by RCW 64.55.010 through 64.55.090, nothing in this chapter amends or modifies the provisions of RCW 64.34.050. [2005 c 456 § 1.]

64.55.010 Definitions. Unless the context clearly requires otherwise, the definitions in RCW 64.34.020 and in this section apply throughout this chapter.

(1) "Attached dwelling unit" means any dwelling unit that is attached to another dwelling unit by a wall, floor, or ceiling that separates heated living spaces. A garage is not a heated living space.

(2) "Building enclosure" means that part of any building, above or below grade, that physically separates the outside or exterior environment from interior environments and which weatherproofs, waterproofs, or otherwise protects the building or its components from water or moisture intrusion. Interior environments consist of both heated and unheated enclosed spaces. The building enclosure includes, but is not limited to, that portion of roofs, walls, balcony support columns, decks, windows, doors, vents, and other penetrations through exterior walls, which waterproof, weatherproof, or otherwise protect the building or its components from water or moisture intrusion.

(3) "Building enclosure design documents" means plans, details, and specifications for the building enclosure that have been stamped by a licensed engineer or architect. The building enclosure design documents shall include details and specifications that are appropriate for the building in the professional judgment of the architect or engineer which prepared the same to waterproof, weatherproof, and otherwise protect the building or its components from water or moisture intrusion, including details of flashing, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane, and details around openings.

(4) "Developer" means:

(a) With respect to a condominium or a conversion condominium, the declarant; and

(b) With respect to all other buildings, an individual, group of individuals, partnership, corporation, association, municipal corporation, state agency, or other entity or person that obtains a building permit for the construction or rehabilitative reconstruction of a multiunit residential building. If a permit is obtained by service providers such as architects, contractors, and consultants who obtain permits for others as part of services rendered for a fee, the person for whom the permit is obtained shall be the developer, not the service provider.

(5) "Dwelling unit" has the meaning given to that phrase or similar phrases in the ordinances of the jurisdiction issuing the permit for construction of the building enclosure but if such ordinances do not provide a definition, then "dwelling unit" means a residence containing living, cooking, sleeping, and sanitary facilities.

(6) "Multiunit residential building" means:

(a) A building containing more than two attached dwelling units, including a building containing nonresidential units if the building also contains more than two attached dwelling units, but excluding the following classes of buildings:

- (i) Hotels and motels;
- (ii) Dormitories;
- (iii) Care facilities;
- (iv) Floating homes;

(v) A building that contains attached dwelling units that are each located on a single platted lot, except as provided in (b) of this subsection;

(vi) A building in which all of the dwelling units are held under one ownership and is subject to a recorded irrevocable sale prohibition covenant.

(b) If the developer submits to the appropriate building department when applying for the building permit described in RCW 64.55.020 a statement that the developer elects to treat the improvement for which a permit is sought as a multiunit residential building for all purposes under this chapter, then "multiunit residential building" also means the following buildings for which such election has been made:

- (i) A building containing only two attached dwelling units;
- (ii) A building that does not contain attached dwelling units; and
- (iii) Any building that contains attached dwelling units each of which is located on a single platted lot.

(7) "Party unit owner" means a unit owner who is a named party to an action subject to this chapter and does not include any unit owners whose involvement with the action stems solely from their membership in the association.

(8) "Qualified building inspector" means a person satisfying the requirements of RCW 64.55.040.

(9) "Rehabilitative construction" means construction work on the building enclosure of a multiunit residential building if the cost of such construction work is more than five percent of the assessed value of the building.

(10) "Sale prohibition covenant" means a recorded covenant that prohibits the sale or other disposition of individual dwelling units as or as part of a condominium for five years or more from the date of first occupancy except as otherwise provided in RCW 64.55.090, a certified copy of which the developer shall submit to the appropriate building department; provided such covenant shall not apply to sales or dispositions listed in RCW 64.34.400(2). The covenant must be recorded in the county in which the building is located and must be in substantially the following form:

This covenant has been recorded in the real property records of County, Washington, in satisfaction of the requirements of RCW 64.55.010 through 64.55.090. The undersigned is the owner of the property described on Exhibit A (the "Property"). Until termination of this covenant, no dwelling unit in or on the Property may be sold as a condominium unit except for sales listed in RCW 64.34.400(2).

This covenant terminates on the earlier of either: (a) Compliance with the requirements of RCW 64.55.090, as certified by the owner of the Property in a recorded supplement hereto; or (b) the fifth anniversary of the date of first occupancy of a dwell-

ing unit as certified by the Owner in a recorded supplement hereto.

All title insurance companies and persons acquiring an interest in the Property may rely on the forgoing certifications without further inquiry in issuing any policy of title insurance or in acquiring an interest in the Property.

(11) "Stamped" means bearing the stamp and signature of the responsible licensed architect or engineer on the title page, and on every sheet of the documents, drawings, or specifications, including modifications to the documents, drawings, and specifications that become part of change orders or addenda to alter those documents, drawings, or specifications. [2005 c 456 § 2.]

64.55.020 Building permit application—Submission of design documents.

(1) Any person applying for a building permit for construction of a multiunit residential building or rehabilitative construction shall submit building enclosure design documents to the appropriate building department prior to the start of construction or rehabilitative construction of the building enclosure. If construction work on a building enclosure is not rehabilitative construction because the cost thereof is not more than five percent of the assessed value of the building, then the person applying for a building permit shall submit to the building department a letter so certifying. Any changes to the building enclosure design documents that alter the manner in which the building or its components is waterproofed, weatherproofed, and otherwise protected from water or moisture intrusion shall be stamped by the architect or engineer and shall be provided to the building department and to the person conducting the course of construction inspection in a timely manner to permit such person to inspect for compliance therewith, and may be provided through individual updates, cumulative updates, or as-built updates.

(2) The building department shall not issue a building permit for construction of the building enclosure of a multiunit residential building or for rehabilitative construction unless the building enclosure design documents contain a stamped statement by the person stamping the building enclosure design documents in substantially the following form: "The undersigned has provided building enclosure documents that in my professional judgment are appropriate to satisfy the requirements of RCW 64.55.005 through 64.55.090."

(3) The building department is not charged with determining whether the building enclosure design documents are adequate or appropriate to satisfy the requirements of RCW 64.55.005 through 64.55.090. Nothing in RCW 64.55.005 through 64.55.090 requires a building department to review, approve, or disapprove enclosure design documents. [2005 c 456 § 3.]

64.55.030 Inspection required. All multiunit residential buildings shall have the building enclosure inspected by a qualified inspector during the course of initial construction and during rehabilitative construction. [2005 c 456 § 4.]

64.55.040 Inspectors—Qualifications. (1) A qualified building enclosure inspector:

(a) Must be a person with substantial and verifiable training and experience in building enclosure design and construction;

(b) Shall be free from improper interference or influence relating to the inspections; and

(c) May not be an employee, officer, or director of, nor have any pecuniary interest in, the declarant, developer, association, or any party providing services or materials for the project, or any of their respective affiliates, except that the qualified inspector may be the architect or engineer who approved the building enclosure design documents or the architect or engineer of record. The qualified inspector may, but is not required to, assist with the preparation of such design documents.

(2) Nothing in this section alters requirements for licensure of any architect, engineer, or other professional, or alters the jurisdiction, authority, or scope of practice of architects, engineers, other professionals, or general contractors. [2005 c 456 § 5.]

64.55.050 Scope of inspection—Definition. (1) Any inspection required by this chapter shall include, at a minimum, the following:

(a) Water penetration resistance testing of a representative sample of windows and window installations. Such tests shall be conducted according to industry standards. Where appropriate, tests shall be conducted with an induced air pressure difference across the window and window installation. Additional testing is not required if the same assembly has previously been tested in situ within the previous two years in the project under construction by the builder, by another member of the construction team such as an architect or engineer, or by an independent testing laboratory; and

(b) An independent periodic review of the building enclosure during the course of construction or rehabilitative construction to ascertain whether the multiunit residential building has been constructed, or the rehabilitative construction has been performed, in substantial compliance with the building enclosure design documents.

(2) Subsection (1)(a) of this section shall not apply to rehabilitative construction if the windows and adjacent cladding are not altered in the rehabilitative construction.

(3) "Project" means one or more parcels of land in a single ownership, which are under development pursuant to a single land use approval or building permit, where window installation is performed by the owner with its own forces, or by the same general contractor, or, if the owner is contracting directly with trade contractors, is performed by the same trade contractor. [2005 c 456 § 6.]

64.55.060 Certification—Certificate of occupancy. Upon completion of an inspection required by this chapter, the qualified inspector shall prepare and submit to the appropriate building department a signed letter certifying that the building enclosure has been inspected during the course of construction or rehabilitative construction and that it has been constructed or reconstructed in substantial compliance with the building enclosure design documents, as updated pursuant to RCW 64.55.020. The building department shall not

issue a final certificate of occupancy or other equivalent final acceptance until the letter required by this section has been submitted. The building department is not charged with and has no responsibility for determining whether the building enclosure inspection is adequate or appropriate to satisfy the requirements of this chapter. [2005 c 456 § 7.]

64.55.070 Inspector, architect, and engineer—No private right of action or basis for liability against. (1) Nothing in this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) is intended to, or does:

(a) Create a private right of action against any inspector, architect, or engineer based upon compliance or noncompliance with its provisions; or

(b) Create any independent basis for liability against an inspector, architect, or engineer.

(2) The qualified inspector, architect, or engineer and the developer that retained the inspector, architect, or engineer may contractually agree to the amount of their liability to the developer. [2005 c 456 § 8.]

64.55.080 Inspector's report or testimony—No evidentiary presumption—Admissibility. A qualified inspector's report or testimony regarding an inspection conducted pursuant to this chapter is not entitled to any evidentiary presumption in any arbitration or court proceeding. Nothing in this chapter restricts the admissibility of such a report or testimony, and questions of the admissibility of such a report or testimony shall be determined under the rules of evidence. [2005 c 456 § 9.]

64.55.090 Sale of condominium unit subject to compliance—Inspection alternative. (1) Except for sales or other dispositions listed in RCW 64.34.400(2), no declarant may convey a condominium unit that may be occupied for residential use in a multiunit residential building without first complying with the requirements of RCW 64.55.005 through 64.55.080 unless the building enclosure of the building in which such unit is included is inspected by a qualified building enclosure inspector, and:

(a) The inspection includes such intrusive or other testing, such as the removal of siding or other building enclosure materials, that the inspector believes, in his or her professional judgment, is necessary to ascertain the manner in which the building enclosure was constructed;

(b) The inspection evaluates, to the extent reasonably ascertainable and in the professional judgment of the inspector, the present condition of the building enclosure including whether such condition has adversely affected or will adversely affect the performance of the building enclosure to waterproof, weatherproof, or otherwise protect the building or its components from water or moisture intrusion. "Adversely affect" has the same meaning as provided in RCW 64.34.445(7);

(c) The inspection report includes recommendations for repairs to the building enclosure that, in the professional judgment of the qualified building inspector, are necessary to: (i) Repair a design or construction defect in the building enclosure that results in the failure of the building enclosure

to perform its intended function and allows unintended water penetration not caused by flooding; and (ii) repair damage caused by such a defect that has an adverse effect as provided in RCW 64.34.445(7);

(d) With respect to a building that would be a multiunit residential building but for the recording of a sale prohibition covenant and unless more than five years have elapsed since the date such covenant was recorded, all repairs to the building enclosure recommended pursuant to (c) of this subsection have been made; and

(e) The declarant provides as part of the public offering statement, consistent with RCW 64.34.410 (1)(nn) and (2) and 64.34.415(1)(b), an inspection and repair report signed by the qualified building enclosure inspector that identifies:

(i) The extent of the inspection performed pursuant to this section;

(ii) The information obtained as a result of that inspection; and

(iii) The manner in which any repairs required by this section were performed, the scope of those repairs, and the names of the persons performing those repairs.

(2) Failure to deliver the inspection and repair report in violation of this section constitutes a failure to deliver a public offering statement for purposes of chapter 64.34 RCW. [2005 c 456 § 10.]

64.55.100 Arbitration—Election—Number of arbitrators—Qualifications—Trial de novo. (1) If the declarant, an association, or a party unit owner demands an arbitration by filing such demand with the court not less than thirty and not more than ninety days after filing or service of the complaint, whichever is later, the parties shall participate in a private arbitration hearing. The declarant, the association, and the party unit owner do not have the right to compel arbitration without giving timely notice in compliance with this subsection. Unless otherwise agreed by the parties, the arbitration hearing shall commence no more than fourteen months from the later of the filing or service of the complaint.

(2) Unless otherwise agreed by the parties, claims that in aggregate are for less than one million dollars shall be heard by a single arbitrator and all other claims shall be heard by three arbitrators. As used in this chapter, arbitrator also means arbitrators where applicable.

(3) Unless otherwise agreed by the parties, the court shall appoint the arbitrator, who shall be a current or former attorney with experience as an attorney, judge, arbitrator, or mediator in construction defect disputes involving the application of Washington law.

(4) Upon conclusion of the arbitration hearing, the arbitrator shall file the decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after the filing of the decision and award, any aggrieved party may file with the clerk a written notice of appeal and demand for a trial de novo in the superior court on all claims between the appealing party and an adverse party. As used in this section, "adverse party" means the party who either directly asserted or defended claims against the appealing party. The demand shall identify the adverse party or parties and all claims between those parties shall be included in the trial de novo. The right to a

trial de novo includes the right to a jury, if demanded. The court shall give priority to the trial date for the trial de novo.

(5) If the judgment for damages, not including awards of fees and costs, in the trial de novo is not more favorable to the appealing party than the damages awarded by the arbitrator, not including awards of fees and costs, the appealing party shall pay the nonappealing adverse party's costs and fees incurred after the filing of the appeal, including reasonable attorneys' fees so incurred.

(6) If the judgment for damages, not including awards of fees and costs, in the trial de novo is more favorable to the appealing party than the damages awarded by the arbitrator, not including awards of fees and costs, then the court may award costs and fees, including reasonable attorneys' fees, incurred after the filing of the request for trial de novo in accordance with applicable law; provided if such a judgment is not more favorable to the appealing party than the most recent offer of judgment, if any, made pursuant to RCW 64.55.160, the court shall not make an award of fees and costs to the appealing party.

(7) If a party is entitled to an award with respect to the same fees and costs pursuant to this section and RCW 64.55.160, then the party shall only receive an award of fees and costs as provided in and limited by RCW 64.55.160. Any award of fees and costs pursuant to subsections (5) or (6) of this section is subject to review in the event of any appeal thereof otherwise permitted by applicable law or court rule. [2005 c 456 § 11.]

64.55.110 Case schedule plan—Deadlines. (1) Not less than sixty days after the later of filing or service of the complaint, the parties shall confer to create a proposed case schedule plan for submission to the court that includes the following deadlines:

(a) Selection of a mediator;

(b) Commencement of the mandatory mediation and submission of mediation materials required by this chapter;

(c) Selection of the arbitrator by the parties, where applicable;

(d) Joinder of additional parties in the action;

(e) Completion of each party's investigation;

(f) Disclosure of each party's proposed repair plan;

(g) Disclosure of each party's estimated costs of repair;

(h) Meeting of parties and experts to confer in accordance with RCW 64.55.120; and

(i) Disclosure of each party's settlement demand or response.

(2) If the parties agree upon a proposed case schedule plan, they shall move the court for the entry of the proposed case schedule plan. If the parties cannot agree, either party may move the court for entry of a case schedule plan that includes the above deadlines. [2005 c 456 § 12.]

64.55.120 Mandatory mediation. (1) The parties to an action subject to this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) shall engage in mediation. Unless the parties agree otherwise, the mediation required by this section shall commence within seven months of the later of the filing or service of the

complaint. If the parties cannot agree upon a mediator, the court shall appoint a mediator.

(2) Prior to the mediation required by this section, the parties and their experts shall meet and confer in good faith to attempt to resolve or narrow the scope of the disputed issues, including issues related to the parties' repair plans.

(3) Prior to the mandatory mediation, the parties or their attorneys shall file and serve a declaration that:

(a) A decision maker with authority to settle will be available for the duration of the mandatory mediation; and

(b) The decision maker has been provided with and has reviewed the mediation materials provided by the party to which the decision maker is affiliated as well as the materials submitted by the opposing parties.

(4) Completion of the mediation required by this section occurs upon written notice of termination by any party. The provisions of RCW 64.55.160 shall not apply to any later mediation conducted following such notice. [2005 c 456 § 13.]

64.55.130 Appointment of neutral expert—Qualifications—Duties—Admissibility of report or testimony.

(1) If, after meeting and conferring as required by RCW 64.55.120(2), disputed issues remain, a party may file a motion with the court, or arbitrator if an arbitrator has been appointed, requesting the appointment of a neutral expert to address any or all of the disputed issues. Unless otherwise agreed to by the parties or upon a showing of exceptional circumstances, including a material adverse change in a party's litigation risks due to a change in allegations, claims, or defenses by an adverse party following the appointment of the neutral expert, any such motion shall be filed no later than sixty days after the first day of the meeting required by RCW 64.55.120(2). Upon such a request, the court or arbitrator shall decide whether or not to appoint a neutral expert or experts. A party may only request more than one neutral expert if the particular expertise of the additional neutral expert or experts is necessary to address disputed issues.

(2) The neutral expert shall be a licensed architect or engineer, or any other person, with substantial experience relevant to the issue or issues in dispute. The neutral expert shall not have been employed as an expert by a party to the present action within three years before the commencement of the present action, unless the parties agree otherwise.

(3) All parties shall be given an opportunity to recommend neutral experts to the court or arbitrator and shall have input regarding the appointment of a neutral expert.

(4) Unless the parties agree otherwise on the following matters, the court, or arbitrator if then appointed, shall determine:

(a) Who shall serve as the neutral expert;

(b) Subject to the requirements of this section, the scope of the neutral expert's duties;

(c) The number and timing of inspections of the property;

(d) Coordination of inspection activities with the parties' experts;

(e) The neutral expert's access to the work product of the parties' experts;

(f) The product to be prepared by the neutral expert;

(g) Whether the neutral expert may participate personally in the mediation required by RCW 64.55.120; and

(h) Other matters relevant to the neutral expert's assignment.

(5) Unless the parties agree otherwise, the neutral expert shall not make findings or render opinions regarding the amount of damages to be awarded, or the cost of repairs, or absent exceptional circumstances any matters that are not in dispute as determined in the meeting described in RCW 64.55.120(2) or otherwise.

(6) A party may, by motion to the court, or to the arbitrator if then appointed, object to the individual appointed to serve as the neutral expert and to determinations regarding the neutral expert's assignment.

(7) The neutral expert shall have no liability to the parties for the performance of his or her duties as the neutral expert.

(8) Except as otherwise agreed by the parties, the parties have a right to review and comment on the neutral expert's report before it is made final.

(9) A neutral expert's report or testimony is not entitled to any evidentiary presumption in any arbitration or court proceeding. Nothing in this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) restricts the admissibility of such a report or testimony, provided it is within the scope of the neutral expert's assigned duties, and questions of the admissibility of such a report or testimony shall be determined under the rules of evidence.

(10) The court, or arbitrator if then appointed, shall determine the significance of the neutral expert's report and testimony with respect to parties joined after the neutral expert's appointment and shall determine whether additional neutral experts should be appointed or other measures should be taken to protect such joined parties from undue prejudice. [2005 c 456 § 14.]

64.55.140 Payment of arbitrators, mediators, and neutral experts.

(1) Where the building permit that authorized commencement of construction of a building was issued on or after August 1, 2005:

(a)(i) If the action is referred to arbitration under RCW 64.55.100, the party who demands arbitration shall advance the fees of any arbitrator and any mediator appointed under RCW 64.55.120; and

(ii) A party who requests the appointment of a neutral expert pursuant to RCW 64.55.130 shall advance any appointed neutral expert's fees incurred up to the issuance of a final report.

(b) If the action has not been referred to arbitration, the court shall determine liability for the fees of any mediator appointed under RCW 64.55.120, unless the parties agree otherwise.

(c) Ultimate liability for any fees or costs advanced pursuant to this subsection (1) is subject to the fee- and cost-shifting provisions of RCW 64.55.160.

(2) Where the building permit that authorized commencement of construction of a building was issued before August 1, 2005:

(a)(i) If the action is referred to arbitration under RCW 64.55.100, the party who demands arbitration is liable for and

shall pay the fees of any appointed arbitrator and any mediator appointed under RCW 64.55.120; and

(ii) A party who requests the appointment of a neutral expert pursuant to RCW 64.55.130 is liable for and shall pay any appointed neutral expert's fees incurred up to the issuance of a final report.

(b) If the action has not been referred to arbitration, the court shall determine liability for the fees of any mediator appointed under RCW 64.55.120, unless the parties agree otherwise.

(c) Fees and costs paid under this subsection (2) are not subject to the fee- and cost-shifting provisions of RCW 64.55.160. [2005 c 456 § 15.]

64.55.150 Subcontractors and suppliers—When party to arbitration. Upon the demand of a party to an arbitration demanded under RCW 64.55.100, any subcontractor or supplier against whom such party has a legal claim and whose work or performance on the building in question becomes an issue in the arbitration may be joined in and become a party to the arbitration. However, joinder of such parties shall not be allowed if such joinder would require the arbitration hearing date to be continued beyond the date established pursuant to RCW 64.55.100, unless the existing parties to the arbitration agree otherwise. Nothing in RCW 64.55.010 through 64.55.090 shall be construed to release, modify, or otherwise alleviate the liabilities or responsibilities that any party may have towards any other party, contractor, or subcontractor. [2005 c 456 § 16.]

64.55.160 Offers of judgment—Costs and fees. (1) On or before the sixtieth day following completion of the mediation pursuant to RCW 64.55.120(4), the declarant, association, or party unit owner may serve on an adverse party an offer to allow judgment to be entered. The offer of judgment shall specify the amount of damages, not including costs or fees, that the declarant, association, or party unit owner is offering to pay or receive. A declarant's offer shall also include its commitment to pay costs and fees that may be awarded as provided in this section. The declarant, association, or party unit owner may make more than one offer of judgment so long as each offer is timely made. Each subsequent offer supersedes and replaces the previous offer. Any offer not accepted within twenty-one days of the service of that offer is deemed rejected and withdrawn and evidence thereof is not admissible and may not be provided to the court or arbitrator except in a proceeding to determine costs and fees or as part of the motion identified in subsection (2) of this section.

(2) A declarant's offer must include a demonstration of ability to pay damages, costs, and fees, including reasonable attorneys' fees, within thirty days of acceptance of the offer of judgment. The demonstration of ability to pay shall include a sworn statement signed by the declarant, the attorney representing the declarant, and, if any insurance proceeds will be used to fund any portion of the offer, an authorized representative of the insurance company. If the association or party unit owner disputes the adequacy of the declarant's demonstration of ability to pay, the association or party unit owner may file a motion with the court requesting a ruling on

the adequacy of the declarant's demonstration of ability to pay. Upon filing of such motion, the deadline for a response to the offer shall be tolled from the date the motion is filed until the court has ruled.

(3) An association or party unit owner that accepts the declarant's offer of judgment shall be deemed the prevailing party and, in addition to recovery of the amount of the offer, shall be entitled to a costs and fees award, including reasonable attorneys' fees, in an amount to be determined by the court in accordance with applicable law.

(4) If the amount of the final nonappealable or nonappealed judgment, exclusive of costs or fees, is not more favorable to the offeree than the offer of judgment, then the offeror is deemed the prevailing party for purposes of this section only and is entitled to an award of costs and fees, including reasonable attorneys' fees, incurred after the date the last offer of judgment was rejected and through the date of entry of a final nonappealable or nonappealed judgment, in an amount to be determined by the court in accordance with applicable law. The nonprevailing party shall not be entitled to receive any award of costs and fees.

(5) If the final nonappealable or nonappealed judgment on damages, not including costs or fees, is more favorable to the offeree than the last offer of judgment, then the court shall determine which party is the prevailing party and shall determine the amount of the costs and fees award, including reasonable attorneys' fees, in accordance with applicable law.

(6) Notwithstanding any other provision in this section, with respect to claims brought by an association or unit owner, the liability for declarant's costs and fees, including reasonable attorneys' fees, shall:

(a) With respect to claims brought by an association, not exceed five percent of the assessed value of the condominium as a whole, which is determined by the aggregate tax-assessed value of all units at the time of the award; and

(b) With respect to claims brought by a party unit owner, not exceed five percent of the assessed value of the unit at the time of the award. [2005 c 456 § 17.]

64.55.900 Captions not law—2005 c 456. Captions used in this act are not any part of the law. [2005 c 456 § 22.]

64.55.901 Effective date—2005 c 456. This act takes effect August 1, 2005. [2005 c 456 § 24.]

Chapter 64.70 RCW

UNIFORM ENVIRONMENTAL COVENANTS ACT

Sections

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64.70.900	Severability—2007 c 104.

64.70.005 Findings—National uniform legislation.

The legislature finds that the national conference of commissioners on uniform state laws has developed uniform legislation called the uniform environmental covenants act. The act ensures that environmental covenants, recorded use restrictions negotiated in connection with hazardous waste site cleanups, and other environmental response projects are legally valid and enforceable. The uniform environmental covenants act achieves this objective by providing clear statutory standards that override court-made doctrines that do not fit such cleanup and reuse contexts. The legislature further finds that nothing in this chapter will amend or modify any local or state laws that determine when environmental covenants are required, when a particular contaminated site must be cleaned up, or the standards for a cleanup.

Adoption of the uniform environmental covenants act in Washington will provide all participants in a cleanup with greater confidence that environmental covenants and other institutional controls will be effective over the life of the cleanup. This will facilitate cleanups of many sites and assist in the recycling of urban brownfield properties into new economic uses for the benefit of the citizens of Washington.

This chapter adopts most provisions of the uniform legislation while making modifications to integrate the uniform environmental covenants act with Washington's environmental cleanup programs. [2007 c 104 § 1.]

64.70.010 Short title. This chapter may be cited as the uniform environmental covenants act. [2007 c 104 § 2.]

64.70.015 Application—Construction—2007 c 104.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2007 c 104 § 14.]

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

(1) "Activity or use limitations" means restrictions or obligations created under this chapter with respect to real property.

(2) "Agency" means either the department of ecology or the United States environmental protection agency, whichever determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3)(a) "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(b) "Common interest community" includes but is not limited to:

(i) An association of apartment owners as defined in RCW 64.32.010;

(ii) A unit owners' association as defined in RCW 64.34.020 and organized under RCW 64.34.300;

(iii) A master association as provided in RCW 64.34.276;

(iv) A subassociation as provided in RCW 64.34.278; and

(v) A homeowners' association as defined in RCW 64.38.010.

(4) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity or use limitations.

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

(a) Under a federal or state program governing environmental remediation of real property, including chapters 43.21C, 64.44, 70.95, 70.98, 70.105, 70.105D, 90.48, and 90.52 RCW;

(b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(c) Under the state voluntary clean-up program authorized under chapter 70.105D RCW.

(6) "Holder" means the grantee of an environmental covenant as specified in RCW 64.70.030(1).

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [2007 c 104 § 3.]

64.70.030 Interests in real property—Subordination.

(1) Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(2) A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(3) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(4) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(a) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(b) This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(c) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

(d) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant. [2007 c 104 § 4.]

64.70.040 Covenants—Contents—Agency discretion—Local land use consideration. (1) An environmental covenant must:

(a) State that the instrument is an environmental covenant executed pursuant to this chapter;

(b) Contain a legally sufficient description of the real property subject to the covenant;

(c) Describe with specificity the activity or use limitations on the real property;

(d) Identify every holder;

(e) Be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and

(f) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(2) In addition to the information required by subsection (1) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(a) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;

(b) Requirements for periodic reporting describing compliance with the covenant;

(c) Rights of access to the property granted in connection with implementation or enforcement of the covenant;

(d) Narrative descriptions of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(e) Limitations on amendment or termination of the covenant in addition to those contained in RCW 64.70.090 and 64.70.100;

(f) Rights of the holder in addition to its right to enforce the covenant pursuant to RCW 64.70.110;

(g) Other information, restrictions, or requirements required by the agency, including the department of ecology under the authority of chapter 70.105D RCW.

(3) In addition to other conditions for its approval of an environmental covenant, the agency may require those per-

sons specified by the agency who have interests in the real property to sign the covenant.

(4) The agency may also require notice and opportunity to comment upon an environmental covenant as part of public participation efforts related to the environmental response project.

(5) The agency shall consult with local land use planning authorities in the development of the land use or activity restrictions in the environmental covenant. The agency shall consider potential redevelopment and revitalization opportunities and obtain information regarding present and proposed land and resource uses, and consider comprehensive land use plan and zoning provisions applicable to the real property to be subject to the environmental covenant. [2007 c 104 § 5.]

64.70.050 Covenants—Enforceability. (1) An environmental covenant that complies with this chapter runs with the land.

(2) An environmental covenant that is otherwise effective is valid and enforceable even if:

(a) It is not appurtenant to an interest in real property;

(b) It can be or has been assigned to a person other than the original holder;

(c) It is not of a character that has been recognized traditionally at common law;

(d) It imposes a negative burden;

(e) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(f) The benefit or burden does not touch or concern real property;

(g) There is no privity of estate or contract;

(h) The holder dies, ceases to exist, resigns, or is replaced; or

(i) The owner of an interest subject to the environmental covenant and the holder are the same person.

(3) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity or use limitations except for the fact that the instrument was recorded before July 22, 2007, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (2) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

(4) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state. [2007 c 104 § 6.]

64.70.060 Use of real property—Chapter application. This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this chapter. [2007 c 104 § 7.]

64.70.070 Covenants—Providing copies. (1) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

- (a) Each person that signed the covenant;
- (b) Each person holding a recorded interest in the real property subject to the covenant;
- (c) Each person in possession of the real property subject to the covenant at the time the covenant is executed;
- (d) Each municipality or other unit of local government in which real property subject to the covenant is located;
- (e) The department of ecology; and
- (f) Any other person the agency requires.

(2) The validity of an environmental covenant is not affected by failure to provide a copy of the covenant as required under this section.

(3) If the agency has not designated the persons to provide a copy of an environmental covenant, the grantor shall be responsible for providing a copy of an environmental covenant as required under subsection (1) of this section. [2007 c 104 § 8.]

64.70.080 Covenants—Recording and priority of interests. (1) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(2) Except as otherwise provided in RCW 64.70.090(3), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property. [2007 c 104 § 9.]

64.70.090 Covenant—Duration—Court action. (1) An environmental covenant is perpetual unless it is:

- (a) By its terms limited to a specific duration or terminated by the occurrence of a specific event;
- (b) Terminated by consent pursuant to RCW 64.70.100;
- (c) Terminated pursuant to subsection (2) of this section;
- (d) Terminated by foreclosure of an interest that has priority over the environmental covenant; or
- (e) Terminated or modified in an eminent domain proceeding, but only if:
 - (i) The agency that signed the covenant is a party to the proceeding;
 - (ii) All persons identified in RCW 64.70.100 (1) and (2) are given notice of the pendency of the proceeding; and
 - (iii) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(2) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in RCW 64.70.100 (1) and (2) have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.

(3) Except as otherwise provided in subsections (1) and (2) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine

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of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(4) An environmental covenant may not be extinguished, limited, or impaired by the extinguishment of a mineral interest under chapter 78.22 RCW. [2007 c 104 § 10.]

64.70.100 Covenant—Amendment or termination by consent. (1) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

- (a) The agency;
- (b) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;
- (c) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(d) Except as otherwise provided in subsection (4)(b) of this section, the holder.

(2) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(3) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(4) Except as otherwise provided in an environmental covenant:

(a) A holder may not assign its interest without consent of the other parties;

(b) A holder may be removed and replaced by agreement of the other parties specified in subsection (1) of this section; and

(c) A court of competent jurisdiction may fill a vacancy in the position of holder. [2007 c 104 § 11.]

64.70.110 Violations—Civil actions—Regulatory authority under chapter—Liability. (1) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

- (a) A party to the covenant;
- (b) The agency or, if it is not the agency, the department of ecology;
- (c) Any person to whom the covenant expressly grants power to enforce;
- (d) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; and

(e) A municipality or other unit of local government in which the real property subject to the covenant is located.

(2) This chapter does not limit the regulatory authority of the agency or the department of ecology under law other than this chapter with respect to an environmental response project.

(3) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant. [2007 c 104 § 12.]

64.70.120 Covenants—Registry—Information contained. (1) The department of ecology shall establish and maintain a registry that contains information identifying all environmental covenants established under this chapter and any amendment or termination of those covenants, including the county where the covenant is recorded and the recording number. The registry may also contain any other information concerning environmental covenants and the real property subject to them that the department of ecology considers appropriate. The registry is a public record for purposes of chapter 42.56 RCW, but the department shall maintain electronic access to the registry without requiring a public records request for any information included in the registry.

(2) Failure to include information or inclusion of inaccurate information concerning an environmental covenant in the registry does not invalidate or limit the application or enforceability of the covenant. [2007 c 104 § 13.]

64.70.130 Electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.) but does not modify, limit, or supersede section 101 of that act (15 U.S.C. Sec. 7001(a)) or authorize electronic delivery of any of the notices described in section 103 of that act (15 U.S.C. Sec. 7003(b)). [2007 c 104 § 15.]

64.70.900 Severability—2007 c 104. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 104 § 21.]

Title 65

RECORDING, REGISTRATION, AND LEGAL PUBLICATION

Chapters

- 65.04 Duties of county auditor.**
- 65.08 Recording.**
- 65.12 Registration of land titles (Torrens Act).**
- 65.16 Legal publications.**
- 65.20 Classification of manufactured homes.**
- 65.24 Uniform real property electronic recording act.**

Assessor's plats: Chapter 58.18 RCW.

Assignment, satisfaction of mortgages: Chapter 61.16 RCW.

Civil procedure, legal publication generally: Chapter 4.28 RCW.

Community property

claim of spouse or domestic partner to be filed: RCW 26.16.100.
purchaser protected by record title: RCW 26.16.095.

Copies of recorded instruments as evidence: Chapter 5.44 RCW.

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

County auditor: Chapter 36.22 RCW.

Crop liens: Chapter 60.11 RCW.

Eminent domain by

corporations, judgment or decree: RCW 8.20.090.
county, decree: RCW 8.08.060.
school districts, decree: RCW 8.16.110.
state, judgment or decree: RCW 8.04.120.

Eminent domain, state lands, decree: RCW 8.28.010.

Fees of county officers: Chapter 36.18 RCW.

Field notes of irregular subdivided tracts: RCW 84.40.170.

Filing reports, claims, tax returns, etc.: RCW 1.12.070.

Lis pendens, effect of filing: RCW 4.28.320.

Notice of proposed constitutional amendments, publication of: RCW 29A.52.330, 29A.52.340.

Plats: Chapter 58.08 RCW, RCW 84.40.170.

Powers of appointment: Chapter 11.95 RCW.

RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.

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

Secretary of state, duties: RCW 43.07.030.

65.04.110 Liability of auditor for damages.

65.04.115 Names on documents, etc., to be printed or typewritten—Indexing.

65.04.130 Fees to be paid or tendered.

65.04.140 Auditor as custodian of records.

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

County auditor: Chapter 36.22 RCW.

Fees of county officers, generally: Chapter 36.18 RCW.

Powers of appointment: Chapter 11.95 RCW.

65.04.015 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering or transmitting electronically an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "Recording number" means a unique number that identifies the storage location (book or volume and page, reel and frame, instrument number, auditor or recording officer file number, receiving number, electronic retrieval code, or other specific place) of each instrument in the public records accessible in the same recording office where the instrument containing the reference to the location is found.

(5) "Grantor/grantee" for recording purposes means the names of the parties involved in the transaction used to create the recording index. There will always be at least one grantor and one grantee for any document. In some cases, the grantor and the grantee will be the same individual(s), or one of the parties may be the public.

(6) "Legible and capable of being imaged" means all text, seals, drawings, signatures, or other content within the document must be legible and capable of producing a readable image, regardless of what process is used for recording. [1999 c 233 § 10; 1998 c 27 § 3; 1996 c 229 § 1; 1991 c 26 § 3.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.04.020 Duty to provide records. For the purpose of recording deeds and other instruments of writing, required or permitted by law to be recorded, the county auditor shall procure such media for records as the business of the office requires. [1999 c 233 § 11; 1985 c 44 § 14; 1893 c 119 § 10; Code 1881 § 2726; RRS § 10600.]

Effective date—1999 c 233: See note following RCW 4.28.320.

Chapter 65.04 RCW

DUTIES OF COUNTY AUDITOR

Sections

- 65.04.015 Definitions.
- 65.04.020 Duty to provide records.
- 65.04.030 Instruments to be recorded or filed.
- 65.04.033 Notice of abandoned cemetery document—Recording requirements.
- 65.04.040 Method for recording instruments—Marginal notations—Arrangement of records.
- 65.04.045 Recorded instruments—Requirements—Content restrictions—Form.
- 65.04.047 Recorded instruments—Cover sheet—When required—Form.
- 65.04.048 Additional fee for certain documents not meeting requirements—Signed statement.
- 65.04.050 Index of instruments, how made and kept—Recording of plat names.
- 65.04.060 Record when lien is discharged.
- 65.04.070 Recording judgments affecting real property.
- 65.04.080 Entries when instruments offered for record—Content restrictions.
- 65.04.090 Further endorsements—Delivery.

65.04.030 Instruments to be recorded or filed. The auditor or recording officer must, upon the payment of the fees as required in RCW 36.18.010 for the same, acknowledge receipt therefor in writing or printed form and record in large and well bound books, or by photographic, photomechanical, electronic format, or other approved process, the following:

(1) Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, instruments or agreements relating to community or separate property, powers of attorney to convey real estate, and leases which have been acknowledged or proved: PROVIDED, That deeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record;

(2) Patents to lands and receivers' receipts, whether for mineral, timber, homestead or preemption claims or cash entries;

(3) All such other papers or writing as are required by law to be recorded and such as are required by law to be filed. [1996 c 229 § 2; 1991 c 26 § 4; 1985 c 44 § 15; 1967 c 98 § 1; 1919 c 182 § 1; 1893 c 119 § 11; Code 1881 § 2727; 1865 p 26 § 1; RRS § 10601.]

Claim of spouse or domestic partner in community realty to be filed: RCW 26.16.100.

Marriage certificate to county auditor, filing and recording, etc.: RCW 26.04.090, 26.04.100.

Purchaser of community realty protected by record title: RCW 26.16.095.

65.04.033 Notice of abandoned cemetery document—Recording requirements. Any person who has knowledge of the existence of any cemetery, abandoned cemetery, historical cemetery, or historic grave that has not been dedicated pursuant to RCW 68.24.010 through 68.24.040 may file for recording, in the county in which the cemetery or grave is located, a notice of abandoned cemetery document providing notice of the existence of the cemetery or grave. Such document shall contain the legal description of the property, the approximate location of the cemetery or grave within the property, the name of the owner or reputed owner of the property, and the assessor's tax parcel or account number. The auditor or recording officer shall index the document to the names of the property owner and the person executing the document. [1999 c 367 § 1.]

65.04.040 Method for recording instruments—Marginal notations—Arrangement of records. Any state, county, or municipal officer charged with the duty of recording instruments in public records shall record them by *record location number in the order filed, irrespective of the type of instrument, using a process that has been tested and approved for the intended purpose by the state archivist.

In addition, the county auditor or recording officer, in the exercise of the duty of recording instruments in public records, may, in lieu of transcription, record all instruments, that he or she is charged by law to record, by any electronic data transfer, photographic, photostatic, microfilm, microcard, miniature photographic or other process that actually reproduces or forms a durable medium for so reproducing the original, and which has been tested and approved for the

intended purpose by the state archivist. If the county auditor or recording officer records any instrument by a process approved by the state archivist it shall not be necessary thereafter to make any notations or marginal notes, which are otherwise required by law, thereon if, in lieu of making said notations thereon, the auditor or recording officer immediately makes a note of such in the general index in the column headed "remarks," listing the record number location of the instrument to which the current entry relates back.

Previously recorded or filed instruments may be processed and preserved by any means authorized under this section for the original recording of instruments. The county auditor or recording officer may provide for the use of the public, media containing reproductions of instruments and other materials that have been recorded pursuant to the provisions of this section. The contents of the media may be arranged according to date of filing, irrespective of type of instrument, or in such other manner as the county auditor or recording officer deems proper. [1996 c 229 § 3; 1991 c 26 § 5; 1985 c 44 § 16; 1967 c 98 § 2; 1959 c 254 § 1; 1919 c 125 § 1; RRS § 10602.]

*Reviser's note: The definition "record location number" was changed to "recording number" by 1999 c 233 § 10.

Fees for recording instruments: RCW 36.18.010.

State archivist: RCW 40.14.020.

65.04.045 Recorded instruments—Requirements—Content restrictions—Form. (1) When any instrument is presented to a county auditor or recording officer for recording, the first page of the instrument shall contain:

(a) A top margin of at least three inches and a one-inch margin on the bottom and sides, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins;

(b) The top left-hand side of the page shall contain the name and address to whom the instrument will be returned;

(c) The title or titles, or type or types, of the instrument to be recorded indicating the kind or kinds of documents or transactions contained therein immediately below the three-inch margin at the top of the page. The auditor or recording officer shall be required to index only the title or titles captioned on the document;

(d) Reference numbers of documents assigned or released with reference to the document page number where additional references can be found, if applicable;

(e) The names of the grantor(s) and grantee(s), as defined under RCW 65.04.015, with reference to the document page number where additional names are located, if applicable;

(f) An abbreviated legal description of the property, and for purposes of this subsection, "abbreviated legal description of the property" means lot, block, plat, or section, township, range, and quarter/quarter section, and reference to the document page number where the full legal description is included, if applicable;

(g) The assessor's property tax parcel or account number set forth separately from the legal description or other text.

(2) All pages of the document shall be on sheets of paper of a weight and color capable of producing a legible image that are not larger than fourteen inches long and eight and one-half inches wide with text printed or written in eight

point type or larger. All text within the document must be of sufficient color and clarity to ensure that when the text is imaged all text is readable. Further, all pages presented for recording must have at minimum a one-inch margin on the top, bottom, and sides for all pages except page one, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins, be prepared in ink color capable of being imaged, and have all seals legible and capable of being imaged. No attachments, except firmly attached bar code or address labels, may be affixed to the pages.

(3) When any instrument, except those generated by governmental agencies, is presented to a county auditor or recording officer for recording, the document may not contain the following information: (a) A social security number; (b) a date of birth identified with a particular person; or (c) the maiden name of a person's parent so as to be identified with a particular person.

The information provided on the instrument must be in substantially the following form:

This Space Provided for Recorder's Use

When Recorded Return to:

.....

Document Title(s)

Grantor(s)

Grantee(s)

Legal Description

Assessor's Property Tax Parcel or Account Number

Reference Numbers of Documents Assigned or Released

[2005 c 134 § 1; 1999 c 233 § 12; 1998 c 27 § 1; 1996 c 143 § 2.]

Effective date—1999 c 233: See note following RCW 4.28.320.

Effective date—1996 c 143: See note following RCW 36.18.010.

65.04.047 Recorded instruments—Cover sheet—When required—Form. (1) If the first page of an instrument presented for recording does not contain the information required by RCW 65.04.045(1), the person preparing the instrument for recording shall prepare a cover sheet that contains the required information. The cover sheet shall be attached to the instrument and shall be recorded as a part of the instrument. An additional page fee as determined under RCW 36.18.010 shall be collected for recording of the cover sheet. Any errors in the cover sheet shall not affect the transactions contained in the instrument itself. The cover sheet need not be separately signed or acknowledged. The cover sheet information shall be used to generate the auditor's grantor/grantee index, however, the names and legal description in the instrument itself will determine the legal chain of title. The cover sheet shall be substantially the following form:

Return Address

Please print or type information

Document Title(s) (or transactions contained therein):

- 1.
2.
3.
4.

Grantor(s) (Last name first, then first name and initials)

- 1.
2.
3.
4.

5. Additional names on page __ of document.

Grantee(s) (Last name first, then first name and initials)

- 1.
2.
3.
4.

5. Additional names on page __ of document.

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

Additional legal description is on page __ of document.

Assessor's Property Tax Parcel or Account Number at the time of recording:

Reference Number(s) of Documents assigned or released:

Additional references on page __ of document.

The Auditor or Recording Officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

(2) Documents which are exempt from format requirements and which may be recorded with a properly completed cover sheet include: Documents which were signed prior to January 1, 1997; military separation documents; documents executed outside of the United States; certified copies of documents; any birth or death certificate; marriage certificates from outside the state of Washington; any document, one of whose original signer is deceased or otherwise incapacitated; and judgments or other documents formatted to meet court requirements. [1999 c 233 § 13; 1998 c 27 § 2; 1996 c 143 § 3.]

Effective date—1999 c 233: See note following RCW 4.28.320.

Effective date—1996 c 143: See note following RCW 36.18.010.

65.04.048 Additional fee for certain documents not meeting requirements—Signed statement. (1) Documents which must be recorded immediately and which do not meet margin and font size requirements may be recorded for an additional fee of fifty dollars. Documents which do not meet

legibility requirements must not be recorded as a nonstandard recording.

(2) In addition to preparing a properly completed cover sheet as described in RCW 65.04.047, the person preparing the document for recording must sign a statement which must be attached to the document and which must read substantially as follows: "I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document." [1999 c 233 § 14.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.04.050 Index of instruments, how made and kept—Recording of plat names. Every auditor or recording officer must keep a general index, direct and inverted. The index may be either printed on paper or produced on microfilm or microfiche, or it can be created from a computerized database and displayed on a video display terminal. Any reference to a prior *record location number may be entered in the remarks column. Any property legal description contained in the instrument must be entered in the description of property column of the general index. The direct index shall be divided into eight columns, and with heads to the respective columns, as follows: Date of reception, grantor, grantee, nature of instrument, volume and page where recorded and/or the auditor's file number, remarks, description of property, assessor's property tax parcel or account number. The auditor or recording officer shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into eight columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being in alphabetical order. The auditor or recording officer may combine the direct and indirect indexes into a single index if it contains all the information required to be contained in the separate direct and indirect indexes and the names of all grantors and grantees can be found by a person searching the combined index. For the purposes of this chapter, the term "grantor" means any person conveying or encumbering the title to any property, or any person against whom any *lis pendens*, judgment, notice of lien, order of sale, execution, writ of attachment, claims of separate or community property, or notice for request of transfer or encumbrance under RCW 43.20B.750 shall be placed on record. The auditor or recording officer shall also enter in the general index, the name of the party or parties platting a town, village, or addition in the column prescribed for "grantors," describing the grantee in such case as "the public." However, the auditor or recording officer shall not receive or record any such plat or map until it has been approved by the mayor and common council of the municipality in which the property so platted is situated, or if the property be not situated within any municipal corporation, then the plat must be first approved by the county legislative authority. The auditor or recording officer shall not receive for record any plat, map, or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in the office. The auditor or recording officer may establish a name reservation sys-

tem to preclude the possibility of duplication of names. [2005 c 292 § 3; 1996 c 143 § 4; 1991 c 26 § 6; 1893 c 119 § 12; Code 1881 § 2728; 1869 p 314 § 24; RRS § 10603.]

***Reviser's note:** The definition "record location number" was changed to "recording number" by 1999 c 233 § 10.

Effective date—1996 c 143: See note following RCW 36.18.010.

65.04.060 Record when lien is discharged. Whenever any mortgage, bond, lien, or instrument incumbering real estate, has been satisfied, released or discharged, by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note, in the comment section of the index, the recording number of the original mortgage, bond, lien, or instrument. [1999 c 233 § 15; 1985 c 44 § 17; Code 1881 § 2729; 1869 p 315 § 25; RRS § 10604.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.04.070 Recording judgments affecting real property. The auditor must file and record with the record of deeds, grants and transfers certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he is recorder. Every such certified copy or partition, from the time of filing the same with the auditor for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders purchase and take with like notice and effect as if such copy or decree was a duly recorded deed, grant or transfer. [Code 1881 § 2730; RRS § 10605.]

65.04.080 Entries when instruments offered for record—Content restrictions. (1) When any instrument, paper, or notice, authorized or required by law to be filed or recorded, is deposited in or electronically transmitted to the county auditor's office for filing or record, that officer must indorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and note that the document was received by electronic transmission, and must file, or file and record the same without delay, together with the acknowledgments, proofs, and certificates written or printed upon or annexed to the same, with the plats, surveys, schedules and other papers thereto annexed, in the order and as of the time when the same was received for filing or record, and must note on the instrument filed, or at the foot of the record the exact time of its reception, and the name of the person at whose request it was filed or filed and recorded. However, the county auditor shall not be required to accept for filing, or filing and recording, any instrument unless there appear upon the face thereof, the name and nature of the instrument offered for filing, or filing and recording, as the case may be.

(2) When any instrument, except those generated by governmental agencies, is presented to a county auditor or recording officer for recording, the document may not contain the following information: (a) A social security number; (b) a date of birth identified with a particular person; or (c) the maiden name of a person's parent so as to be identified with a particular person. [2005 c 134 § 2; 1996 c 229 § 4;

1985 c 44 § 18; 1927 c 187 § 1; Code 1881 § 2731; 1869 p 313 § 19; RRS § 10606.]

65.04.090 Further endorsements—Delivery. The recording officer must also endorse upon such an instrument, paper, or notice, the time when and the book and page in which it is recorded, and must thereafter either electronically transmit or deliver it to the party leaving the same for record or to the address on the face of the document. [2003 c 239 § 1; 1996 c 229 § 5; Code 1881 § 2732; RRS § 10607.]

65.04.110 Liability of auditor for damages. If any county auditor to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded is delivered or electronically transmitted for record: (1) Neglects or refuses to record such instrument, paper or notice, within a reasonable time after receiving the same; or (2) records any instruments, papers or notices untruly, or in any other manner than as directed in this chapter; or, (3) neglects or refuses to keep in his or her office such indexes as are required by *this act, or to make the proper entries therein; or, (4) neglects or refuses to make the searches and to give the certificate required by *this act; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or, (5) alters, changes, or obliterates any records deposited in his or her office, or inserts any new matter therein; he or she is liable to the party aggrieved for the amount of damage which may be occasioned thereby. However, if the name or names and address hand printed, printed, or typewritten on any instrument, proved or acknowledged according to law, or on any paper or notice which may by law be filed or recorded, is or are incorrect, or misspelled or not the true name or names of the party or parties appearing thereon, the county auditor shall not, by reason of such fact, be liable for any loss or damage resulting therefrom. [1996 c 229 § 6; 1965 c 134 § 1; Code 1881 § 2734; RRS § 10609.]

***Reviser's note:** The language "this act" appears in Code 1881 c 211, codified herein as RCW 5.44.070, 36.16.030 through 36.16.050, 36.16.070, 36.16.080, 36.22.110 through 36.22.130, 36.22.150, 65.04.020, 65.04.030, 65.04.050 through 65.04.110, 65.04.130, and 65.04.140.

65.04.115 Names on documents, etc., to be printed or typewritten—Indexing. The name or names appearing on all documents or instruments, proved or acknowledged according to law, or on any paper which may by law be filed or recorded shall be hand printed, printed or typewritten so as to be legible and the county auditor shall index said documents and instruments in accordance with the hand printed, printed or typewritten name or names appearing thereon. [1965 c 134 § 2.]

65.04.130 Fees to be paid or tendered. Said county auditor is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are if demanded paid or tendered. [Code 1881 § 2735; RRS § 10610.]

(2008 Ed.)

65.04.140 Auditor as custodian of records. The county auditor in his capacity of recorder of deeds is sole custodian of all books in which are recorded deeds, mortgages, judgments, liens, incumbrances and other instruments of writing, indexes thereto, maps, charts, town plats, survey and other books and papers constituting the records and files in said office of recorder of deeds, and all such records and files are, and shall be, matters of public information, free of charge to any and all persons demanding to inspect or to examine the same, or to search the same for titles of property. It is said recorder's duty to arrange in suitable places the indexes of said books of record, and when practicable, the record books themselves, to the end that the same may be accessible to the public and convenient for said public inspection, examination and search, and not interfere with the said auditor's personal control and responsibility for the same, or prevent him from promptly furnishing the said records and files of his said office to persons demanding any information from the same. The said auditor or recorder must and shall, upon demand, and without charge, freely permit any and all persons, during reasonable office hours, to inspect, examine and search any or all of the records and files of his said office, and to gather any information therefrom, and to make any desired notes or memoranda about or concerning the same, and to prepare an abstract or abstracts of title to any and all property therein contained. [1886 p 163 § 1; 1883 p 34 § 1; Code 1881 § 2736; RRS § 10611.]

Chapter 65.08 RCW

RECORDING

Sections

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65.08.170	Notice of additional water or sewer facility tap or connection charges—Required—Contents.
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Corporate seals, effect of absence from instrument: RCW 64.04.105.

Powers of appointment: Chapter 11.95 RCW.

65.08.030 Recorded irregular instrument imparts notice. An instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor's office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force. [1953 c 115 § 1. Prior: 1929 c 33 § 8; RRS § 10599.]

[Title 65 RCW—page 5]

65.08.050 Recording land office receipts. Every cash or final receipt from any receiver, and every cash or final certificate from any register of the United States land office, evidencing that final payment has been made to the United States as required by law, or that the person named in such certificate is entitled, on presentation thereof, to a patent from the United States for land within the state of Washington, shall be recorded by the county auditor of the county wherein such land lies, on request of any party presenting the same, and any record heretofore made of any such cash or final receipt or certificate shall, from the date when this section becomes a law, and every record hereafter made of any such receipt or certificate shall, from the date of recording, impart to third persons and all the world, full notice of all the rights and equities of the person named in said cash or final receipt or certificate in the land described in such receipt or certificate. [1890 p 92 § 1; RRS § 10613.]

65.08.060 Terms defined. (1) The term "real property" as used in RCW 65.08.060 through 65.08.150 includes lands, tenements and hereditaments and chattels real and mortgage liens thereon except a leasehold for a term not exceeding two years.

(2) The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate.

(3) The term "conveyance" includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property. "To convey" is to execute a "conveyance" as defined in this subdivision.

(4) The term "recording officer" means the county auditor or, in charter counties, the county official charged with the responsibility for recording instruments in the county records. [1999 c 233 § 16; 1984 c 73 § 1; 1927 c 278 § 1; RRS § 10596-1.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.08.070 Real property conveyances to be recorded. A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record. [1927 c 278 § 2; RRS § 10596-2. Prior: 1897 c 5 § 1; Code 1881 § 2314; 1877 p 312 § 4; 1873 p 465 § 4; 1863 p 430 § 4; 1860 p 299 § 4; 1858 p 28 § 1; 1854 p 403 § 4.]

RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.

65.08.090 Letters patent. Letters patent from the United States or the state of Washington granting real property may be recorded in the office of the recording officer of the county where such property is situated in the same manner and with like effect as a conveyance that is entitled to be recorded. [1927 c 278 § 4; RRS § 10596-4.]

65.08.095 Conveyances of fee title by public bodies. Every conveyance of fee title to real property hereafter executed by the state or by any political subdivision or municipal corporation thereof shall be recorded by the grantor, after having been reviewed as to form by the grantee, at the expense of the grantee at the time of delivery to the grantee, and shall constitute legal delivery at the time of filing for record. [1963 c 49 § 1.]

65.08.100 Certified copies. A copy of a conveyance of or other instrument affecting real property recorded or filed in the office of the secretary of state or the commissioner of public lands, or of the record thereof, when certified in the manner required to entitle the same to be read in evidence, may be recorded with the certificate in the office of any recording officer of the state. [1927 c 278 § 5; RRS § 10596-5.]

65.08.110 Certified copies—Effect. A copy of a record, when certified or authenticated to entitle it to be read in evidence, may be recorded in any office where the original instrument would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of the record of a conveyance of or other instrument affecting separate parcels of real property situated in more than one county, when certified or authenticated to entitle it to be read in evidence may be recorded in the office of the recording officer of any county in which any such parcel is situated with the same effect as though the original instrument were so recorded. [1927 c 278 § 6; RRS § 10596-6.]

65.08.120 Assignment of mortgage—Notice. The recording of an assignment of a mortgage is not in itself notice to the mortgagor, his heirs, assigns or personal representatives, to invalidate a payment made by any of them to a prior holder of the mortgage. [1927 c 278 § 7; RRS § 10596-7.]

65.08.130 Revocation of power of attorney. A power of attorney or other instrument recorded pursuant to RCW 65.08.060 through 65.08.150 is not deemed revoked by any act of the party by whom it was executed unless the instrument of revocation is also recorded in the same office in which the instrument granting the power was recorded. [1927 c 278 § 8; RRS § 10596-8.]

65.08.140 No liability for error in recording when properly indexed. A recording officer is not liable for recording an instrument in a wrong book, volume or set of records if the instrument is properly indexed with a reference to the volume and page or recording number where the instrument is actually of record. [1999 c 233 § 17; 1927 c 278 § 9; RRS § 10596-9. Formerly RCW 65.04.120.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.08.150 Duty to record. A recording officer, upon payment or tender to him of the lawful fees therefor, shall record in his office any instrument authorized or permitted to be so recorded by the laws of this state or by the laws of the United States. [1943 c 23 § 1; 1927 c 278 § 10; RRS § 10596-10. Formerly RCW 65.04.010.]

65.08.160 Recording master form instruments and mortgages or deeds of trust incorporating master form provisions. A mortgage or deed of trust of real estate may be recorded and constructive notice of the same and the contents thereof given in the following manner:

(1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county auditor of any county and the auditor of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by . . . (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged to be entitled to record.

(2) When any such instrument is recorded, the county auditor shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real estate situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page or pages or recording number where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or of part thereof, identified by its title as provided in subsection (1) of this section and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded by the county auditor to whom the instrument is presented for recording; in such case the county auditor shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding. [1999 c 233 § 18; 1967 c 148 § 1.]

(2008 Ed.)

Effective date—1999 c 233: See note following RCW 4.28.320.

65.08.170 Notice of additional water or sewer facility tap or connection charges—Required—Contents. When any municipality as defined in RCW 35.91.020 or any county has levied or intends to levy a charge on property pertaining to:

(1) The amount required by the provisions of a contract pursuant to RCW 35.91.020 under which the water or sewer facilities so tapped into or used were constructed; or

(2) Any connection charges which are in fact reimbursement for the cost of facilities constructed by the sale of revenue bonds; or

(3) The additional connection charge authorized in RCW 35.92.025;

such municipality or county shall record in the office in which deeds are recorded of the county or counties in which such facility is located a notice of additional tap or connection charges. Such notice shall contain either the legal description of the land affected by such additional tap or connection charges or a map making appropriate references to the United States government survey showing in outline the land affected or to be affected by such additional tap or connection charges. [1977 c 72 § 1.]

65.08.180 Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release. The notice required by RCW 65.08.170, when duly recorded, shall be effective until there is recorded in the same office in which the notice was recorded a certificate of payment and release executed by the municipality or county. Such certificate shall contain a legal description of the particular parcel of land so released and shall be recorded within thirty days of the date of payment thereof. [1977 c 72 § 2.]

Chapter 65.12 RCW

REGISTRATION OF LAND TITLES (TORRENS ACT)

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65.12.005 Registration authorized—Who may apply.

The owner of any estate or interest in land, whether legal or equitable, except unpatented land, may apply as hereinafter provided to have the title of said land registered. The application may be made by the applicant personally, or by an agent thereunto lawfully authorized in writing, which authority shall be executed and acknowledged in the same manner and form as is now required as to a deed, and shall be recorded in the office of the county auditor in the county in which the land, or the major portion thereof, is situated before the making of the application by such agent. A corporation may apply by its authorized agent, and an infant or any other person under disability by his legal guardian. Joint tenants and tenants in common shall join in the application. The person in whose behalf the application is made shall be named as applicant. [1907 c 250 § 1; RRS § 10622.]

Construction—1907 c 250: "This act shall be construed liberally, so far as may be necessary for the purpose of carrying out its general intent, which is, that any owner of land may register his title and bring his land under the provisions of this act, but no one is required so to do." [1907 c 250 § 97.]

65.12.010 Land subject to a lesser estate. It shall not be an objection to bringing land under this chapter, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien or charge; but no mortgage, lien, charge or lesser estate than a fee simple shall be registered unless the estate in fee simple to the same land is registered; and every such lesser estate, mortgage, lien or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens and charges as are so noted, except as herein provided. [1907 c 250 § 2; RRS § 10623.]

65.12.015 Tax title land—Conditions to registration.

No title derived through sale for any tax or assessment, or special assessment, shall be entitled to be registered, unless it shall be made to appear that the title of the applicant, or those through whom he claims title has been adjudicated by a court of competent jurisdiction, and a decree of such court duly made and recorded, decreeing the title of the applicant, or that the applicant or those through whom he claims title have been in the actual and undisputed possession of the land under such title at least seven years, immediately prior to the application, and shall have paid all taxes and assessments legally levied thereon during said times; unless the same is vacant and unoccupied lands or lots, in which case, where title is derived through sale for any tax or assessment or special assessment for any such vacant and unoccupied lands or lots, and the applicant, or those through whom he claims title, shall have paid all taxes and assessments legally levied thereon for eight successive years immediately prior to the application, in which case such lands and lots shall be entitled to be registered as other lands provided for by this section. [1907 c 250 § 3; RRS § 10624.]

65.12.020 Application. The application shall be in writing and shall be signed and verified by the oath of the applicant, or the person acting in his behalf. It shall set forth substantially:

(1) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.

(2) Whether the applicant (except in the case of a corporation) is married or not, and, if married, the name and residence of the husband or wife, and the age of the applicant.

(3) The description of the land and the assessed value thereof, exclusive of improvements, according to the last official assessment, the same to be taken as a basis for the payments required under RCW 65.12.670 and 65.12.790(1).

(4) The applicant's estate or interest in the same, and whether the same is subject to homestead exemption.

(5) The names of all persons or parties who appear of record to have any title, claim, estate, lien or interest in the lands described in the application for registration.

(6) Whether the land is occupied or unoccupied, and if occupied by any other person than the applicant, the name and post office address of each occupant, and what estate he has or claims in the land.

(7) Whether the land is subject to any lien or incumbrance, and if any, give the nature and amount of the same, and if recorded, the book and page of record; also give the name and post office address of each holder thereof.

(8) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion or expectancy, and if any, set forth the name and post office address of every such person and the nature of his estate or claim.

(9) In case it is desired to settle or establish boundary lines, the names and post office addresses of all the owners of the adjoining lands that may be affected thereby, as far as he is able, upon diligent inquiry, to ascertain the same.

(10) If the application is on behalf of a minor, the age of such minor shall be stated.

(11) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant will also state that upon diligent inquiry he had been unable to ascertain the same. [1907 c 250 § 4; RRS § 10625.]

65.12.025 Various lands in one application. Any number of contiguous pieces of land in the same county, and owned by the same person, and in the same right, or any number of pieces of property in the same county having the same chain of title and belonging to the same person, may be included in one application. [1907 c 250 § 5; RRS § 10626.]

65.12.030 Amendment of application. The application may be amended only by supplemental statement in writing, signed and sworn to as in the case of the original application. [1907 c 250 § 6; RRS § 10627.]

65.12.035 Form of application. The form of application may, with appropriate changes, be substantially as follows:

FORM OF APPLICATION FOR INITIAL REGISTRATION OF TITLE TO LAND

State of Washington }
County of , } ss.

In the superior court of the state of Washington in and for county.

In the matter of the application of to register the title to the land hereinafter described } PETITION

To the Honorable, judge of said court: I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge, information and belief.

First. Name of applicant,, age, years. Residence, (number and street, if any). Married to (name of husband or wife).

Second. Applications made by, acting as (owner, agent or attorney). Residence, (number, street).

Third. Description of real estate is as follows: estate or interest therein is and subject to homestead.

Fourth. The land is occupied by (names of occupants), whose address is (number street and town or city). The estate, interest or claim of occupant is

Fifth. Liens and incumbrances on the land Name of holder or owner thereof is Whose post office address is Amount of claim, \$. Recorded, Book, page, of the records of said county.

Sixth. Other persons, firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are whose addresses are respectively. Character of estate, interest or claim is

Seventh. Other facts connected with said land and appropriate to be considered in this registration proceeding are

Eighth. Therefore, the applicant prays this honorable court to find or declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same and to grant such other and further relief as may be proper in the premises.

. (Applicant's signature)
By, agent, attorney, administrator or guardian.

Subscribed and sworn to before me this day of
, A.D. 19. . .

.....
 Notary Public in and for the state
 of Washington, residing at

[1907 c 250 § 7; RRS § 10628.]

65.12.040 Venue—Power of the court. The application for registration shall be made to the superior court of the state of Washington in and for the county wherein the land is situated. Said court shall have power to inquire into the condition of the title to and any interest in the land and any lien or encumbrance thereon, and to make all orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all persons, known, or unknown, and all liens and incumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order, priority and preference as between the same, and to remove all clouds from the title. [1907 c 250 § 8; RRS § 10629.]

65.12.050 Registrars of titles. The county auditors of the several counties of this state shall be registrars of titles in their respective counties; and their deputies shall be deputy registrars. All acts performed by registrars and deputy registrars under this law shall be performed under rules and instructions established and given by the superior court having jurisdiction of the county in which they act. [1907 c 250 § 9; RRS § 10630.]

65.12.055 Bond of registrar. Every county auditor shall, before entering upon his duties as registrar of titles, give a bond with sufficient sureties, to be approved by a judge of the superior court of the state of Washington in and for his county, payable to the state of Washington, in such sum as shall be fixed by the said judge of the superior court, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do; said bond shall be filed in the office of the secretary of state, and a copy thereof shall be filed and entered upon the records of the superior court in the county wherein the county auditor shall hold office. [1907 c 250 § 10; RRS § 10631.]

65.12.060 Deputy registrar—Duties—Vacancy. Deputy registrars shall perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in the case of the death of the registrar or his removal from office, the vacancy shall be filled in the same manner as is provided by law for filling such vacancy in the office of the county auditor. The person so appointed to fill such vacancy shall file a bond and be vested with the same powers as the registrar whose office he is appointed to fill. [1907 c 250 § 11; RRS § 10632.]

65.12.065 Registrar not to practice law—Liability for deputy. No registrar or deputy registrar shall practice as an attorney or counselor at law, nor prepare any papers in any

proceeding herein provided for, nor while in the office be in partnership with any attorney or counselor at law so practicing. The registrar shall be liable for any neglect or omission of the duties of his office when occasioned by a deputy registrar, in the same manner as for his own personal neglect or omission. [1907 c 250 § 12; RRS § 10633.]

65.12.070 Nonresident to appoint agent. If the applicant is not a resident of the state of Washington, he shall file with his application a paper, duly acknowledged, appointing an agent residing in this state, giving his name in full and post office address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect when made on said agent as if made on the applicant within this state. If the agent so appointed dies or removes from the state, the applicant shall at once make another appointment in like manner, and if he fails so to do, the court may dismiss the application. [1907 c 250 § 14; RRS § 10635.]

65.12.080 Filing application—Docket and record entries. The application shall be filed in the office of the clerk of the court to which the application is made and in case of personal service a true copy thereof shall be served with the summons, and the clerk shall docket the case in a book to be kept for that purpose, which shall be known as the "land registration docket". The record entry of the application shall be entitled (name of applicant), plaintiff, against (here insert the names of all persons named in the application as being in possession of the premises, or as having any lien, incumbrance, right, title or interest in the land, and the names of all persons who shall be found by the report of the examiner hereinafter provided for to be in possession or to have any lien, incumbrance, right, title or interest in the land), also all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the application herein, defendants.

All orders, judgments and decrees of the court in the case shall be appropriately entered in such docket. All final orders or decrees shall be recorded, and proper reference made thereto in such docket. [1907 c 250 § 15; RRS § 10636.]

65.12.085 Filing abstract of title. The applicant shall also file with the said clerk, at the time the application is made, an abstract of title such as is now commonly used, prepared and certified to by the county auditor of the county, or a person, firm or corporation regularly engaged in the abstract business, and having satisfied the said superior court that they have a complete set of abstract books and are in existence and doing business at the time of the filing of the application under this chapter. [1907 c 250 § 15a; RRS § 10637.]

65.12.090 Examiner of titles—Appointment—Oath—Bond. The judges of the superior court in and for the state of Washington for the counties for which they were elected or appointed shall appoint a competent attorney in each county to be examiner of titles and legal adviser of the registrar. The examiner of titles in each county shall be paid in each case by the applicant such compensation as the judge

of the superior court of the state of Washington in and for that county shall determine. Every examiner of titles shall, before entering upon the duties of his office, take and subscribe an oath of office to faithfully and impartially perform the duties of his office, and shall also give a bond in such amount and with such sureties as shall be approved by the judge of the said superior court, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall be entered upon the records of said court and the original shall be filed with the registrar. [1907 c 250 § 13; RRS § 10634.]

65.12.100 Copy of application as lis pendens. At the time of the filing of the application in the office of the clerk of the court, a copy thereof, certified by the clerk, shall be filed (but need not be recorded) in the office of the county auditor, and shall have the force and effect of a lis pendens. [1907 c 250 § 16; RRS § 10638.]

65.12.110 Examination of title. Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right, and, also as to all judgments against the applicant or those through whom he claims title, which may be a lien upon the lands described in the application; he shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his application. The election shall be made in writing, and filed with the clerk of the court. [1907 c 250 § 17; RRS § 10639.]

65.12.120 Summons to issue. If, in the opinion of the examiner, the applicant has a title, as alleged, and proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the clerk of the court shall, immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be, issue a summons substantially in the form hereinafter provided. The summons shall be issued by the order of the court and attested by the clerk of the court. [1907 c 250 § 18; RRS § 10640.]

65.12.125 Summons—Form. The summons provided for in RCW 65.12.135 shall be in substance in the form following, to wit:

SUMMONS ON APPLICATION FOR
REGISTRATION OF LAND

State of Washington, }
County of , } ss.

In the superior court of the state of Washington in and for the county of (name of applicant), plaintiff,, versus (names of all defendants), and all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate, described in the application herein defendants.

The state of Washington to the above-named defendants, greeting:

You are hereby summoned and required to answer the application of the applicant plaintiff in the above entitled application for registration of the following land situate in county, Washington, to wit: (description of land), and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said application within the time aforesaid, the applicant plaintiff in this action will apply to the court for the relief demanded in the application herein.

Witness,, clerk of said court and the seal thereof, at, in said county and state, this day of, A.D. 19. . .

(Seal.) Clerk.

[1907 c 250 § 206; RRS § 10644.]

65.12.130 Parties to action. The applicant shall be known in the summons as the plaintiff. All persons named in the application or found by the report of the examiner as being in possession of the premises or as having of record any lien, incumbrance, right, title, or interest in the land, and all other persons who shall be designated as follows, viz: "All other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein," shall be and shall be known as defendants. [1907 c 250 § 19; RRS § 10641.]

65.12.135 Service of summons. The summons shall be directed to the defendants and require them to appear and answer the application within twenty days after the service of the summons, exclusive of the day of service; and the summons shall be served as is now provided for the service of summons in civil actions in the superior court in this state, except as herein otherwise provided. The summons shall be served upon nonresident defendants and upon "all such unknown persons or parties," defendant, by publishing the summons in a newspaper of general circulation in the county where the application is filed, once in each week for three consecutive weeks, and the service by publication shall be deemed complete at the end of the twenty-first day from and including the first publication, provided that if any named defendant assents in writing to the registration as prayed for, which assent shall be endorsed upon the application or filed therewith and be duly witnessed and acknowledged, then in all such cases no service of summons upon the defendant shall be necessary. [1985 c 469 § 60; 1907 c 250 § 20; RRS § 10642.]

65.12.140 Copy mailed to nonresidents—Proof—Expense. The clerk of the court shall also, on or before twenty days after the first publication, send a copy thereof by

mail to such defendants who are not residents of the state whose place of address is known or stated in the application, and whose appearance is not entered and who are not in person served with the summons. The certificate of the clerk that he has sent such notice, in pursuance of this section, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant, and proof of the service thereof shall be made as proof of service is now made in other civil actions. [1907 c 250 § 20a; RRS § 10643.]

65.12.145 Guardians ad litem. The court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability, and for all other persons not in being who may appear to have an interest in the land. The compensation of the said guardian shall be determined by the court, and paid as a part of the expense of the proceeding. [1907 c 250 § 21; RRS § 10645.]

65.12.150 Who may appear—Answer. Any person claiming an interest, whether named in the summons or not, may appear and file an answer within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the interests claimed by the party filing the same, and shall be signed and sworn to by him or by some person in his behalf. [1907 c 250 § 22; RRS § 10646.]

65.12.155 Judgment by default—Proof. If no person appears and answers within the time named in the summons, or allowed by the court, the court may at once, upon the motion of the applicant, no reason to the contrary appearing, upon satisfactory proof of the applicant's right thereto, make its order and decree confirming the title of the applicant and ordering registration of the same. By the description in the summons, "all other persons unknown, claiming any right, title, lien, or interest in, to, or upon the real estate described in the application herein", all the world are made parties defendant, and shall be concluded by the default, order and decree. The court shall not be bound by the report of the examiners of title, but may require other or further proof. [1907 c 250 § 23; RRS § 10647.]

65.12.160 Cause set for trial—Default—Referral. If, in any case an appearance is entered and answer filed, the cause shall be set down for hearing on motion of either party, but a default and order shall first be entered against all persons who do not appear and answer in the manner provided in RCW 65.12.155. The court may refer the cause or any part thereof to one of the examiners of title, as referee, to hear the parties and their evidence, and make report thereon to the court. His report shall have the same force and effect as that of a referee appointed by the said superior court under the laws of this state now in force, and relating to the appointment, duties and powers of referees. [1907 c 250 § 24; RRS § 10648.]

65.12.165 Court may require further proof. The court may order such other or further hearing of the cause before the court or before the examiner of titles after the filing of the report of the examiner, referred to in RCW 65.12.160, and require such other and further proof by either of the parties to the cause as to the court shall seem meet and proper. [1907 c 250 § 25; RRS § 10649.]

65.12.170 Application dismissed or withdrawn. If, in any case, after hearing, the court finds that the applicant has not title proper for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may dismiss his application at any time, before the final decree, upon such terms as may be fixed by the court, and upon motion to dismiss duly made by the court. [1907 c 250 § 26; RRS § 10650.]

65.12.175 Decree of registration—Effect—Appellate review. If the court, after hearing, finds that the applicant has title, whether as stated in his application or otherwise, proper for registration, a decree of confirmation of title and registration shall be entered. Every decree of registration shall bind the land, and quiet the title thereto, except as herein otherwise provided, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the application, or included in "all other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein", and such decree shall not be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any proceeding at law, or in equity, for reversing judgments or decrees, except as herein especially provided. Appellate review of the court's decision may be sought as in other civil actions. [1988 c 202 § 56; 1971 c 81 § 132; 1907 c 250 § 27; RRS § 10651.]

Severability—1988 c 202: See note following RCW 2.24.050.

65.12.180 Rights of persons not served. Any person having an interest in or lien upon the land who has not been actually served with process or notified of the filing of the application or the pendency thereof, may at any time within ninety days after the entry of such decree, and not afterwards, appear and file his sworn answer to such application in like manner as hereinbefore prescribed for making answer: PROVIDED, HOWEVER, That such person had no actual notice or information of the filing of such application or the pendency of the proceedings during the pendency thereof, or until within three months of the time of the filing of such answer, which facts shall be made to appear before answering by the affidavit of the person answering or the affidavit of some one in his behalf having knowledge of the facts, and PROVIDED, ALSO, that no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided; but any person aggrieved by such decree in any case may pursue his remedy by suit in the nature of an action of tort against the applicant or any other person for fraud in procuring the decree; and may also bring his action for indemnity as hereinafter provided. Upon the fil-

ing of such answer, and not less than ten days' notice having been given to the applicant, and to such other interested parties as the court may order in such manner as shall be directed by the court, the court shall proceed to review the case, and if the court is satisfied that the order or decree ought to be opened, an order shall be entered to that effect, and the court shall proceed to review the proceedings, and shall make such order in the case as shall be equitable in the premises. An appeal may be allowed in this case, as well as from all other decrees affecting any registered title within a like time, and in a like manner, as in the case of an original decree under this chapter, and not otherwise. [1907 c 250 § 28; RRS § 10652.]

65.12.190 Limitation of actions. No person shall commence any proceeding for the recovery of lands or any interest, right, lien or demand therein or upon the same adverse to the title or interest as found, or decreed in the decree of registration, unless within ninety days after the entry of the order or decree; and this section shall be construed as giving such right of action to such person only as shall not, because of some irregularity, insufficiency, or for some other cause, be bound and concluded by such order or decree. [1907 c 250 § 29; RRS § 10653.]

65.12.195 Title free from incumbrances—Exceptions. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances except only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar's office, and except any of the following rights or incumbrances subsisting, namely:

(1) Any existing lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.

(2) All public highways embraced in the description of the land included in the certificates shall be deemed to be excluded from the certificate. And any subsisting right-of-way or other easement, for ditches or water rights, upon, over or in respect to the land.

(3) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.

(4) Such right of appeal, or right to appear and contest the application, as is allowed by this chapter. And,

(5) Liens, claims or rights, if any, arising or existing under the constitution or laws of the United States, and which the statutes of this state cannot or do not require to appear of record in the office of the county clerk and county auditor. [1907 c 250 § 30; RRS § 10654.]

65.12.200 Decree—Contents—Filing. Every decree of registration shall bear the date of the year, day, hour and minute of its entry, and shall be signed by the judge of the superior court of the state of Washington in and for the county in which the land is situated; it shall state whether the owner is married or unmarried, and if married, the name of the husband or wife; if the owner is under disability it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally deter-

mined by the court, and shall set forth the estate of the owner, and also in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, homesteads and other incumbrances, including rights of husband and wife, if any, to which the land or the owner's estate is subject, and shall contain any other matter or information properly to be determined by the court in pursuance of this chapter. The decree shall be stated in a convenient form for transcription upon the certificate of title, to be made as hereinafter provided by the registrar of titles. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof in the office of the registrar of titles. [1907 c 250 § 31; RRS § 10655.]

65.12.210 Interest acquired after filing application. Any person who shall take by conveyance, attachment, judgment, lien or otherwise any right, title or interest in the land, subsequent to the filing of a copy of the application for registration in the office of the county auditor, shall at once appear and answer as a party defendant in the proceeding for registration, and the right, title or interest of such person shall be subject to the order or decree of the court. [1907 c 250 § 32; RRS § 10656.]

65.12.220 Registration—Effect. The obtaining of a decree of registration and receiving of a certificate of title shall be deemed an agreement running with the land and binding upon the applicant and the successors in title, that the land shall be and forever remain registered land, subject to the provisions of this chapter and of all acts amendatory thereof, unless the same shall be withdrawn from registration in the manner hereinafter provided. All dealings with the land or any estate or interest therein after the same has been brought under this chapter, and all liens, encumbrances, and charges upon the same shall be made only subject to the terms of this chapter, so long as said land shall remain registered land and until the same shall be withdrawn from registration in the manner hereinafter provided. [1917 c 62 § 1; 1907 c 250 § 33; RRS § 10657.]

65.12.225 Withdrawal authorized—Effect. The owner or owners of any lands, the title to which has been or shall hereafter be registered in the manner provided by law, shall have the right to withdraw said lands from registration in the manner hereinafter provided, and after the same have been so withdrawn from registration, shall have the right to contract concerning, convey, encumber or otherwise deal with the title to said lands as freely and to the same extent and in the same manner as though the title had not been registered. [1917 c 62 § 2; RRS § 10658.]

65.12.230 Application to withdraw. The owner or owners of registered lands, desiring to withdraw the same from registration, shall make and file with the registrar of titles in the county in which said lands are situated, an application in substantially the following form:

To the registrar of titles in the county of, state of Washington:

I, (or we),, the undersigned registered owner . . . in fee simple of the following described real property situated in the county of, state of Washington, to wit: (here insert the description of the property), hereby make application to have the title to said real property withdrawn from registration.

Witness my (or our) hand . . . and seal . . . this . . . day of, 19. . .

.....
Applicant's signature.

Said application shall be acknowledged in the same manner as is required for the acknowledgment of deeds. [1917 c 62 § 3; RRS § 10659.]

65.12.235 Certificate of withdrawal. Upon the filing of such application and the payment of a fee of five dollars, the registrar of titles, if it shall appear that the application is signed and acknowledged by all the registered owners of said land, shall issue to the [applicant] a certificate in substantially the following form:

This is to certify, That the owner (or owners) in fee simple of the following described lands situated in the county of, state of Washington, the title to which has been heretofore registered under the laws of the state of Washington, to wit: (here insert description of the property), having heretofore filed his (or their) application for the withdrawal of the title to said lands from the registry system; NOW, THEREFORE, The title to said above described lands has been withdrawn from the effect and operation of the title registry system of the state of Washington and the owner (or owners) of said lands is (or are) by law authorized to contract concerning, convey, encumber or otherwise deal with the title to said lands in the same manner and to the same extent as though said title had never been registered.

Witness my hand and seal this day of, 19. . .

.....
Registrar of Titles for
..... county.

[1973 c 121 § 1; 1917 c 62 § 4; RRS § 10660.]

65.12.240 Effect of recording. The person receiving such certificate of withdrawal shall record the same in the record of deeds in the office of the county auditor of the county in which the lands are situated and thereafter the title to said lands shall be conveyed or encumbered in the same manner as the title to lands that have not been registered. [1917 c 62 § 5; RRS § 10661.]

65.12.245 Title prior to withdrawal unaffected. *This act shall not be construed to disturb the effect of any proceedings under said registry system, wherein the question of title to said real property has been determined, but all proceedings had in connection with the registering of said title, relating to the settlement or determination of said title, prior to such withdrawal, shall have the same force and effect as if

said title still remained under said registry system. [1917 c 62 § 6; RRS § 10662.]

*Reviser's note: The language "This act" appears in 1917 c 62 codified herein as RCW 65.12.220 through 65.12.245.

65.12.250 Entry of registration—Records. Immediately upon the filing of the decree of registration in the office of the registrar of titles, the registrar shall proceed to register the title or interest pursuant to the terms of the decree in the manner herein provided. The registrar shall keep a book known as the "Register of Titles", wherein he shall enter all first and subsequent original certificates of title by binding or recording them therein in the order of their numbers, consecutively, beginning with number one, with appropriate blanks for entry of memorials and notations allowed by this chapter. Each certificate, with such blanks, shall constitute a separate page of such book. All memorials and notations that may be entered upon the register shall be entered upon the page whereon the last certificate of title of the land to which they relate is entered. The term certificate of title used in this chapter shall be deemed to include all memorials and notations thereon. [1907 c 250 § 34; RRS § 10663.]

65.12.255 Certificate of title. The certificate of registration shall contain the name of the owner, a description of the land and of the estate of the owner, and shall by memorial or notation contain a description of all incumbrances, liens and interests to which the estate of the owner is subject; it shall state the residence of the owner and, if a minor, give his age; if under disability, it shall state the nature of the disability; it shall state whether married or not, and, if married, the name of the husband or wife; in case of a trust, condition or limitation, it shall state the trust, condition or limitation, as the case may be; and shall contain and conform in respect to all statements to the certified copy of the decree of registration filed with the registrar of titles as hereinbefore provided; and shall be in form substantially as follows:

FIRST CERTIFICATE OF TITLE
Pursuant to order of the superior court of the state of Washington, in and for county.
State of Washington, }
County of, } ss.

This is to certify that A. B. of, county of, state of, is now the owner of an estate (describe the estate) of, and in (describe the land), subject to the incumbrances, liens and interests noted by the memorial underwritten or indorsed thereon, subject to the exceptions and qualifications mentioned in the thirtieth section of "An Act relating to the registration and confirmation of titles to land," in the session laws of Washington for the year 1907 [RCW 65.12.195]. (Here note all statements provided herein to appear upon the certificate.)

In witness whereof, I have hereunto set my hand and affixed the official seal of my office this day of, A.D. 19. . .

(Seal)
.....
Registrar of Titles.

[1907 c 250 § 35; RRS § 10664.]

65.12.260 Owner's certificate—Receipt. The registrar shall, at the time that he enters his original certificate of title, make an exact duplicate thereof, but putting on it the words "Owner's duplicate certificate of ownership", and deliver the same to the owner or to his attorney duly authorized. For the purpose of preserving evidence of the signature and handwriting of the owner in his office, it shall be the duty of the registrar to take from the owner, in every case where it is practicable so to do, his receipt for the certificate of title which shall be signed by the owner in person. Such receipt, when signed and delivered in the registrar's office, shall be witnessed by the registrar or deputy registrar. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as is now provided for the acknowledgment of deeds. When so signed, such receipt shall be prima facie evidence of the genuineness of such signature. [1907 c 250 § 36; RRS § 10665.]

65.12.265 Tenants in common. Where two or more persons are registered owners as tenants in common or otherwise, one owner's duplicate certificate can be issued for the entirety, or a separate duplicate owner's certificate may be issued to each owner for his undivided share. [1907 c 250 § 37; RRS § 10666.]

65.12.270 Subsequent certificates. All certificates subsequent to the first shall be in like form, except that they shall be entitled: "Transfer from No. . . .", (the number of the next previous certificate relating to the same land), and shall also contain the words "Originally registered on the . . . day of . . . , 19. . . , and entered in the book . . . at page . . . of register." [1907 c 250 § 38; RRS § 10667.]

65.12.275 Exchange of certificates—Platting land. A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it and take out several certificates for portions thereof. A registered owner holding several duplicate certificates for several distinct parcels of land may surrender them and take out a single duplicate certificate for all of said parcels, or several certificates for different portions thereof. Such exchange of certificates, however, shall only be made by the order of the court upon petition therefor duly made by the owner. An owner of registered land who shall subdivide such land into lots, blocks or acre tracts shall file with the registrar of titles a plat of said land so subdivided, in the same manner and subject to the same rules of law and restrictions as is provided for platting land that is not registered. [1907 c 250 § 39; RRS § 10668.]

65.12.280 Effective date of certificate. The certificate of title shall relate back to and take effect as of the date of the decree of registration. [1907 c 250 § 40; RRS § 10669.]

65.12.290 Certificate of title as evidence. The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar of titles or his deputy, and authenticated by his seal and also the owner's duplicate certificate shall be received as evidence in all the courts

of this state, and shall be conclusive as to all matters contained therein, except so far as is otherwise provided in this chapter. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail. [1907 c 250 § 41; RRS § 10670.]

65.12.300 Indexes and files—Forms. The registrar of titles, under the direction of the court, shall make and keep indexes of all duplication and of all certified copies and decrees of registration and certificates of titles, and shall also index and file in classified order all papers and instruments filed in his office relating to applications and to registered titles. The registrar shall also, under the direction of the court, prepare and keep forms of indexes and entry books. The court shall prepare and adopt convenient forms of certificates of titles, and also general forms of memorials or notations to be used by the registrars of titles in registering the common forms of conveyance and other instruments to express briefly their effect. [1907 c 250 § 42; RRS § 10671.]

65.12.310 Tract and alphabetical indexes. The registrar of titles shall keep tract indexes, in which shall be entered the lands registered in the numerical order of the townships, ranges, sections, and in cases of subdivisions, the blocks and lots therein, and the names of the owners, with a reference to the volume and page of the register of titles in which the lands are registered. He shall also keep alphabetical indexes, in which shall be entered, in alphabetical order, the names of all registered owners, and all other persons interested in, or holding charges upon, or any interest in, the registered land, with a reference to the volume and page of the register of titles in which the land is registered. [1907 c 250 § 43; RRS § 10672.]

65.12.320 Dealings with registered land. The owner of registered land may convey, mortgage, lease, charge or otherwise incumber, dispose of or deal with the same as fully as if it had not been registered. He may use forms of deeds, trust deeds, mortgages and leases or voluntary instruments, like those now in use, and sufficient in law for the purpose intended. But no voluntary instrument of conveyance, except a will and a lease, for a term not exceeding three years, purporting to convey or affect registered land, shall take effect as a conveyance, or bind the land; but shall operate only as a contract between the parties, and as evidence of the authority to the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land. [1907 c 250 § 44; RRS § 10673.]

65.12.330 Registration has effect of recording. Every conveyance, lien, attachment, order, decree, judgment of a court of record, or instrument or entry which would, under existing law, if recorded, filed or entered in the office of the county clerk, and county auditor, of the county in which the real estate is situate, affect the said real estate to which it relates, if the title thereto were not registered, shall, if recorded, filed or entered in the office of the registrar of titles in the county where the real estate to which such instrument relates is situate, affect in like manner the title thereto if registered, and shall be notice to all persons from the time of

such recording, filing or entering. [1907 c 250 § 45; RRS § 10674.]

65.12.340 Filing—Numbering—Indexing—Public records. The registrar of titles shall number and note in a proper book to be kept for that purpose, the year, month, day, hour and minute of reception and number of all conveyances, orders or decrees, writs or other process, judgments, liens, or all other instruments, or papers or orders affecting the title of land, the title to which is registered. Every instrument so filed shall be retained in the office of the registrar of titles, and shall be regarded as registered from the time so noted, and the memorial of each instrument, when made on the certificate of title to which it refers, shall bear the same date. Every instrument so filed, whether voluntary or involuntary, shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records and papers, relating to registered land, in the office of the registrar of titles shall be open to public inspection, in the same manner as are now the papers and records in the office of the county clerk and county auditor. [1907 c 250 § 46; RRS § 10675.]

65.12.350 Duplicate of instruments certified—Fees. Duplicates of all instruments, voluntary or involuntary, filed and registered in the office of the registrar of titles, may be presented with the originals, and shall be attested and sealed by the registrar of titles, and indorsed with the file number and other memoranda on the originals, and may be taken away by the person presenting the same. Certified copies of all instruments filed and registered may be obtained from the registrar of titles, on the payment of a fee of the same amount as is now allowed the county clerk and county auditor, for a like certified copy. [1907 c 250 § 47; RRS § 10676.]

65.12.360 New certificate—Register of less than fee—When form of memorial in doubt. No new certificate shall be entered or issued upon any transfer of registered land, which does not divest the title in fee simple of said land or some part thereof, from the owner or some one of the registered owners. All interest in the registered land, less than a freehold estate, shall be registered by filing with the registrar of titles, the instruments creating, transferring or claiming such interest, and by a brief memorandum or memorial thereof, made by a registrar of titles upon the certificate of title, and signed by him. A similar memorandum, or memorial, shall also be made on the owner's duplicate.

The cancellation or extinguishment of such interests shall be registered in the same manner. When any party in interest does not agree as to the proper memorial to be made upon the filing of any instrument, (voluntary or involuntary), presented for registration, or where the registrar of titles is in doubt as to the form of such memorial, the question shall be referred to the court for decision, either on the certificate of the registrar of titles, or upon the demand in writing of any party in interest.

The registrar of titles shall bring before the court all the papers and evidence which may be necessary for the determination of the question by the court. The court, after notice to all parties in interest and a hearing, shall enter an order prescribing the form of the memorial, and the registrar of titles

shall make registration in accordance therewith. [1907 c 250 § 48; RRS § 10677.]

65.12.370 Owner's certificate to be produced when new certificate issued. No new certificates of titles shall be entered, and no memorial shall be made upon any certificate of title, in pursuance of any deed, or other voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases provided for in this chapter, or upon the order of the court for cause shown; and whenever such order is made a memorial therefor shall be entered, or a new certificate issued, as directed by said order. The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles, to enter a new certificate, or to make a memorial of registration in accordance with such instrument; and a new certificate or memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith. [1907 c 250 § 49; RRS § 10678.]

65.12.375 Owner's duplicate certificate. In the event that an owner's duplicate certificate of title shall be lost, mislaid or destroyed, the owner may make affidavit of the fact before any officer authorized to administer oaths, stating, with particularly, the facts relating to such loss, mislaying or destruction, and shall file the same in the office of the registrar of titles.

Any party in interest may thereupon apply to the court, and the court shall, upon proofs of the facts set forth in the affidavits, enter an order directing the registrar of titles to make and issue a new owner's duplicate certificate, such new owner's duplicate certificate shall be printed or marked, "Certified copy of owner's duplicate certificate", and such certified copy shall stand in the place of and have like effect as the owner's duplicate certificate. [1907 c 250 § 50; RRS § 10679.]

65.12.380 Conveyance of registered land. An owner of registered land, conveying the same, or any portion thereof, in fee, shall execute a deed of conveyance, which the grantor shall file with the registrar of titles in the county where the land lies. The owner's duplicate certificate shall be surrendered at the same time and shall be by the registrar marked "Canceled". The original certificate of title shall also be marked "Canceled". The registrar of titles shall thereupon entered in the register of titles, a new certificate of title to the grantee, and shall prepare and deliver to such grantee an owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate or certificates, except insofar as they may be simultaneously released or discharged.

When only a part of the land described in a certificate is transferred, or some estate or interest in the land is to remain in the transferor, a new certificate shall be issued to him, for the part, estate or interest remaining in him. [1907 c 250 § 51; RRS § 10680.]

65.12.390 Certificate of tax payment. Before any deed, plat or other instrument affecting registered land shall be filed or registered in the office of the registrar of titles, the owner shall present a certificate from the county treasurer showing that all taxes then due thereon have been paid. [1907 c 250 § 52; RRS § 10681.]

65.12.400 Registered land charged as other land. Registered land and ownership therein shall in all respects be subject to the same burdens and incidents which attach by law to unregistered land. Nothing contained in this chapter shall in any way be construed to relieve registered land, or the owners thereof, from any rights incident to the relation of husband and wife, or from liability to attachment of mesne process, or levy on execution, or from liability from any lien of any description established by law on land or the improvements thereon, or the interest of the owner in such land or improvements, or to change the laws of descent, or the rights of partition between cotenants, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy, under the provisions of law relating thereto; or to change or affect in any way, any other rights or liabilities, created by law, applicable to unregistered land, except as otherwise expressly provided in this chapter, or any amendments hereof. [1907 c 250 § 53; RRS § 10682.]

65.12.410 Conveyances by attorney-in-fact. Any person may by attorney convey or otherwise deal with registered land, but the letters or power of attorney shall be acknowledged and filed with the registrar of titles, and registered. Any instrument revoking such letters, or power of attorney, shall be acknowledged in like manner. [1907 c 250 § 54; RRS § 10683.]

65.12.420 Encumbrances by owner. The owner of registered land may mortgage or encumber the same, by executing a trust deed or other instrument, sufficient in law for that purpose, and such instrument may be assigned, extended, discharged, released, in whole or in part, or otherwise dealt with by the mortgagee, by any form of instrument sufficient in law for the purpose; but such trust deed or other instrument, and all instruments assigning, extending, discharging, releasing or otherwise dealing with the encumbrance, shall be registered, and shall take effect upon the title only from the time of registration. [1907 c 250 § 55; RRS § 10684.]

65.12.430 Registration of mortgages. A trust deed shall be deemed to be a mortgage, and be subject to the same rules as a mortgage, excepting as to the manner of the foreclosure thereof. The registration of a mortgage shall be made in the following manner, to wit: The owner's duplicate certificate shall be presented to the registrar of titles with the mortgage deed or instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate, a memorial of the purport of the instrument registered, the time of filing, and the file number of the registered instrument. He shall also note upon the instrument registered, the time of filing, and a reference to the volume and page of the register of titles, wherein

the same is registered. The registrar of titles shall also, at the request of the mortgagee, make out and deliver to him a duplicate certificate of title, like the owner's duplicate, except that the words, "Mortgagee's duplicate", shall be written or printed upon such certificate in large letters, diagonally across the face. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the certificate of title. [1907 c 250 § 56; RRS § 10685.]

65.12.435 Dealings with mortgages. Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate, and upon the original certificate of title. When the mortgage is discharged, or otherwise extinguished, the mortgagee's duplicate shall be surrendered and stamped, "Canceled". In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made by a memorial according in like manner as before provided for a release or discharge.

The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented. A mortgage on registered land may be discharged in whole or in part by the mortgagee in person on the register of titles in the same manner as a mortgage on unregistered land may be discharged by an entry on the margin of the record thereof, in the auditor's office, and such discharge shall be attested by the registrar of titles. [1907 c 250 § 57; RRS § 10686.]

65.12.440 Foreclosures on registered land. All charges upon registered land, or any estate or interest in the same, and any right thereunder, may be enforced as is now allowed by law, and all laws relating to the foreclosure of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that a notice of the pendency of any suit or of any proceeding to enforce or foreclose the mortgage, or any charge, shall be filed in the office of the registrar of titles, and a memorial thereof entered on the register, at the time of, or prior to, the commencement of such suit, or the beginning of any such proceeding. A notice so filed and registered shall be notice to the registrar of titles and all persons dealing with the land or any part thereof. When a mortgagee's duplicate has been issued, such duplicate shall, at the time of the registering of the notice, be presented, and a memorial of such notice shall be entered upon the mortgagee's duplicate. [1907 c 250 § 58; RRS § 10687.]

65.12.445 Registration of final decree—New certificate. In any action affecting registered land a judgment or final decree shall be entitled to registration on the presentation of a certified copy of the entry thereof from the clerk of the court where the action is pending to the registrar of titles. The registrar of titles shall enter a memorial thereof upon the original certificates of title, and upon the owner's duplicate, and also upon the mortgagee's and lessee's duplicate, if any there be outstanding. When the registered owner of such land

is, by such judgment or decree, divested of his estate in fee to the land or any part thereof, the plaintiff or defendant shall be entitled to a new certificate of title for the land, or that part thereof, designated in the judgment or decree, and the registrar of titles shall enter such new certificate of title, and issue a new owner's duplicate, in such manner as is provided in the case of voluntary conveyance: PROVIDED, HOWEVER, That no such new certificate of title shall be entered, except upon the order of the superior court of the county in which the land is situated, and upon the filing in the office of the registrar of titles, an order of the court directing the entry of such new certificate. [1907 c 250 § 59; RRS § 10688.]

65.12.450 Title on foreclosure—Registration. Any person who has, by any action or proceeding to enforce or foreclose any mortgage, lien or charge upon registered land, become the owner in fee of the land, or any part thereof, shall be entitled to have his title registered, and the registrar of titles shall, upon application therefor, enter a new certificate of title for the land, or that part thereof, of which the applicant is the owner, and issue an owner's duplicate, in such manner as in the case of a voluntary conveyance of registered land: PROVIDED, HOWEVER, No such new certificate of title shall be entered, except after the time to redeem from such foreclosure has expired, and upon the filing in the office of the registrar of titles, an order of the superior court of the county directing the entry of such new certificates. [1907 c 250 § 60; RRS § 10689.]

65.12.460 Petition for new certificate. In all cases wherein, by this chapter, it is provided that a new certificate of title to registered land shall be entered by order of the court a person applying for such new certificate shall apply to the court by petition, setting forth the facts; and the court shall, after notice given to all parties in interest, as the court may direct, and upon hearing, make an order or decree for the entry of a new certificate to such person as shall appear to be entitled thereto. [1907 c 250 § 61; RRS § 10690.]

65.12.470 Registration of leases. Leases for registered land, for a term of three years or more, shall be registered in like manner as a mortgage, and the provisions herein relating to the registration of mortgages, shall also apply to the registration of leases. The registrar shall, at the request of the lessee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except the words, "Lessee's duplicate", shall be written or printed upon it in large letters diagonally across its face. [1907 c 250 § 62; RRS § 10691.]

65.12.480 Instruments with conditions. Whenever a deed, or other instrument, is filed in the office of the registrar of titles, for the purpose of effecting a transfer of or charge upon the registered land, or any estate or interest in the same, and it shall appear that the transfer or charge is to be in trust or upon condition or limitation expressed in such deed or instrument, such deed or instrument shall be registered in the usual manner, except that the particulars of the trust, condition, limitation or other equitable interest shall not be entered upon the certificate of title by memorial, but a memorandum

or memorial shall be entered by the words, "in trust", or "upon condition", or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate.

No transfer of, or charge upon, or dealing with, the land, estate or interest therein, shall thereafter be registered, except upon an order of the court first filed in the office of the registrar of titles, directing such transfer, charge, or dealing, in accordance with the true intent and meaning of the trust, condition or limitation. Such registration shall be conclusive evidence in favor of the person taking such transfer, charge, or right; and those claiming under him, in good faith, and for a valuable consideration, that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition, or limitation. [1907 c 250 § 63; RRS § 10692.]

65.12.490 Transfers between trustees. When the title to registered land passes from a trustee to a new trustee, a new certificate shall be entered to him, and shall be registered in like manner as upon an original conveyance in trust. [1907 c 250 § 64; RRS § 10693.]

65.12.500 Trustee may register land. Any trustee shall have authority to file an application for the registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust. [1907 c 250 § 65; RRS § 10694.]

65.12.510 Creation of lien on registered land. In every case where writing of any description, or copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of the registrar of titles, in the county in which the land lies, and, in addition to any particulars required in such papers, for the filing or recording, shall also contain a reference to the number of the certificate of title of the land to be affected, and also, if the attachment, right or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for the identification of the land intended to be affected. [1907 c 250 § 66; RRS § 10695.]

65.12.520 Registration of liens. All attachments, liens and rights, of every description, shall be enforced, continued, reduced, discharged and dissolved, by any proceeding or method, sufficient and proper in law to enforce, continue, reduce, discharge or dissolve, like liens or unregistered land. All certificates, writing or other instruments, permitted or required by law, to be filed or recorded, to give effect to the enforcement, continuance, reduction, discharge or dissolution of attachments, liens or other rights upon registered land, or to give notice of such enforcement, continuance, reduction, discharge or dissolution, shall in the case of like attachments, liens or other rights upon registered land, be filed with the registrar of titles, and registered in the register of titles, in lieu of filing or recording. [1907 c 250 § 67; RRS § 10696.]

65.12.530 Entry as to plaintiff's attorney. The name and address of the attorney for the plaintiff in every action affecting the title to registered land, shall, in all cases, be endorsed upon the writ or other writing filed in the office of the registrar of titles, and he shall be deemed the attorney of the plaintiff until written notice that he has ceased to be such plaintiff's attorney shall be filed for registration by the plaintiff. [1907 c 250 § 68; RRS § 10697.]

65.12.540 Decree. A judgment, decree, or order of any court shall be a lien upon, or affect registered land, or any estate or interest therein, only when a certificate under the hand and official seal of the clerk of the court in which the same is of record, stating the date and purport of the judgment, decree, or order, or a certified copy of such judgment, decree, or order, or transcript of the judgment docket, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected. [1907 c 250 § 69; RRS § 10698.]

65.12.550 Title acquired on execution. Any person who has acquired any right, interest or estate in registered land by virtue of any execution, judgment, order or decree of the court, shall register his title so acquired, by filing in the office of the registrar of titles all writings or instruments permitted or required to be recorded in the case of unregistered land. If the interest or estate so acquired is the fee in the registered land, or any part thereof, the person acquiring such interest shall be entitled to have a new certificate of title, registered in him, in the same manner as is provided in the case of persons acquiring title by an action or proceeding in foreclosure of mortgages. [1907 c 250 § 70; RRS § 10699.]

65.12.560 Termination of proceedings. The certificate of the clerk of the court in which any action or proceeding shall be pending, or any judgment or decree is of record, that such action or proceeding has been dismissed or otherwise disposed of, or that the judgment, decree, or order has been satisfied, released, reversed or overruled, or of any sheriff or any other officer that the levy of any execution, attachment, or other process, certified by him, has been released, discharged, or otherwise disposed of, being filed in the office of the registrar of titles and noted upon the register, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such action, proceeding, judgment, decree, order, or levy, according to the purport of such certificate. [1907 c 250 § 71; RRS § 10700.]

65.12.570 Land registered only after redemption period. Whenever registered land is sold, and the same is by law subject to redemption by the owner or any other person, the purchaser shall not be entitled to have a new certificate of title entered, until the time within which the land may be redeemed has expired. At any time after the time to redeem shall have expired, the purchaser may petition the court for an order directing the entry of a new certificate of title to him, and the court shall, after such notice as it may order, and hearing, grant and make an order directing the entry of such new certificate of title. [1907 c 250 § 72; RRS § 10701.]

65.12.580 Registration on inheritance. The heirs at law and devisees, upon the death of an owner of lands, and any estate or interest therein, registered pursuant to this chapter, on the expiration of thirty days after the entry of the decree of the superior court granting letters testamentary or of administration, or, in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree, of the superior court having jurisdiction, and of the will, if any, with the clerk of the superior court, in the county in which the land lies, and make application to the court for an order for the entry of a new certificate of title. The court shall issue notice to the executor or administrator and all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may deem proper, to all whom it may concern; and after hearing, may direct the entry of a new certificate or certificates to the person or persons who appear to be entitled thereto as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner, in the superior courts, shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate in the superior court, or after the expiration of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorial upon their certificates, stating that the estate is in the course of settlement, and the court, after such notice as it may order, and a hearing, may grant the petition: PROVIDED, HOWEVER, That the liability of registered land to be sold for claims against the estate of the deceased, shall not in any way be diminished or changed. [1907 c 250 § 73; RRS § 10702.]

65.12.590 Probate court may direct sale of registered land. Nothing contained in this chapter shall include, affect or impair the jurisdiction of the superior court to order an executor, administrator or guardian to sell or mortgage registered land for any purpose for which such order may be granted in the case of unregistered land. The purchaser or mortgagee, taking a deed or mortgage executed in pursuance of such order of the superior court, shall be entitled to register his title, and to the entry of a new certificate of title or memorial of registration, upon application to the superior court, and upon filing in the office of the registrar of titles, an order of said court, directing the entry of such certificates. [1907 c 250 § 74; RRS § 10703.]

65.12.600 Trustees and receivers. An assignee for the benefit of creditors, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person appointed by the court, shall file in the office of the registrar of titles, the instrument or instruments by which he is vested with title, estate, or interest in any registered land, or a certified copy of an order of the court showing that such assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person, is authorized to deal with such land, estate or interest, and, if it is in the power of such person, he shall, at the same time, present to the registrar of titles, the owner's duplicate certificate of title; thereupon the registrar shall enter upon the register of titles, and the duplicate certifi-

icate, if presented, a memorial thereof, with a reference to such order or deed by its file number. Such memorial having been entered, the assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner or other person may, subject to the direction of the court, deal with or transfer such land as if he were a registered owner. [1907 c 250 § 75; RRS § 10704.]

65.12.610 Eminent domain—Reversion. Whenever registered land, or any right or interest therein, is taken by eminent domain, the state or body politic, or corporate or other authority exercising such right shall pay all fees on account of any memorial or registration or entry of new certificates, or duplicate thereof, and fees for the filing of instruments required by this chapter to be filed. When, for any reason, by operation of law, land which has been taken for public use reverts to the owner from whom it was taken, or his heirs or assigns, the court, upon petition of the person entitled to the benefit of the reversion, after such notice as it may order, and hearing, may order the entry of a new certificate of title to him. [1907 c 250 § 76; RRS § 10705.]

65.12.620 Registration when owner's certificate withheld. In every case where the registrar of titles enters a memorial upon a certificate of title, or enters a new certificate of title, in pursuance of any instrument executed by the registered owner, or by reason of any instrument or proceeding which affects or devises the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented, the registrar of titles shall not enter a new certificate or make a memorial, but the person claiming to be entitled thereto may apply by petition to the court. The court may order the registered owner, or any person withholding the duplicate certificate, to present or surrender the same, and direct the entry of a memorial or new certificate upon such presentation or surrender. If, in any case, the person withholding the duplicate certificate is not amenable to the process of the court, or cannot be found, or if, for any reason, the outstanding owner's duplicate certificate cannot be presented or surrendered without delay, the court may, by decree, annul the same, and order a new certificate of title to be entered. Such new certificate, and all duplicates thereof, shall contain a memorial of the annulment of the outstanding duplicate. If in any case of an outstanding mortgagee's or lessee's duplicate certificate shall be withheld or otherwise dealt with, like proceedings may be had to obtain registration as in case of the owner's withholding or refusing to deliver the duplicate receipt. [1907 c 250 § 77; RRS § 10706.]

65.12.630 Reference to examiner of title. In all cases where, under the provisions of this chapter, application is made to the court for an order or decree, the court may refer the matter to one of the examiners of title for hearing and report, in like manner, as is herein provided for the reference of the application for registration. [1907 c 250 § 78; RRS § 10707.]

65.12.635 Examiner of titles. Examiners of titles shall, upon the request of the registrar of titles, advise him upon any act or duty pertaining to the conduct of his office, and shall,

upon request, prepare the form of any memorial to be made or entered by the registrar of titles. The examiner of titles shall have full power to administer oaths and examine witnesses involved in his investigation of titles. [1907 c 250 § 79; RRS § 10708.]

65.12.640 Registered instruments to contain names and addresses—Service of notices. Every writing and instrument required or permitted by this chapter to be filed for registration, shall contain or have endorsed upon it, the full name, place of residence and post office address of the grantee or other person requiring or claiming any right, title or interest under such instrument. Any change in residence or post office address of such person shall be endorsed by the registrar of titles in the original instrument, on receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates. All notices required by, or given in pursuance of the provisions of this chapter by the registrar of titles or by the court, after original registration, shall be served upon the person to be notified; if a resident of the state of Washington, as summons in civil actions are served; and proof of such service shall be made as on the return of a summons. All such notices shall be sent by mail, to the person to be notified, if not a resident of the state of Washington, and his residence and post office address, as stated in the certificate of title, or in any registered instrument under which he claims an interest. The certificate of the registrar of titles, or clerk of court, that any notice has been served, by mailing the same, as aforesaid, shall be conclusive proof of such notice: PROVIDED, HOWEVER, That the court may, in any case, order different or further service by publication or otherwise. [1907 c 250 § 80; RRS § 10709.]

65.12.650 Adverse claims—Procedure. Any person claiming any right or interest in registered land, adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this chapter for registering the same, make a statement in writing, setting forth fully his alleged right or interest and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land to which the right or interest is claimed. The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration, as an adverse claim; and the court, upon the petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall enter such decree thereon as equity and justice may require.

If the claim is adjudged to be invalid, its registration shall be canceled. The court may, in any case, award such costs and damages, including reasonable attorneys' fees, as it may deem just in the premises. [1907 c 250 § 81; RRS § 10710.]

65.12.660 Assurance fund. Upon the original registration of land under this chapter, and also upon the entry of the certificate showing title as registered owners in heirs or devisees, there shall be paid to the registrar of titles, one-fortieth

of one percent of the assessed value of the real estate on the basis of the last assessment for general taxation, as an assurance fund. [1973 1st ex.s. c 195 § 75; 1907 c 250 § 82; RRS § 10711.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

65.12.670 Investment of fund. All sums of money received by the registrar as provided for in RCW 65.12.660, shall be forthwith paid by the registrar to the county treasurer of the county in which the land lies, for the purpose of an assurance fund, under the terms of this chapter; it shall be the duty of the county treasurer, whenever the amount on hand in said assurance fund is sufficient, to invest the same, principal and income, and report annually to the superior court of the same county the condition and income thereof; and no investment of the funds, or any part thereof, shall be made without the approval of said court, by order entered of record. Said fund shall be invested only in bonds or securities of the United States, or of one of the states of the United States, or of the counties or other municipalities of this state. [1907 c 250 § 83; RRS § 10712.]

65.12.680 Recoveries from fund. Any person sustaining loss or damage, through any omission, mistake, or misfeasance of the registrar of titles, or of any examiner of titles, or of any deputy, or by the mistake or misfeasance of the clerk of the court, or any deputy, in the performance of their respective duties, under the provisions of this chapter, and any person wrongfully deprived of any land or any interest therein, through the bringing of the same, under the provisions of this chapter, or by the registration of any other person as the owner of such land, or by any mistake, omission, or misdescription in any certificate or entry, or memorial, in the register of titles, or by any cancellation, and who, by the provisions of this chapter, is barred or precluded from bringing any action for the recovery of such land, or interest therein, or claim thereon, may bring an action against the treasurer of the county in which such land is situated, for the recovery of damages to be paid out of the assurance fund. [1907 c 250 § 84; RRS § 10713.]

65.12.690 Parties defendant—Judgment—Payment—Duties of county attorney. If such action be for recovery for loss or damage arising only through any omission, mistake or misfeasance of the registrar of titles or his deputies, or of any examiner of titles, or any clerk of court or his deputy, in the performance of their respective duties, under the provisions of this chapter, then the county treasurer shall be the sole defendant to such action; but if such action be brought for loss or damage arising only through the fraud or wrongful act of some person or persons other than the registrar or his deputies, the examiners of title, the clerk of the court or his deputies, or arising jointly through the fraud or wrongful act of such other person or persons, and the omission, mistakes or misfeasance of the registrar of titles or his deputies, the examiners of titles, the clerk of the court or his deputies, then such action shall be brought against both the county treasurer and such persons or persons aforesaid. In all such actions, where there are defendants other than the

county treasurer, and damages shall have been recovered, no final judgment shall be entered against the county treasurer, until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the indemnity [assurance] fund. Thereupon the court, being satisfied as to the truth of such return, shall order final judgment against the treasurer, for the amount of the execution and costs, or so much thereof as remains unpaid. The county treasurer shall, upon such order of the court and final judgment, pay the amount of such judgment out of the assurance fund. It shall be the duty of the county attorney to appear and defend all such actions. If the funds in the assurance funds at any time are insufficient to pay any judgment in full, the balance unpaid shall draw interest at the legal rate of interest, and be paid with such interest out of the first funds coming into said fund. [1907 c 250 § 85; RRS § 10714.]

65.12.700 When fund not liable—Maximum liability. The assurance fund shall not be liable in any action to pay for any loss, damage or deprivation occasioned by a breach of trust, whether expressed, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale, in a mortgage or a trust deed. Final judgment shall not be entered against the county treasurer in any action against this chapter to recover from the assurance fund for more than a fair market value of the real estate at the time of the last payment to the assurance fund, on account of the same real estate. [1907 c 250 § 86; RRS § 10715.]

65.12.710 Limitation of actions. No action or proceeding for compensation for or by reason of any deprivation, loss or damage occasioned or sustained as provided in this chapter, shall be made, brought or taken, except within the period of six years from the time when right to bring or take such action or proceeding first accrued; except that if, at any time, when such right of action first accrues, the person entitled to bring such action, or take such proceeding, is under the age of eighteen years, or insane, imprisoned, or absent from the United States in the service of the United States, or of this state, then such person, or anyone claiming from, by, or under him, may bring the action, or take the proceeding, at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired. [1971 ex.s. c 292 § 49; 1907 c 250 § 87; RRS § 10716.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

65.12.720 Proceeding to change records. No erasure, alteration or amendment shall be made upon the register of titles after the entry of the certificate of title, or a memorial thereon, and the attestation of the same by the registrar of titles, except by order of the court. Any registered owner, or other person in interest, may at any time apply by petition to the court, on the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have determined and ceased; or that new interests have arisen or been created, which do not appear upon the certificate; or that an error, omission or mistake was made in entering the certificate; or any memorial thereon, or any duplicate

certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered, has married, that the marriage has been terminated, or that a corporation which owned registered land has been dissolved, and has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after such notice as it may order, to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: PROVIDED, HOWEVER, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent. [1907 c 250 § 88; RRS § 10717.]

65.12.730 Certificate subject of theft—Penalty. Certificates of title or duplicate certificates entered under this chapter, shall be subjects of theft, and anyone unlawfully stealing or carrying away any such certificate, shall, upon conviction thereof, be deemed guilty of theft under chapter 9A.56 RCW. [2003 c 53 § 291; 1907 c 250 § 89; RRS § 10718.]

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

65.12.740 Perjury. Whoever knowingly swears falsely to any statement required by this chapter to be made under oath is guilty of perjury under chapter 9A.72 RCW. [2003 c 53 § 292; 1907 c 250 § 90; RRS § 10719.]

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

65.12.750 Fraud—False entries—Penalty. Whoever fraudulently procures, or assists fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles, or other book kept in the registrar's office, or of any erasure or alteration in any entry in any such book, or in any instrument authorized by this chapter, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a class C felony, and upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in a state correctional facility for not more than five years, or both such fine and imprisonment, in the discretion of the court. [2003 c 53 § 293; 1907 c 250 § 91; RRS § 10720.]

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

65.12.760 Forgery—Penalty. Whoever forges or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature, or handwriting of any officer of the registry office, in case where such officer is expressly or impliedly authorized to affix his or her signature; or forges or procures to be forged, or assists in forging, the name, signa-

ture, or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of the registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, shall be guilty of a class B felony, and upon conviction shall be imprisoned in a state correctional facility for not more than ten years, or fined not more than one thousand dollars, or both fined and imprisoned, in the discretion of the court. [2003 c 53 § 294; 1907 c 250 § 92; RRS § 10721.]

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

65.12.770 Civil actions unaffected. No proceeding or conviction for any act hereby declared to be a felony, shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law, or in equity, against the person who has committed such act, or against his estate. [1907 c 250 § 93; RRS § 10722.]

65.12.780 Fees of clerk. On the filing of any application for registration, the applicant shall pay to the clerk of the court filing fees as set in RCW 36.18.016. When any number of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this chapter shall be paid for by the party on whose application the order of publication is made, in addition to the fees above prescribed. The party at whose request any notice is issued, shall pay for the service of the same, except when sent by mail by the clerk of court, or the registrar of titles. [1995 c 292 § 19; 1907 c 250 § 94; RRS § 10723.]

65.12.790 Fees of registrar. The fees to be paid to the registrar of titles shall be as follows:

(1) At or before the time of filing of the certified copy of the application with the registrar, the applicant shall pay, to the registrar, on all land having an assessed value, exclusive of improvements, of one thousand dollars or less, thirty-one and one-quarter cents on each one thousand dollars, or major fraction thereof, of the assessed value of said land, additional.

(2) For granting certificates of title, upon each applicant, and registering the same, two dollars.

(3) For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the instruments connected therewith, and the issuance and registration of the new certificate of title, ten dollars.

(4) When the land transferred is held upon any trust, condition, or limitation, an additional fee of three dollars.

(5) For entry of each memorial on the register, including the filing of all instruments and papers connected therewith, and endorsements upon duplicate certificates, three dollars.

(6) For issuing each additional owner's duplicate certificate, mortgagee's duplicate certificate, or lessee's duplicate certificate, three dollars.

(7) For filing copy of will, with letters testamentary, or filing copy of letters of administration, and entering memorial thereof, two dollars and fifty cents.

(8) For the cancellation of each memorial, or charge, one dollar.

(9) For each certificate showing the condition of the register, one dollar.

(10) For any certified copy of any instrument or writing on file in his office, the same fees now allowed by law to county clerks and county auditors for like service.

(11) For any other service required, or necessary to carry out this chapter, and not hereinbefore itemized, such fee or fees as the court shall determine and establish.

(12) For registration of each mortgage and issuance of duplicate of title a fee of five dollars; for each deed of trust and issuance of duplicate of title a fee of eight dollars. [1973 1st ex.s. c 195 § 76; 1973 c 121 § 2; 1907 c 250 § 95; RRS § 10724.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

65.12.800 Disposition of fees. One-half of all fees provided for in RCW 65.12.790(1), shall be collected by the registrar, and paid to the county treasurer of the county in which the fees are paid, to be used for the current expenses of the county; and all the remaining fees provided for in said section, and all the subdivisions thereof, shall be collected by the registrar, and applied the same as the other fees of his office; but his salary as county clerk or county auditor, as now provided by law, shall not be increased on account of the additional duties, or by reason of the allowance of additional fees provided for herein; and the said registrar, as such, shall receive no salary. [1907 c 250 § 96; RRS § 10725.]

Chapter 65.16 RCW

LEGAL PUBLICATIONS

Sections

- 65.16.010 Weekly publication—How made.
- 65.16.020 Qualifications of legal newspaper.
- 65.16.030 Affidavit of publication—Presumption.
- 65.16.040 Legal publications to be approved—Order of approval.
- 65.16.050 Revocation of approval—Notice.
- 65.16.060 Choice of newspapers.
- 65.16.070 List posted in clerk’s office.
- 65.16.080 Scope of provisions.
- 65.16.091 Rates for legal notices.
- 65.16.095 Rates for political candidates.
- 65.16.100 Omissions for Sundays and holidays.
- 65.16.110 Affidavit to cover payment of fees.
- 65.16.120 Payment of fees in advance, on demand.
- 65.16.130 Publication of official notices by radio or television—Restrictions.
- 65.16.150 Proof of publication by radio or television.
- 65.16.160 Publication of ordinances.

Civil procedure, legal publication generally: Chapter 4.28 RCW.
Corporate seals, effect of absence from instrument: RCW 64.04.105.
Powers of appointment: Chapter 11.95 RCW.

65.16.010 Weekly publication—How made. The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published. [1893 c 127 § 27; RRS § 253.]

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65.16.020 Qualifications of legal newspaper. The qualifications of a legal newspaper are that such newspaper shall have been published regularly, at least once a week, in the English language, as a newspaper of general circulation, in the city or town where the same is published at the time of application for approval, for at least six months prior to the date of such application; shall be compiled either in whole or in part in an office maintained at the place of publication; shall contain news of general interest as contrasted with news of interest primarily to an organization, group or class; shall have a policy to print all statutorily required legal notices; and shall hold a periodical class mailing permit: PROVIDED, That in case of the consolidation of two or more newspapers, such consolidated newspaper shall be considered as qualified if either or any of the papers so consolidated would be a qualified newspaper at the date of such legal publication, had not such consolidation taken place: PROVIDED, That this section shall not disqualify as a legal newspaper any publication which, prior to June 8, 1961, was adjudged a legal newspaper, so long as it continues to meet the requirements under which it qualified. [2001 c 283 § 1; 1961 c 279 § 1; 1941 c 213 § 3; 1921 c 99 § 1; Rem. Supp. 1941 § 253-1. Prior: 1917 c 61 § 1.]

65.16.030 Affidavit of publication—Presumption. All legal and other official notices shall be published in a legal newspaper as herein defined, and the affidavit of publication shall state that the newspaper has been approved as a legal newspaper by order of the superior court of the county in which it is published, and shall be prima facie evidence of that fact. Wherever a legal notice, publication, advertisement or other official notice is required to be published by any statute or law of the state of Washington, the proof of such publication shall be the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper which published said notice. [1953 c 233 § 1; 1941 c 213 § 4; 1921 c 99 § 2; Rem. Supp. 1941 § 253-2.]

65.16.040 Legal publications to be approved—Order of approval. Sixty days from and after the date *this act becomes effective, a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding, or other official document now or hereafter required by law to be published, shall be a newspaper which has been approved as a legal newspaper by order of the superior court of the county in which such newspaper is published. Such order may be entered without notice upon presentation of a petition by or on behalf of the publisher, setting forth the qualifications of the newspaper as required by *this act, and upon evidence satisfactory to the court that such newspaper is so qualified. [1941 c 213 § 1; Rem. Supp. 1941 § 253a.]

*Reviser’s note: (1) The language "this act" appears in 1941 c 213 codified as RCW 65.16.020 through 65.16.080.

(2) The effective date of this act is midnight June 11, 1941; see preface 1941 session laws.

65.16.050 Revocation of approval—Notice. An order of approval of a newspaper shall remain effective from the time of the entry thereof until the approval be terminated by a subsequent order of the court, which may be done whenever it shall be brought to the attention of the court that the news-

paper is no longer qualified as a legal newspaper, and after notice of hearing issued by the clerk and served upon the publisher, at least ten days prior to the date of hearing, by delivering a copy of such notice to the person in charge of the business office of the publisher, or if the publisher has no business office at the time of service, by mailing a copy of such notice addressed to the publisher at the place of publication alleged in the petition for approval. [1941 c 213 § 2; Rem. Supp. 1941 § 253b.]

65.16.060 Choice of newspapers. Any summons, citation, notice of sheriff's sale, or legal advertisement of any description, the publication of which is now or may be hereafter required by law, may be published in any daily or weekly legal newspaper published in the county where the action, suit or other proceeding is pending, or is to be commenced or had, or in which such notice, summons, citation, or other legal advertisement is required to be given: PROVIDED, HOWEVER, That if there be more than one legal newspaper in which any such legal notice, summons, citation or legal advertisement might lawfully be published, then the plaintiff or moving party in the action, suit or proceeding shall have the exclusive right to designate in which of such qualified newspapers such legal notice, summons, citation, notice of sheriff's sale or other legal advertisement shall be published. [1941 c 213 § 6; 1921 c 99 § 5; Rem. Supp. 1941 § 253-5.]

65.16.070 List posted in clerk's office. Publications commenced in a legal newspaper, *when this act takes effect, may be completed in that newspaper notwithstanding any failure to obtain an order of approval under *this act, and notwithstanding an order of termination of approval prior to completion of publication. The clerk of the superior court of each county shall post and keep posted in a prominent place in his office a list of the newspapers published in that county which are approved as legal newspapers. [1941 c 213 § 7; RRS § 253-5a.]

*Reviser's note: "this act," "when this act takes effect," see note following RCW 65.16.040.

65.16.080 Scope of provisions. The provisions of *this act shall not apply in counties where no newspaper has been published for a period of one year prior to the publication of such legal or other official notices. [1941 c 213 § 5; 1921 c 99 § 3; Rem. Supp. 1941 § 253-3.]

*Reviser's note: "this act," see note following RCW 65.16.040.

65.16.091 Rates for legal notices. The rate charged by a newspaper for legal notices shall not exceed the national advertising rate extended by the newspaper to all general advertisers and advertising agencies in its published rate card. [1977 c 34 § 3.]

65.16.095 Rates for political candidates. The rate charged by a newspaper for advertising in relation to candidates for political office shall not exceed the national advertising rate extended to all general advertisers and advertising agencies in its published rate card. [1955 c 186 § 2.]

Severability—1955 c 186: "If any section of this act shall be found unconstitutional it shall not invalidate the remaining section." [1955 c 186 § 3.]

65.16.100 Omissions for Sundays and holidays. Where any law or ordinance of any incorporated city or town in this state provides for the publication of any form of notice or advertisement for consecutive days in a daily newspaper, the publication of such notice on legal holidays and Sundays may be omitted without in any manner affecting the legality of such notice or advertisement: PROVIDED, That the publication of the required number of notices is complied with. [1921 c 99 § 6; RRS § 253-6.]

65.16.110 Affidavit to cover payment of fees. The affidavit of publication of all notices required by law to be published shall state the full amount of the fee charged for such publication and that the fee has been paid in full. [1921 c 99 § 7; RRS § 253-7.]

65.16.120 Payment of fees in advance, on demand. When, by law, any publication is required to be made by an officer of any suit, process, notice, order or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer shall be compelled to make publication thereof. [Code 1881 § 2092; 1869 p 373 § 14; RRS § 504.]

65.16.130 Publication of official notices by radio or television—Restrictions. Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement publication thereof by radio or television broadcast or both when, in his or her judgment, the public interest will be served thereby: PROVIDED, That the time, place, and nature of such notice only be read or shown with no reference to any person by name then a candidate for political office, and that notices by political subdivisions may be made only by stations whose signal is received within the county of origin of the legal notice. [2007 c 103 § 1; 1961 c 85 § 1; 1951 c 119 § 1.]

65.16.150 Proof of publication by radio or television. Written documentation of proof of publication of legal notice or notice of event must be provided by the radio or television station broadcasting the notice. [2007 c 103 § 2; 1961 c 85 § 3; 1951 c 119 § 3.]

65.16.160 Publication of ordinances. (1) Whenever any county is required by law to publish legal notices containing the full text of any proposed or adopted ordinance in a newspaper, the county may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:

- (a) The name of the county;
- (b) The formal identification or citation number of the ordinance;
- (c) A descriptive title;
- (d) A section-by-section summary;
- (e) Any other information which the county finds is necessary to provide a complete summary; and

(f) A statement that the full text will be mailed upon request.

Publication of the title of an ordinance by a county authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a complete summary of that ordinance, and a section-by-section summary shall not be required.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains provisions regarding taxation or penalties or contains legal descriptions of real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering more than one street address, the street addresses of the four corners of the area described shall meet this requirement.

(3) The full text of any ordinance which is summarized by publication under this section shall be mailed without charge to any person who requests the text from the adopting county. [1995 c 157 § 1; 1994 c 273 § 19; 1977 c 34 § 4.]

Chapter 65.20 RCW

CLASSIFICATION OF MANUFACTURED HOMES

Sections

65.20.010	Purpose.
65.20.020	Definitions.
65.20.030	Clarification of type of property and perfection of security interests.
65.20.040	Elimination of title—Application.
65.20.050	Elimination of title—Approval.
65.20.060	Eliminating title—Lenders and conveyances.
65.20.070	Eliminating title—Removing manufactured home when title has been eliminated.
65.20.080	Eliminating title—Uniform forms.
65.20.090	Eliminating title—Fees.
65.20.100	Eliminating title—General supervision.
65.20.110	Eliminating title—Rules.
65.20.120	Eliminating title—Notice.
65.20.130	General penalties.
65.20.900	Prospective effect.
65.20.910	Effect on taxation.
65.20.920	Captions not law.
65.20.930	Short title.
65.20.940	Severability—1989 c 343.
65.20.950	Effective date—1989 c 343.

Certificates of ownership and registration: Chapter 46.12 RCW.

65.20.010 Purpose. The legislature recognizes that confusion exists regarding the classification of manufactured homes as personal or real property. This confusion is increased because manufactured homes are treated as vehicles in some parts of state statutes, however these homes are often used as residences to house persons residing in the state of Washington. This results in a variety of problems, including: (1) Creating confusion as to the creation, perfection, and priority of security interests in manufactured homes; (2) making it more difficult and expensive to obtain financing and title insurance; (3) making it more difficult to utilize manufactured homes as an affordable housing option; and (4) increasing the risk of problems for and losses to the consumer. Therefore the purpose of this chapter is to clarify the type of property manufactured homes are, particularly relating to security interests, and to provide a statutory process to

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make the manufactured home real property by eliminating the title to a manufactured home when the home is affixed to land owned by the homeowner. [1989 c 343 § 1.]

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

(1) "Affixed" means that the manufactured home is installed in accordance with the installation standards in state law.

(2) "Department" means the department of licensing.

(3) "Eliminating the title" means to cancel an existing title issued by this state or a foreign jurisdiction or to waive the certificate of ownership required by chapter 46.12 RCW and recording the appropriate documents in the county real property records pursuant to this chapter.

(4) "Homeowner" means the owner of a manufactured home.

(5) "Land" means real property excluding the manufactured home.

(6) "Manufactured home" or "mobile home" means a structure, designed and constructed to be transportable in one or more sections and is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must comply with the national mobile home construction and safety standards act of 1974 as adopted by chapter 43.22 RCW if applicable. "Manufactured home" does not include a modular home. A structure which met the definition of a "manufactured home" at the time of manufacture is still considered to meet this definition notwithstanding that it is no longer transportable.

(7) "Owner" means, when referring to a manufactured home that is titled, the person who is the registered owner. When referring to a mobile home that is untitled pursuant to this chapter, the owner is the person who owns the land. When referring to land, the person may have fee simple title, have a leasehold estate of thirty-five years or more, or be purchasing the property on a real estate contract. Owners include joint tenants, tenants in common, holders of legal life estates, and holders of remainder interests.

(8) "Person" means any individual, trustee, partnership, corporation, or other legal entity. "Person" may refer to more than one individual or entity.

(9) "Secured party" means the legal owner when referring to a titled mobile home, or the lender securing a loan through a mortgage, deed of trust, or real estate contract when referring to land or land containing an untitled manufactured home pursuant to this chapter.

(10) "Security interest" means an interest in property to secure payment of a loan made by a secured party to a borrower.

(11) "Title" or "titled" means a certificate of ownership issued pursuant to chapter 46.12 RCW. [1989 c 343 § 2.]

65.20.030 Clarification of type of property and perfection of security interests. When a manufactured home is sold or transferred on or after March 1, 1990, and when all ownership in the manufactured home is transferred through

the sale or other transfer of the manufactured home to new owners, the manufactured home shall be real property when the new owners eliminate the title pursuant to this chapter. The manufactured home shall not be real property in any form, including fixture law, unless the title is eliminated under this chapter. Where any person who owned a used manufactured home on March 1, 1990, continues to own the manufactured home on or after March 1, 1990, the interests and rights of owners, secured parties, lienholders, and others in the manufactured home shall be based on the law prior to March 1, 1990, except where the owner voluntarily eliminates the title to the manufactured home by complying with this chapter. If the title to the manufactured home is eliminated under this chapter, the manufactured home shall be treated the same as a site-built structure and ownership shall be based on ownership of the real property through real property law. If the title to the manufactured home has not been eliminated under this chapter, ownership shall be based on chapter 46.12 RCW.

For purposes of perfecting and realizing upon security interests, manufactured homes shall always be treated as follows: (1) If the title has not been eliminated under this chapter, security interests in the manufactured home shall be perfected only under chapter 62A.9A RCW in the case of a manufactured home held as inventory by a manufacturer or dealer or chapter 46.12 RCW in all other cases, and the lien shall be treated as securing personal property for purposes of realizing upon the security interest; or (2) if the title has been eliminated under this chapter, a separate security interest in the manufactured home shall not exist, and the manufactured home shall only be secured as part of the real property through a mortgage, deed of trust, or real estate contract. [2000 c 250 § 9A-836; 1989 c 343 § 3.]

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

65.20.040 Elimination of title—Application. If a manufactured home is affixed to land that is owned by the homeowner, the homeowner may apply to the department to have the title to the manufactured home eliminated. The application package shall consist of the following:

(1) An affidavit, in the form prescribed by the department, signed by all the owners of the manufactured home and containing:

- (a) The date;
- (b) The names of all of the owners of record of the manufactured home;
- (c) The legal description of the real property;
- (d) A description of the manufactured home including model year, make, width, length, and vehicle identification number;
- (e) The names of all secured parties in the manufactured home; and
- (f) A statement that the owner of the manufactured home owns the real property to which it is affixed;

(2) Certificate of ownership for the manufactured home, or the manufacturer's statement of origin in the case of a new manufactured home. Where title is held by the secured party as legal owner, the consent of the secured party must be indicated by the legal owner releasing his or her security interest;

(3) A certification by the local government indicating that the manufactured home is affixed to the land;

(4) Payment of all licensing fees, excise tax, use tax, real estate tax, recording fees, and proof of payment of all property taxes then due; and

(5) Any other information the department may require. [1989 c 343 § 4.]

65.20.050 Elimination of title—Approval. The department shall approve the application for elimination of the title when all requirements listed in RCW 65.20.040 have been satisfied and the registered and legal owners of the manufactured home have consented to the elimination of the title. After approval, the department shall have the approved application recorded in the county or counties in which the land is located and on which the manufactured home is affixed.

The county auditor shall record the approved application, and any other form prescribed by the department, in the county real property records. The manufactured home shall then be treated as real property as if it were a site-built structure. Removal of the manufactured home from the land is prohibited unless the procedures set forth in RCW 65.20.070 are complied with.

The department shall cancel the title after verification that the county auditor has recorded the appropriate documents, and the department shall maintain a record of each manufactured home title eliminated under this chapter by vehicle identification number. The title is deemed eliminated on the date the appropriate documents are recorded by the county auditor. [1989 c 343 § 5.]

65.20.060 Eliminating title—Lenders and conveyances. It is the responsibility of the owner, secured parties, and others to take action as necessary to protect their respective interests in conjunction with the elimination of the title or reissuance of a previously eliminated title.

A manufactured home whose title has been eliminated shall be conveyed by deed or real estate contract and shall only be transferred together with the property to which it is affixed, unless procedures described in RCW 65.20.070 are completed.

Nothing in this chapter shall be construed to require a lender to consent to the elimination of the title of a manufactured home, or to retitling a manufactured home under RCW 65.20.070. The obligation of the lender to consent is governed solely by the agreement between the lender and the owner of the manufactured home. Absent any express written contractual obligation, a lender may withhold consent in the lender's sole discretion. In addition, the homeowner shall comply with all reasonable requirements imposed by a lender for obtaining consent, and a lender may charge a reasonable fee for processing a request for consent. [1989 c 343 § 6.]

65.20.070 Eliminating title—Removing manufactured home when title has been eliminated. Before physical removal of an untitled manufactured home from the land the home is affixed to, the owner shall follow one of these two procedures:

(1) Where a title is to be issued or the home has been destroyed:

(a) The owner shall apply to the department for a title pursuant to chapter 46.12 RCW. In addition the owner shall provide:

(i) An affidavit in the form prescribed by the department, signed by the owners of the land and all secured parties and other lienholders in the land consenting to the removal of the home;

(ii) Payment of recording fees;

(iii) A certification from a title insurance company listing the owners and lienholders in the land and dated within ten days of the date of application for a new title under this subsection; and

(iv) Any other information the department may require;

(b) The owner shall apply for and obtain permits necessary to move a manufactured home including but not limited to the permit required by RCW 46.44.170, and comply with other regulations regarding moving a manufactured home; and

(c) The department shall approve the application for title when the requirements of chapter 46.12 RCW and this subsection have been satisfied. Upon approval the department shall have the approved application and the affidavit recorded in the county or counties in which the land from which the home is being removed is located and the department shall issue a title. The title is deemed effective on the date the appropriate documents are recorded with the county auditor.

(2) Where the manufactured home is to be moved to a new location but again will be affixed to land owned by the homeowner a new title need not be issued, but the following procedures must be complied with:

(a) The owner shall apply to the department for a transfer in location of the manufactured home and if a new owner, a transfer in ownership by filing an application pursuant to RCW 65.20.040. In addition the owner shall include:

(i) An affidavit in the form prescribed by the department signed by all of the owners of the real property from which the manufactured home is being moved indicating their consent. The affidavit shall include the consent of all secured parties and other lienholders in the land from which the manufactured home is being moved;

(ii) A legal description and property tax parcel number of the real property from which the home is being removed and a legal description and property tax parcel number of the land on which the home is being moved to; and

(iii) A certification from a title insurance company listing the owners and lienholders in the land and dated within ten days of the application for transfer in location under this subsection;

(b) The owner shall apply for and obtain permits necessary to move a manufactured home including but not limited to RCW 46.44.170, and comply with other regulations regarding moving a manufactured home; and

(c) After approval, including verification that the owners, secured parties, and other lienholders have consented to the move, the department shall have the approved application recorded in the county or counties in which the land from which the home is being removed and the land to which the home is being moved is located. [1989 c 343 § 7.]

65.20.080 Eliminating title—Uniform forms. The department may prepare standard affidavits, lienholder's (2008 Ed.)

consents, and other forms to be used pursuant to this chapter. [1989 c 343 § 8.]

65.20.090 Eliminating title—Fees. The director may, in addition to the title fees and other fees and taxes required under chapter 46.12 RCW establish by rule a reasonable fee to cover the cost of processing documents and performing services by the department required under this chapter.

Fees collected by the department for services provided by the department under this chapter shall be forwarded to the state treasurer. The state treasurer shall credit such moneys to the motor vehicle fund and all department expenses incurred in carrying out the provisions of this chapter shall be paid from such fund as authorized by legislative appropriation. [1989 c 343 § 9.]

65.20.100 Eliminating title—General supervision. The department shall have the general supervision and control of the elimination of titles and shall have full power to do all things necessary and proper to carry out the provisions of this chapter. The director shall have the power to appoint the county auditors as the agents of the department. [1989 c 343 § 11.]

65.20.110 Eliminating title—Rules. The department may make any reasonable rules relating to the enforcement and proper operation of this chapter. [1989 c 343 § 12.]

65.20.120 Eliminating title—Notice. County auditors shall notify county assessors regarding elimination of titles to manufactured homes, the retitling of manufactured homes, and the movement of manufactured homes under RCW 65.20.070. [1989 c 343 § 13.]

65.20.130 General penalties. Every person who falsifies or intentionally omits material information required in an affidavit, or otherwise intentionally violates a material provision of this chapter, is guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021. [1989 c 343 § 10.]

65.20.900 Prospective effect. This chapter applies prospectively only. RCW 65.20.030 applies to all security interests perfected on or after March 1, 1990. This chapter applies to the sale or transfer of manufactured homes on or after March 1, 1990, where all of the existing ownership rights and interests in the manufactured home are terminated in favor of new and different owners, or where persons who own a manufactured home on or after March 1, 1990, voluntarily elect to eliminate the title to the manufactured home under this chapter. [1989 c 343 § 14.]

65.20.910 Effect on taxation. Nothing in this chapter shall be construed to affect the taxation of manufactured homes. [1989 c 343 § 15.]

65.20.920 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1989 c 343 § 16.]

65.20.930 Short title. This chapter may be known and cited as the manufactured home real property act. [1989 c 343 § 17.]

65.20.940 Severability—1989 c 343. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 343 § 26.]

65.20.950 Effective date—1989 c 343. This act shall take effect on March 1, 1990. [1989 c 343 § 27.]

Chapter 65.24 RCW

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Sections

65.24.010	Definitions.
65.24.020	Electronic authentication.
65.24.030	Recording officer—Powers and duties.
65.24.040	E-recording standards commission.
65.24.050	Electronic signatures in global and national commerce act.
65.24.900	Short title.
65.24.901	Application—construction.

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

(1) "Document" means information that is:

(a) Inscribed on a tangible medium or that is stored in an electronic or other medium, and is retrievable in perceivable form; and

(b) Eligible to be recorded in the land records maintained by the recording officer.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the recording officer in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(7) "E-recording standards commission" means the body of stakeholders appointed by the secretary of state to review electronic recording standards and make recommendations to the secretary under RCW 65.24.040. [2008 c 57 § 2.]

65.24.020 Electronic authentication. (1) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in

writing, the requirement is satisfied by an electronic document satisfying this chapter.

(2) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(3) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature. [2008 c 57 § 3.]

65.24.030 Recording officer—Powers and duties. (1)

In this section, "paper document" means a document that is received by the recording officer in a form that is not electronic.

(2) A recording officer:

(a) Who performs any of the functions listed in this section shall do so in compliance with the rules adopted by the secretary of state for the electronic recording of documents;

(b) May receive, index, store, archive, and transmit electronic documents;

(c) May provide for access to, and for search and retrieval of, documents and information by electronic means;

(d) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index;

(e) May convert paper documents accepted for recording into electronic form;

(f) May convert information previously recorded into electronic form;

(g) May, after receiving approval pursuant to RCW 36.29.190, accept electronically any fee or tax that the recording officer is authorized to collect;

(h) May agree with other officials of a state, or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees or taxes. [2008 c 57 § 4.]

65.24.040 E-recording standards commission. The office of the secretary of state shall create and appoint an e-recording standards commission. The e-recording standards commission shall review electronic recording standards and make recommendations to the secretary of state for rules necessary to implement this chapter. A majority of the commission must be county recorders or auditors. The commission may include assessors, treasurers, land title company representatives, escrow agents, and mortgage brokers, the state archivist, and any other party the secretary of state deems appropriate. The term of the commissioners will be set by the secretary of state.

To keep the standards and practices of recording officers in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact this chapter and to keep the technology used by recording officers in this state compatible with technology used by recording offices in

other jurisdictions that enact this chapter, the office of the secretary of state, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing standards shall consider:

- (1) The standards and practices of other jurisdictions;
 - (2) The most recent standards adopted by national standard-setting bodies, such as the property records industry association;
 - (3) The views of interested persons and governmental officials and entities;
 - (4) The needs of counties of varying size, population, and resources; and
 - (5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.
- [2008 c 57 § 5.]

65.24.050 Electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act. [2008 c 57 § 7.]

65.24.900 Short title. This chapter may be known and cited as the uniform real property electronic recording act. [2008 c 57 § 1.]

65.24.901 Application—construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact a uniform real property electronic recording act. [2008 c 57 § 6.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

- 66.04** Definitions.
- 66.08** Liquor control board—General provisions.
- 66.12** Exemptions.
- 66.16** State liquor stores.
- 66.20** Liquor permits.
- 66.24** Licenses—Stamp taxes.
- 66.28** Miscellaneous regulatory provisions.
- 66.32** Search and seizure.
- 66.36** Abatement proceedings.
- 66.40** Local option.
- 66.44** Enforcement—Penalties.
- 66.98** Construction.

Alcoholism, intoxication, and drug addiction private establishments: Chapter 71.12 RCW. treatment: Chapter 70.96A RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

Chapter 66.04 RCW DEFINITIONS

Sections

- 66.04.010 Definitions.
- 66.04.011 "Public place" not to include certain parks and picnic areas.

66.04.010 Definitions. In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced anywhere outside Washington by a brewery or winery which does not hold a certificate of approval issued by the board; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(7) "Board" means the liquor control board, constituted under this title.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Confection" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, dairy products, or flavorings, in the form of bars, drops, or pieces.

(10) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(11) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(12) "Craft distillery" means a distillery that pays the reduced licensing fee under RCW 66.24.140.

(13) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(14) "Distiller" means a person engaged in the business of distilling spirits.

(15) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(16) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(17) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(18) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(19) "Employee" means any person employed by the board.

(20) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(21) "Fund" means 'liquor revolving fund.'

(22) "Hotel" means buildings, structures, and grounds, having facilities for preparing, cooking, and serving food, that are kept, used, maintained, advertised, or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests. The buildings, structures, and grounds must be located on adjacent property either owned or leased by the same person or persons.

(23) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(24) "Imprisonment" means confinement in the county jail.

(25) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(26) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(27) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(28) "Package" means any container or receptacle used for holding liquor.

(29) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

(30) "Permit" means a permit for the purchase of liquor under this title.

(31) "Person" means an individual, copartnership, association, or corporation.

(32) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(33) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(34) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(35) "Regulations" means regulations made by the board under the powers conferred by this title.

(36) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(37) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the non-

profit organization conducting the raffle has obtained the appropriate permit from the board.

(38) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(39) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

(40) "Store" means a state liquor store established under this title.

(41) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(42) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(43)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(44) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(45) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title. [2008 c 94 § 4; (2008 c 94 § 3 expired July 1, 2008). Prior: 2007 c 370 § 10; 2007 c 226 § 1; prior: 2006 c 225 § 1; 2006 c 101 § 1; 2005 c 151 § 1; 2004 c 160 § 1; 2000 c 142 § 1; 1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

Effective date—2008 c 94 §§ 4 and 11: "Sections 4 and 11 of this act take effect July 1, 2008." [2008 c 94 § 13.]

(2008 Ed.)

Expiration date—2008 c 94 § 3: "Section 3 of this act expires July 1, 2008." [2008 c 94 § 12.]

Effective date—2007 c 370 §§ 10-20: "Sections 10 through 20 of this act take effect July 1, 2008." [2007 c 370 § 23.]

Effective date—2004 c 160: "This act takes effect January 1, 2005." [2004 c 160 § 20.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Severability—1982 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 39 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.]

66.04.011 "Public place" not to include certain parks and picnic areas. "Public place" as defined in this title shall not include (a) any of those parks under the control of the state parks and recreation commission, nor, (b) parks and picnic areas adjacent to and held by the same ownership as licensed brewers and domestic wineries for the consumption of beer and wine produced by the respective brewery or winery, as prescribed by regulation adopted by the board pursuant to chapter 34.05 RCW. [1977 ex.s. c 219 § 1; 1971 ex.s. c 208 § 3.]

Chapter 66.08 RCW

LIQUOR CONTROL BOARD— GENERAL PROVISIONS

Sections

66.08.010	Title liberally construed.
66.08.012	Creation of board—Chairman—Quorum—Salary.
66.08.014	Terms of members—Vacancies—Principal office— Removal—Devotion of time to duties—Bond—Oath.
66.08.016	Employees of the board.
66.08.020	Liquor control board to administer.
66.08.022	Attorney general is general counsel of board—Duties— Assistants.
66.08.024	Annual audit—State auditor's duties—Additional audits— Public records.
66.08.026	Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined.
66.08.030	Regulations—Scope.
66.08.050	Powers of board in general.
66.08.0501	Adoption of rules.
66.08.055	Oaths may be administered and affidavits, declarations received.
66.08.060	Board cannot advertise liquor, exception—Advertising regu- lations.
66.08.070	Purchase of liquor by board—Consignment not prohibited— Warranty or affirmation not required for wine or malt pur- chases.
66.08.075	Officer, employee not to represent manufacturer, wholesaler in sale to board.
66.08.080	Interest in manufacture or sale of liquor prohibited.
66.08.090	Sale of liquor by employees of board.
66.08.095	Liquor for training or investigation purposes.
66.08.100	Jurisdiction of action against board—Immunity from per- sonal liability of members.
66.08.120	Preemption of field by state—Exception.
66.08.130	Inspection of books and records—Goods possessed or shipped—Refusal as violation.
66.08.140	Inspection of books and records—Financial dealings—Pen- alty for refusal.
66.08.145	Subpoena issuing authority.

- 66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding—Opportunity for hearing—Summary suspension.
- 66.08.160 Acquisition of warehouse authorized.
- 66.08.165 Strategies to improve operational efficiency and revenue.
- 66.08.166 Sunday sales authorized—Store selection and other requirements.
- 66.08.167 Sunday sales—Store selection.
- 66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable.
- 66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies.
- 66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for non-compliance.
- 66.08.195 Liquor revolving fund—Definition of terms relating to border areas.
- 66.08.196 Liquor revolving fund—Distribution of funds to border areas.
- 66.08.198 Liquor revolving fund—Distribution of funds to border areas—Guidelines adoption.
- 66.08.200 Liquor revolving fund—Computation for distribution to counties—"Unincorporated area" defined.
- 66.08.210 Liquor revolving fund—Computation for distribution to cities.
- 66.08.220 Liquor revolving fund—Separate account—Distribution.
- 66.08.230 Initial disbursement to wine commission—Repayment.
- 66.08.235 Liquor control board construction and maintenance account.
- 66.08.240 Transfer of funds pursuant to government service agreement.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

66.08.010 Title liberally construed. This entire title shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. [1933 ex.s. c 62 § 2; RRS § 7306-2.]

66.08.012 Creation of board—Chairman—Quorum—Salary. There shall be a board, known as the "Washington state liquor control board," consisting of three members, to be appointed by the governor, with the consent of the senate, who shall each be paid an annual salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The governor may, in his discretion, appoint one of the members as chairman of the board, and a majority of the members shall constitute a quorum of the board. [1961 c 307 § 7; 1949 c 5 § 8; 1945 c 208 § 1; 1937 c 225 § 1; 1933 ex.s. c 62 § 63; Rem. Supp. 1949 § 7306-63. Formerly RCW 43.66.010.]

Severability—1945 c 5: See RCW 66.98.080.

66.08.014 Terms of members—Vacancies—Principal office—Removal—Devotion of time to duties—Bond—Oath. (1) The members of the board to be appointed after December 2, 1948 shall be appointed for terms beginning January 15, 1949, and expiring as follows: One member of the board for a term of three years from January 15, 1949; one member of the board for a term of six years from January 15, 1949; and one member of the board for a term of nine years from January 15, 1949. Each of the members of the board appointed hereunder shall hold office until his successor is appointed and qualified. After June 11, 1986, the term that began on January 15, 1985, will end on January 15, 1989, the term beginning on January 15, 1988, will end on January

15, 1993, and the term beginning on January 15, 1991, will end on January 15, 1997. Thereafter, upon the expiration of the term of any member appointed after June 11, 1986, each succeeding member of the board shall be appointed and hold office for the term of six years. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the board shall impair the right of the remaining member or members to act, except as herein otherwise provided.

(2) The principal office of the board shall be at the state capitol, and it may establish such other offices as it may deem necessary.

(3) Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal shall disqualify such member for reappointment.

(4) Each member of the board shall devote his entire time to the duties of his office and no member of the board shall hold any other public office. Before entering upon the duties of his office, each of said members of the board shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor in the penal sum of fifty thousand dollars conditioned upon the faithful performance of his duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the board. [1986 c 105 § 1; 1949 c 5 § 9; 1947 c 113 § 1; 1945 c 208 § 2; 1933 ex.s. c 62 § 64; Rem. Supp. 1949 § 7306-64. Formerly RCW 43.66.020.]

Severability—1949 c 5: See RCW 66.98.080.

66.08.016 Employees of the board. The board may employ such number of employees as in its judgment are required from time to time. [1961 c 1 § 30 (Initiative Measure No. 207, approved November 8, 1960); 1947 c 113 § 2; 1933 ex.s. c 62 § 65; Rem. Supp. 1947 § 7306-65. Formerly RCW 43.66.030.]

66.08.020 Liquor control board to administer. The administration of this title, including the general control, management and supervision of all liquor stores, shall be vested in the liquor control board, constituted under this title. [1933 ex.s. c 62 § 5; RRS § 7306-5.]

Prosecuting attorney to make annual report of liquor law prosecutions: RCW 36.27.020.

66.08.022 Attorney general is general counsel of board—Duties—Assistants. The attorney general shall be the general counsel of the liquor control board and he shall

institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of the provisions of this chapter and Title 66 RCW.

He shall assign such assistants as may be necessary to the exclusive duty of assisting the liquor control board in the enforcement of Title 66 RCW. [1961 ex.s. c 6 § 2; 1933 ex.s. c 62 § 66; RRS § 7306-66. Formerly RCW 43.66.140.]

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.024 Annual audit—State auditor's duties—Additional audits—Public records. The state auditor shall audit the books, records, and affairs of the board annually. The board may provide for additional audits by certified public accountants. All such audits shall be public records of the state. The payment of the audits provided for in this section shall be paid as provided in RCW 66.08.026 for other administrative expenses. [1987 c 74 § 1; 1981 1st ex.s. c 5 § 2; 1961 ex.s. c 6 § 3; 1937 c 138 § 1; 1935 c 174 § 12; 1933 ex.s. c 62 § 71; RRS § 7306-71. Formerly RCW 43.66.150.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.026 Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined. (Effective until July 1, 2009.) All administrative expenses of the board incurred on and after April 1, 1963, shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of establishing, leasing, maintaining, and operating state liquor stores and warehouses, legal services, pilot projects, annual or other audits, and other general costs of conducting the business of the board, and the costs of supplying, installing, and maintaining equipment used in state liquor stores and contract liquor stores for the purchase of liquor using debit or credit cards. The administrative expenses shall not, however, be deemed to include costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, packaging and repackaging of liquor, agency commissions for contract liquor stores, transaction fees associated with credit or debit card purchases for liquor in state liquor stores and in contract liquor stores pursuant to RCW 66.16.040 and 66.16.041, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. Agency commissions for contract liquor stores shall be established by the liquor control board after consultation with and approval by the director of the office of financial management. All expenditures and payment of obligations authorized by this section are subject to the allotment requirements of chapter 43.88 RCW. [2005 c 151 § 2; 2004 c 63 § 1; 2001 c 313 § 1; 1998 c 265 § 2; 1997 c 148 § 1; 1996 c 291 § 3; 1983 c 160 § 2; 1963 c 239 § 1; 1961 ex.s. c 6 § 4. Formerly RCW 43.66.161.]

(2008 Ed.)

Intent—1998 c 265: See note following RCW 66.16.041.

Severability—1963 c 239: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 239 § 2.]

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.026 Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined. (Effective July 1, 2009.) Administrative expenses of the board shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of opening additional state liquor stores and warehouses, legal services, pilot projects, annual or other audits, and other general costs of conducting the business of the board. The administrative expenses shall not include costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, the cost of operating, maintaining, relocating, and leasing state liquor stores and warehouses, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, agency commissions for contract liquor stores, transaction fees associated with credit or debit card purchases for liquor in state liquor stores and in contract liquor stores pursuant to RCW 66.16.040 and 66.16.041, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. Agency commissions for contract liquor stores shall be established by the liquor control board after consultation with and approval by the director of the office of financial management. All expenditures and payment of obligations authorized by this section are subject to the allotment requirements of chapter 43.88 RCW. [2008 c 67 § 1; 2005 c 151 § 2; 2004 c 63 § 1; 2001 c 313 § 1; 1998 c 265 § 2; 1997 c 148 § 1; 1996 c 291 § 3; 1983 c 160 § 2; 1963 c 239 § 1; 1961 ex.s. c 6 § 4. Formerly RCW 43.66.161.]

Effective date—2008 c 67: "This act takes effect July 1, 2009." [2008 c 67 § 2.]

Intent—1998 c 265: See note following RCW 66.16.041.

Severability—1963 c 239: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 239 § 2.]

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.030 Regulations—Scope. (1) For the purpose of carrying into effect the provisions of this title according to their true intent or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and shall be filed in the office of the code reviser, and thereupon shall have the same force and effect as if incorporated in this title. Such regulations, together with a copy of this title, shall be published in pamphlets and shall be distributed as directed by the board.

(2) Without thereby limiting the generality of the provisions contained in subsection (1), it is declared that the power

of the board to make regulations in the manner set out in that subsection shall extend to

(a) regulating the equipment and management of stores and warehouses in which state liquor is sold or kept, and prescribing the books and records to be kept therein and the reports to be made thereon to the board;

(b) prescribing the duties of the employees of the board, and regulating their conduct in the discharge of their duties;

(c) governing the purchase of liquor by the state and the furnishing of liquor to stores established under this title;

(d) determining the classes, varieties, and brands of liquor to be kept for sale at any store;

(e) prescribing, subject to *RCW 66.16.080, the hours during which the state liquor stores shall be kept open for the sale of liquor;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each variety of liquor kept for sale under this title;

(g) prescribing an official seal and official labels and stamps and determining the manner in which they shall be attached to every package of liquor sold or sealed under this title, including the prescribing of different official seals or different official labels for different classes of liquor;

(h) providing for the payment by the board in whole or in part of the carrying charges on liquor shipped by freight or express;

(i) prescribing forms to be used for purposes of this title or the regulations, and the terms and conditions to be contained in permits and licenses issued under this title, and the qualifications for receiving a permit or license issued under this title, including a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(j) prescribing the fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title, and prescribing the fees for anything done or permitted to be done under the regulations;

(k) prescribing the kinds and quantities of liquor which may be kept on hand by the holder of a special permit for the purposes named in the permit, regulating the manner in which the same shall be kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

(l) regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;

(m) prescribing the records of purchases or sales of liquor kept by the holders of licenses, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(n) prescribing the kinds and quantities of liquor for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

(o) prescribing the manner of giving and serving notices required by this title or the regulations, where not otherwise provided for in this title;

(p) regulating premises in which liquor is kept for export from the state, or from which liquor is exported, prescribing the books and records to be kept therein and the reports to be made thereon to the board, and providing for the inspection of the premises and the books, records and the liquor so kept;

(q) prescribing the conditions and qualifications requisite for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, prescribing the manner of licensing clubs in any municipality or other locality, and providing for the inspection of clubs;

(r) prescribing the conditions, accommodations and qualifications requisite for the obtaining of licenses to sell beer and wines, and regulating the sale of beer and wines thereunder;

(s) specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers shall deliver liquor within the state; and the time and periods when, and the manner, methods and means by which liquor may lawfully be conveyed or carried within the state;

(t) providing for the making of returns by brewers of their sales of beer shipped within the state, or from the state, showing the gross amount of such sales and providing for the inspection of brewers' books and records, and for the checking of the accuracy of any such returns;

(u) providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

(v) providing for the making of returns by any other liquor manufacturers, showing the gross amount of liquor produced or purchased, the amount sold within and exported from the state, and to whom so sold or exported, and providing for the inspection of the premises of any such liquor manufacturers, their books and records, and for the checking of any such return;

(w) providing for the giving of fidelity bonds by any or all of the employees of the board: PROVIDED, That the premiums therefor shall be paid by the board;

(x) providing for the shipment by mail or common carrier of liquor to any person holding a permit and residing in any unit which has, by election pursuant to this title, prohibited the sale of liquor therein;

(y) prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board; and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

(z) seizing, confiscating and destroying all alcoholic beverages manufactured, sold or offered for sale within this state which do not conform in all respects to the standards prescribed by this title or the regulations of the board: PROVIDED, Nothing herein contained shall be construed as authorizing the liquor board to prescribe, alter, limit or in any way change the present law as to the quantity or percentage of alcohol used in the manufacturing of wine or other alcoholic beverages. [2002 c 119 § 2; 1977 ex.s. c 115 § 1; 1971

c 62 § 1; 1943 c 102 § 1; 1933 ex.s. c 62 § 79; RRS § 7306-79. Formerly RCW 66.08.030 and 66.08.040.]

***Reviser's note:** RCW 66.16.080 was repealed by 2005 c 231 § 6.

66.08.050 Powers of board in general. The board, subject to the provisions of this title and the rules, shall:

(1) Determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) Appoint in cities and towns and other communities, in which no state liquor store is located, contract liquor stores. In addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a contract liquor store for the purpose of sale of liquor products of its own manufacture on the licensed premises only. Such contract liquor stores shall be authorized to sell liquor under the guidelines provided by law, rule, or contract, and such contract liquor stores shall be subject to such additional rules and regulations consistent with this title as the board may require;

(3) Establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) Provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business; and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;

(5) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(8) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor: PROVIDED, That the board shall have no

authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language. [2005 c 151 § 3; 1997 c 228 § 1; 1993 c 25 § 1; 1986 c 214 § 2; 1983 c 160 § 1; 1975 1st ex.s. c 173 § 1; 1969 ex.s. c 178 § 1; 1963 c 239 § 3; 1935 c 174 § 10; 1933 ex.s. c 62 § 69; RRS § 7306-69.]

Severability—1975 1st ex.s. c 173: "If any phrase, clause, subsection, or section of this 1975 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1975 amendatory act without the phrase, clause, subsection, or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1975 1st ex.s. c 173 § 13.]

Effective date—1975 1st ex.s. c 173: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 173 § 14.]

Severability—1963 c 239: See note following RCW 66.08.026.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.08.0501 Adoption of rules. The liquor control board may adopt appropriate rules pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of chapter 321, Laws of 1997. [1997 c 321 § 56.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.08.055 Oaths may be administered and affidavits, declarations received. Every member of the board, and every employee authorized by the board to issue permits under this title may administer any oath and take and receive any affidavit or declaration required under this title or the regulations. [1933 ex.s. c 62 § 80; RRS § 7306-80. Formerly RCW 43.66.050.]

66.08.060 Board cannot advertise liquor, exception—Advertising regulations. (1) The board shall not advertise liquor in any form or through any medium whatsoever.

(2) In-store liquor merchandising is not advertising for the purposes of this section.

(3) The board shall have power to adopt any and all reasonable rules as to the kind, character, and location of advertising of liquor. [2005 c 231 § 3; 1933 ex.s. c 62 § 43; RRS § 7306-43.]

Severability—2005 c 231: See note following RCW 66.08.165.

66.08.070 Purchase of liquor by board—Consignment not prohibited—Warranty or affirmation not required for wine or malt purchases. (1) Every order for the purchase of liquor shall be authorized by the board, and no order for liquor shall be valid or binding unless it is so authorized and signed by the board or its authorized designee.

(2) A duplicate of every such order shall be kept on file in the office of the board.

(3) All cancellations of such orders made by the board shall be signed in the same manner and duplicates thereof kept on file in the office of the board. Nothing in this title shall be construed as preventing the board from accepting liquor on consignment.

(4) In the purchase of wine or malt beverages the board shall not require, as a term or condition of purchase, any warranty or affirmation with respect to the relationship of the price charged the board to any price charged any other buyer. [1985 c 226 § 2; 1973 1st ex.s. c 209 § 1; 1933 ex.s. c 62 § 67; RRS § 7306-67.]

Severability—1973 1st ex.s. c 209: "If any phrase, clause, subsection or section of this 1973 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1973 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1973 1st ex.s. c 209 § 21.]

Effective date—1973 1st ex.s. c 209: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 209 § 22.]

66.08.075 Officer, employee not to represent manufacturer, wholesaler in sale to board. No official or employee of the liquor control board of the state of Washington shall, during his term of office or employment, or for a period of two years immediately following the termination thereof, represent directly or indirectly any manufacturer or wholesaler of liquor in the sale of liquor to the board. [1937 c 217 § 5 (adding new section 42-A to 1933 ex.s. c 62); RRS § 7306-42A. Formerly RCW 43.66.040.]

66.08.080 Interest in manufacture or sale of liquor prohibited. Except as provided by chapter 42.52 RCW, no member of the board and no employee of the board shall have any interest, directly or indirectly, in the manufacture of liquor or in any liquor sold under this title, or derive any profit or remuneration from the sale of liquor, other than the salary or wages payable to him in respect of his office or position, and shall receive no gratuity from any person in connection with such business. [1994 c 154 § 313; 1981 1st ex.s. c 5 § 3; 1933 ex.s. c 62 § 68; RRS § 7306-68.]

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.08.090 Sale of liquor by employees of board. No employee shall sell liquor in any other place, nor at any other time, nor otherwise than as authorized by the board under this title and the regulations. [1933 ex.s. c 62 § 31; RRS § 7306-31.]

66.08.095 Liquor for training or investigation purposes. The liquor control board may provide liquor at no charge, including liquor forfeited under chapter 66.32 RCW, to recognized law enforcement agencies within the state when the law enforcement agency will be using the liquor for bona fide law enforcement training or investigation purposes. [1993 c 26 § 3.]

66.08.100 Jurisdiction of action against board—Immunity from personal liability of members. No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the board or any member thereof for anything

done or omitted to be done in or arising out of the performance of his or their duties under this title. Neither the board nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the board or any employee of the board in the performance of his duties and in the administration of this title. [1935 c 174 § 9 (adding new section 62-A to 1933 ex.s. c 62); RRS § 7306-62A. Formerly RCW 66.08.100 and 66.08.110.]

66.08.120 Preemption of field by state—Exception. No municipality or county shall have power to license the sale of, or impose an excise tax upon, liquor as defined in this title, or to license the sale or distribution thereof in any manner; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof, as defined in this title, shall be suspended and shall be of no further effect: PROVIDED, That municipalities and counties shall have power to adopt police ordinances and regulations not in conflict with this title or with the regulations made by the board. [1933 ex.s. c 62 § 29; RRS § 7306-29.]

66.08.130 Inspection of books and records—Goods possessed or shipped—Refusal as violation. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books and records of

- (1) any manufacturer;
- (2) any license holder;
- (3) any drug store holding a permit to sell on prescriptions;
- (4) the freight and express books and records and all waybills, bills of lading, receipts and documents in the possession of any common carrier doing business within the state, containing any information or record relating to any goods shipped or carried, or consigned or received for shipment or carriage within the state. Every manufacturer, license holder, drug store holding a permit to sell on prescriptions, and common carrier, and every owner or officer or employee of the foregoing, who neglects or refuses to produce and submit for inspection any book, record or document referred to in this section when requested to do so by the board or by a person so appointed by it shall be guilty of a violation of this title. [1981 1st ex.s. c 5 § 4; 1933 ex.s. c 62 § 56; RRS § 7306-56.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.08.140 Inspection of books and records—Financial dealings—Penalty for refusal. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books, documents and records of any person lending money to or in any manner financing any license, holder or applicant for license insofar as such books, documents and/or records pertain to the financial transaction involved. Every

person who neglects or refuses to produce and submit for inspection any book, record or document as required by this section when requested to do so by the board or by a person duly appointed by it shall be guilty of a violation of this title. [1945 c 48 § 1 (adding new section 56-A to 1933 ex.s. c 62); RRS § 7306-56A.]

66.08.145 Subpoena issuing authority. (1) The liquor control board may issue subpoenas in connection with any investigation, hearing, or proceeding for the production of books, records, and documents held under this chapter or chapters 70.155, 70.158, 82.24, and 82.26 RCW, and books and records of common carriers as defined in RCW 81.80.010, or vehicle rental agencies relating to the transportation or possession of cigarettes or other tobacco products.

(2) The liquor control board may designate individuals authorized to sign subpoenas.

(3) If any person is served a subpoena from the board for the production of records, documents, and books, and fails or refuses to obey the subpoena for the production of records, documents, and books when required to do so, the person is subject to proceedings for contempt, and the board may institute contempt of court proceedings in the superior court of Thurston county or in the county in which the person resides. [2007 c 221 § 1.]

66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding—Opportunity for hearing—Summary suspension. The action, order, or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to one hundred eighty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and it incorporates a finding to that effect in its order. Proceedings for revocation or other action must be promptly instituted and determined. An administrative law judge may extend the summary suspension period for up to one calendar year in the event the proceedings for revocation or other action cannot be completed during the initial one hundred eighty day period due to actions by the licensee or permittee. The board's enforcement division shall complete a preliminary staff investigation of the violation before requesting an emergency suspension

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by the board. [2007 c 370 § 3; 2003 c 320 § 1; 1989 c 175 § 122; 1967 c 237 § 23; 1933 ex.s. c 62 § 62; RRS § 7306-62.]

Effective date—1989 c 175: See note following RCW 34.05.010.

66.08.160 Acquisition of warehouse authorized. The Washington state liquor board and the state finance committee are hereby authorized to lease or purchase or acquire a site and erect a warehouse building in the city of Seattle, and for that purpose may borrow money and may issue bonds in an amount not to exceed one million five hundred thousand dollars to be amortized from liquor revenues over a period of not to exceed ten years. [1947 c 134 § 1; No RRS.]

66.08.165 Strategies to improve operational efficiency and revenue. The board shall, consistent with, and in addition to, the existing retail business plan, implement strategies to improve the efficiency of retail sales operations and maximize revenue-generating opportunities. Strategies to be implemented shall include, but are not limited to:

(1) Expanding store operations to include Sunday sales in selected liquor stores. Sunday sales are optional for liquor vendors operating agency stores;

(2) Implementing a plan of in-store liquor merchandising, including point-of-sale advertising, and product specific point-of-sale promotional displays and carousels, including displays designed and provided by vendors; and

(3) Implementing a plan for in-store liquor merchandising of brands. The plan may not include provisions for selling liquor-related items other than those items previously authorized. [2005 c 231 § 1.]

Severability—2005 c 231: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 231 § 7.]

66.08.166 Sunday sales authorized—Store selection and other requirements. By September 1, 2005, the board shall expand operations in at least twenty state-operated retail stores to include Sundays. The board shall select the stores that are expected to gross the most revenues on Sunday by considering factors including, but not limited to, population density, proximity to shopping centers, and proximity to other businesses that are open on Sunday. The selected stores shall be open for retail business a minimum of five hours on Sunday. In implementing this program, if the board determines it would be beneficial to retain a consultant to assist the board in determining appropriate stores for the program and monitoring the results of the program, the agency is authorized to do so. The board shall track gross sales and expenses of the selected stores and compare them to previous years' sales and projected sales and expenses before opening on Sunday. The board shall also examine the sales of state and contract liquor stores in proximity to those stores opened on Sundays to determine whether Sunday openings has [have] reduced the sales of other state and contract liquor stores that are not open on Sundays. The board shall present this information to the appropriate policy and fiscal committees of the legislature by January 31, 2007. [2005 c 231 § 2.]

Severability—2005 c 231: See note following RCW 66.08.165.

66.08.167 Sunday sales—Store selection. (1) Before the board determines which state liquor stores will be open on Sundays, it shall give: (a) Due consideration to the location of the liquor store with respect to the proximity of places of worship, schools, and public institutions; (b) due consideration to motor vehicle accident data in the proximity of the liquor store; and (c) written notice by certified mail of the proposed Sunday opening, including proposed Sunday opening hours, to places of worship, schools, and public institutions within five hundred feet of the liquor store proposed to be open on Sunday.

(2) Before permitting an agency vendor liquor store to open for business on Sunday, the board must meet the due consideration and written notice requirements established in subsection (1) of this section.

(3) For the purpose of this section, "place of worship" means a building erected for and used exclusively for religious worship and schooling or other related religious activity. [2005 c 231 § 4.]

Severability—2005 c 231: See note following RCW 66.08.165.

66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable. There shall be a fund, known as the "liquor revolving fund", which shall consist of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board. The state treasurer shall be custodian of the fund. All moneys received by the board or any employee thereof, except for change funds and an amount of petty cash as fixed by the board within the authority of law shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the liquor revolving fund. During the 2001-2003 fiscal biennium, the legislature may transfer from the liquor revolving account to the state general fund such amounts as reflect the excess fund balance of the fund and reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings. Disbursements from the revolving fund shall be on authorization of the board or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the liquor revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. [2002 c 371 § 917; 1961 ex.s. c 6 § 1; 1933 ex.s. c 62 § 73; RRS § 7306-73. Formerly RCW 43.66.060.]

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Transfer of liquor revolving fund to state treasurer—Outstanding obligations: "On June 30, 1961, the Washington state liquor control board shall deliver and transfer to the state treasurer, as custodian, all moneys and accounts which comprise the liquor revolving fund, except change funds and petty cash, and the state treasurer shall assume custody thereof. All obligations outstanding as of June 30, 1961 shall be paid out of the liquor revolving fund." [1961 ex.s. c 6 § 5.]

Effective date—1961 ex.s. c 6: "This act shall take effect on June 30, 1961." [1961 ex.s. c 6 § 7.]

66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. Except as provided in RCW 66.24.290(1), moneys in the liquor revolving fund shall be

distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: PROVIDED, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties and forfeitures derived under chapter 13, Laws of 1935 from spirits, beer, and wine restaurant; spirits, beer, and wine private club; hotel; and sports entertainment facility licenses or spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licensees shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the death investigations account for the state toxicology program pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for. [2007 c 370 § 14; 2000 c 192 § 1. Prior: 1999 c 281 § 1; 1999 c 40 § 7; prior: 1997 c 451 § 3; 1997 c 321 § 57; 1995 c 398 § 16; 1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 1979 c 151 § 166; 1967 ex.s. c 75 § 1; 1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1999 c 40: See note following RCW 43.103.010.

Effective date—1997 c 451: See note following RCW 66.24.290.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Effective date—1986 c 87: "This act shall take effect July 1, 1987." [1986 c 87 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: "The effective date of this 1967 amendatory act is July 1, 1967." [1967 ex.s. c 75 § 8.]

Severability—1949 c 5: See RCW 66.98.080.

Distribution for state toxicological lab: RCW 68.50.107.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for noncompliance. (1) Except for revenues generated by the 2003 surcharge of \$0.42/liter on retail sales of spirits that shall be distributed to the state general fund during the 2003-2005 biennium, when excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

(a) Three-tenths of one percent to border areas under RCW 66.08.195; and

(b) From the amount remaining after distribution under (a) of this subsection, (i) fifty percent to the general fund of the state, (ii) ten percent to the counties of the state, and (iii) forty percent to the incorporated cities and towns of the state.

(2) During the months of June, September, December, and March of each year, prior to disbursing the distribution to incorporated cities and towns under subsection (1)(b) of this section, the treasurer shall deduct from that distribution an amount that will fund that quarter's allotments under RCW 43.88.110 from any legislative appropriation from the city and town research services account. The treasurer shall deposit the amount deducted into the city and town research services account.

(3) The governor may notify and direct the state treasurer to withhold the revenues to which the counties and cities are entitled under this section if the counties or cities are found to be in noncompliance pursuant to RCW 36.70A.340. [2003 1st sp.s. c 25 § 927; 2002 c 38 § 2; 2000 c 227 § 2; 1995 c 159 § 1; 1991 sp.s. c 32 § 34; 1988 c 229 § 4; 1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

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

Effective date—2000 c 227: See note following RCW 43.110.060.

Effective date—1995 c 159: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 159 § 6.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Finding—1988 c 229: "The legislature finds and declares that certain counties and municipalities near international borders are subjected to a constant volume and flow of travelers and visitors for whom local government services must be provided. The legislature further finds that it is in the public interest and for the protection of the health, property, and welfare of the residents and visitors to provide supplemental resources to augment and maintain existing levels of police protection in such areas and to alleviate the impact of such added burdens." [1988 c 229 § 2.]

Effective date—1988 c 229 §§ 2-4: "Sections 2 through 4 of this act shall take effect July 1, 1989." [1988 c 229 § 5.]

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66.08.195 Liquor revolving fund—Definition of terms relating to border areas. For the purposes of this chapter:

(1) "Border area" means any incorporated city or town, or unincorporated area, located within seven miles of the Washington-Canadian border or any unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border.

(2) "Border area per-capita law-enforcement spending" equals total per capita expenditures in a border area on: Law enforcement operating costs, court costs, law enforcement-related insurance, and detention expenses, minus funds allocated to a border area under RCW 66.08.190 and 66.08.196.

(3) "Border-crossing traffic total" means the number of vehicles, vessels, and aircraft crossing into the United States through a United States customs service border crossing that enter into the border area during a federal fiscal year, using border crossing statistics and criteria included in guidelines adopted by the department of community, trade, and economic development.

(4) "Border-related crime statistic" means the sum of infractions and citations issued, and arrests of persons permanently residing outside Washington state in a border area during a calendar year. [2001 c 8 § 1; 1995 c 159 § 2; 1988 c 229 § 3.]

Effective date—1995 c 159: See note following RCW 66.08.190.

Finding—Effective date—1988 c 229: See notes following RCW 66.08.190.

66.08.196 Liquor revolving fund—Distribution of funds to border areas. Distribution of funds to border areas under RCW 66.08.190 and *66.24.290 (1)(a) and (4) shall be as follows:

(1) Sixty-five percent of the funds shall be distributed to border areas ratably based on border area traffic totals;

(2) Twenty-five percent of the funds shall be distributed to border areas ratably based on border-related crime statistics; and

(3) Ten percent of the funds shall be distributed to border areas ratably based upon border area per capita law enforcement spending.

Distributions to an unincorporated area shall be made to the county in which such an area is located and may only be spent on services provided to that area. [2001 c 8 § 2; 1997 c 451 § 4; 1995 c 159 § 3.]

***Reviser's note:** RCW 66.24.290 was amended by 2006 c 302 § 7, changing subsection (1)(a) to subsection (1)(c)(i), expiring June 30, 2008.

Effective date—1997 c 451: See note following RCW 66.24.290.

Effective date—1995 c 159: See note following RCW 66.08.190.

66.08.198 Liquor revolving fund—Distribution of funds to border areas—Guidelines adoption. The department of community, trade, and economic development shall develop guidelines to determine the figures used under the three distribution factors defined in RCW 66.08.195. At the request of any border community, the department may review these guidelines once every three years. [1995 c 159 § 4.]

Effective date—1995 c 159: See note following RCW 66.08.190.

66.08.200 Liquor revolving fund—Computation for distribution to counties—"Unincorporated area" defined. With respect to the ten percent share coming to the counties, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible county shall be determined by a division among the eligible counties according to the relation which the population of the unincorporated area of such eligible county, as last determined by the office of financial management, bears to the population of the total combined unincorporated areas of all eligible counties, as determined by the office of financial management: PROVIDED, That no county in which the sale of liquor is forbidden in the unincorporated area thereof as the result of an election shall be entitled to share in such distribution. "Unincorporated area" means all that portion of any county not included within the limits of incorporated cities and towns.

When a special county census has been conducted for the purpose of determining the population base of a county's unincorporated area for use in the distribution of liquor funds, the census figure shall become effective for the purpose of distributing funds as of the official census date once the census results have been certified by the office of financial management and officially submitted to the office of the secretary of state. [1979 c 151 § 167; 1977 ex.s. c 110 § 2; 1957 c 175 § 7. Prior: 1955 c 109 § 3; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.100.]

Population determinations, office of financial management: Chapter 43.62 RCW.

66.08.210 Liquor revolving fund—Computation for distribution to cities. With respect to the forty percent share coming to the incorporated cities and towns, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible city or town shall be determined by a division among the eligible cities and towns within the state ratably on the basis of population as last determined by the office of financial management: AND PROVIDED, That no city or town in which the sale of liquor is forbidden as the result of an election shall be entitled to any share in such distribution. [1979 c 151 § 168; 1977 ex.s. c 110 § 3; 1957 c 175 § 8. Prior: 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.110.]

Allocation of state funds on population basis: RCW 43.62.020, 43.62.030.

Determining population of territory annexed to city: RCW 35.13.260.

66.08.220 Liquor revolving fund—Separate account—Distribution. The board shall set aside in a separate account in the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to spirits, beer, and wine restaurant; spirits, beer, and wine private club; hotel; and sports entertainment facility licensees collected from these licensees pursuant to the provisions of RCW 82.08.150, less the fifteen percent discount provided for in RCW 66.24.440; and the moneys in said separate account shall be

distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210. No election unit in which the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses is unlawful shall be entitled to share in the distribution of moneys from such separate account. [2007 c 370 § 15; 1999 c 281 § 2; 1949 c 5 § 11 (adding new section 78-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-78A. Formerly RCW 43.66.130.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Severability—1949 c 5: See RCW 66.98.080.

66.08.230 Initial disbursement to wine commission—Repayment. To provide for the operation of the wine commission prior to its first quarterly disbursement, the liquor control board shall, on July 1, 1987, disburse one hundred ten thousand dollars to the wine commission. However, such disbursement shall be repaid to the liquor control board by a reduction from the quarterly disbursements to the wine commission under RCW 66.24.210 of twenty-seven thousand five hundred dollars each quarter until such amount is repaid. These funds shall be used to establish the Washington wine commission and the other purposes delineated in chapter 15.88 RCW. [1987 c 452 § 12.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

66.08.235 Liquor control board construction and maintenance account. The liquor control board construction and maintenance account is created within the state treasury. The liquor control board shall deposit into this account a portion of the board's markup, as authorized by chapter 66.16 RCW, placed upon liquor as determined by the board. Moneys in the account may be spent only after appropriation. The liquor control board shall use deposits to this account to fund construction and maintenance of a centralized distribution center for liquor products intended for sale through the board's liquor store and contract liquor store system. During the 2001-2003 fiscal biennium, the legislature may transfer from the liquor control board construction and maintenance account to the state general fund such amounts as reflect the appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings. [2005 c 151 § 4; 2002 c 371 § 918; 1997 c 75 § 1.]

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Effective date—1997 c 75: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 75 § 3.]

66.08.240 Transfer of funds pursuant to government service agreement. Funds that are distributed to counties, cities, or towns pursuant to this chapter may be transferred by the recipient county, city, or town to another unit of government pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 10.]

Chapter 66.12 RCW

EXEMPTIONS

Sections

66.12.010	Wine or beer manufactured for home use.
66.12.020	Sales of liquor to board.
66.12.030	Licensed manufacturers not prevented from storing liquor— Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected.
66.12.060	Pharmaceutical preparations, patent medicines, denatured alcohol.
66.12.070	Medicinal, culinary, and toilet preparations not usable as bev- erages—Sample and analysis—Clearly labeled.
66.12.110	Duty-free alcoholic beverages for personal use.
66.12.120	Bringing alcoholic beverages into state from another state— Payment of markup and tax.
66.12.125	Alcohol for use as fuel—Legislative finding and declaration.
66.12.130	Alcohol for use as fuel in motor vehicles, farm implements, machines, etc., or in combination with other petroleum prod- ucts for use as fuel.
66.12.140	Use of alcoholic beverages in culinary, restaurant, or food fer- mentation courses.
66.12.145	Persons engaged in medical or dental pursuits—Persons engaged in mechanical, manufacturing, or scientific pursuits.
66.12.150	Beer or wine offered by hospital or nursing home for con- sumption on the premises.
66.12.160	Manufacture or sale of confections or food containing liquor.
66.12.170	Obtaining liquor for manufacturing confections or food prod- ucts.
66.12.180	Wine commission—Wine donations—Promotional activities.
66.12.185	Beer commission—Beer or malt donations—Promotional activities.

66.12.010 Wine or beer manufactured for home use.

Nothing in this title other than RCW 66.28.140, applies to wine or beer manufactured in any home for consumption therein, and not for sale. [1981 c 255 § 1; 1955 c 39 § 1; 1933 ex.s. c 62 § 32; RRS § 7306-32.]

66.12.020 Sales of liquor to board. Nothing in this title shall apply to or prevent the sale of liquor by any person to the board. [1933 ex.s. c 62 § 48; RRS § 7306-48.]

66.12.030 Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected. (1) Nothing in this title shall prevent any person licensed to manufacture liquor from keeping liquor in his warehouse or place of business.

(2) Nothing in this title shall prevent the transshipment of liquor in interstate and foreign commerce; but no person shall import liquor into the state from any other state or country, except, as herein otherwise provided, for use or sale in the state, except the board.

(3) Every provision of this title which may affect transactions in liquor between a person in this state and a person in another state or in a foreign country shall be construed to affect such transactions so far only as the legislature has power to make laws in relation thereto. [1933 ex.s. c 62 § 49; RRS § 7306-49. Formerly RCW 66.12.030, 66.12.040, and 66.12.050.]

66.12.060 Pharmaceutical preparations, patent medicines, denatured alcohol. Nothing in this title shall apply to or prevent the sale, purchase or consumption

(1) of any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the

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pharmacopoeia of the United States, or the dispensatory of the United States; or

(2) of any proprietary or patent medicine; or

(3) of wood alcohol or denatured alcohol, except in the case of the sale, purchase, or consumption of wood alcohol or denatured alcohol for beverage purposes, either alone or combined with any other liquid or substance. [1933 ex.s. c 62 § 50; RRS § 7306-50.]

66.12.070 Medicinal, culinary, and toilet preparations not usable as beverages—Sample and analysis—Clearly labeled. (1) Where a medicinal preparation contains liquor as one of the necessary ingredients thereof, and also contains sufficient medication to prevent its use as an alcoholic beverage, nothing in this title shall apply to or prevent its composition or sale by a druggist when compounded from liquor purchased by the druggist under a special permit held by him, nor apply to or prevent the purchase or consumption of the preparation by any person for strictly medicinal purposes.

(2) Where a toilet or culinary preparation, that is to say, any perfume, lotion, or flavoring extract or essence, or dietary supplement as defined by the federal food and drug administration, contains liquor and also contains sufficient ingredient or medication to prevent its use as a beverage, nothing in this title shall apply to or prevent the sale or purchase of that preparation by any druggist or other person who manufactures or deals in the preparation, nor apply to or prevent the purchase or consumption of the preparation by any person who purchases or consumes it for any toilet or culinary purpose.

(3) In order to determine whether any particular medicinal, toilet, dietary supplement, or culinary preparation referred to in this section contains sufficient ingredient or medication to prevent its use as an alcoholic beverage, the board may cause a sample of the preparation, purchased or obtained from any person whomsoever, to be analyzed by an analyst appointed or designated by the board; and if it appears from a certificate signed by the analyst that he finds the sample so analyzed by him did not contain sufficient ingredient or medication to prevent its use as an alcoholic beverage, the certificate shall be conclusive evidence that the preparation, the sample of which was so analyzed, is not a preparation the sale or purchase of which is permitted by this section.

(4) Dietary supplements that contain more than one-half of one percent alcohol which are prepared and sold under this section shall be clearly labeled and the ingredients listed on the label in accordance with the provisions of the federal food, drug, and cosmetics act (21 U.S.C. Sec. 321) as now or hereafter amended. [1999 c 88 § 1; 1933 ex.s. c 62 § 51; RRS § 7306-51. Formerly RCW 66.12.070, 66.12.080, and 66.12.090.]

66.12.110 Duty-free alcoholic beverages for personal use. A person twenty-one years of age or over may bring into the state from without the United States, free of tax and markup, for his personal or household use such alcoholic beverages as have been declared and permitted to enter the United States duty free under federal law.

Such entry of alcoholic beverages in excess of that herein provided may be authorized by the board upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a Washington state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. The board may issue a spirits, beer, and wine private club license to a charitable or nonprofit corporation of the state of Washington, the majority of the officers and directors of which are United States citizens and the minority of the officers and directors of which are citizens of the Dominion of Canada, and where the location of the premises for such spirits, beer, and wine private club license is not more than ten miles south of the border between the United States and the province of British Columbia. [1999 c 281 § 3; 1975-'76 2nd ex.s. c 20 § 1. Prior: 1975 1st ex.s. c 256 § 1; 1975 1st ex.s. c 173 § 2; 1967 c 38 § 1.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.12.120 Bringing alcoholic beverages into state from another state—Payment of markup and tax. Notwithstanding any other provision of Title 66 RCW, a person twenty-one years of age or over may, free of tax and markup, for personal or household use, bring into the state of Washington from another state no more than once per calendar month up to two liters of spirits or wine or two hundred eighty-eight ounces of beer. Additionally, such person may be authorized by the board to bring into the state of Washington from another state a reasonable amount of alcoholic beverages in excess of that provided in this section for personal or household use only upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying into effect the provisions of this section. [1995 c 100 § 1; 1975 1st ex.s. c 173 § 3.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.12.125 Alcohol for use as fuel—Legislative finding and declaration. The legislature finds that the production of alcohol for use as a fuel or fuel supplement is of great importance to the state. Alcohol, when used as a fuel source, is less polluting to the atmosphere than conventional fuels and its use reduces the state's dependence on limited oil resources. Production of alcohol for use as a fuel provides a new use and market for Washington agricultural products and aids Washington farmers in producing food and fiber for the citizens of the state, nation, and world. Therefore, the legislature declares public policy to be one of encouragement toward the production and use of alcohol as a fuel or fuel supplement. [1980 c 140 § 1.]

66.12.130 Alcohol for use as fuel in motor vehicles, farm implements, machines, etc., or in combination with other petroleum products for use as fuel. Nothing in this title shall apply to or prevent the sale, importation, purchase, production, or blending of alcohol used solely for fuel to be used in motor vehicles, farm implements, and machines or

implements of husbandry or in combination with gasoline or other petroleum products for use as such fuel. Manufacturers and distillers of such alcohol fuel are not required to obtain a license under this title. Alcohol which is produced for use as fuel shall be denatured in accordance with a formula approved by the federal bureau of alcohol, tobacco and firearms prior to the removal of the alcohol from the premises as described in the approved federal permit application: PROVIDED, That alcohol which is being transferred between plants involved in the distillation or manufacture of alcohol fuel need not be denatured if it is transferred in accordance with federal bureau of alcohol, tobacco and firearms regulation 27 CFR 19.996 as existing on July 26, 1981. The exemptions from the state liquor control laws provided by this section only apply to distillers and manufacturers of alcohol to be used solely for fuel as long as the manufacturers and distillers are the holders of an appropriate permit issued under federal law. [1981 c 179 § 1; 1980 c 140 § 2.]

66.12.140 Use of alcoholic beverages in culinary, restaurant, or food fermentation courses. (1) Nothing in this title shall prevent the use of beer, wine, and/or spirituous liquor, for cooking purposes only, in conjunction with a culinary or restaurant course offered by a college, university, community college, area vocational technical institute, or private vocational school. Further, nothing in this title shall prohibit the making of beer or wine in food fermentation courses offered by a college, university, community college, area vocational technical institute, or private vocational school.

(2) "Culinary or restaurant course" as used in this section means a course of instruction which includes practical experience in food preparation under the supervision of an instructor who is twenty-one years of age or older.

(3) Persons under twenty-one years of age participating in culinary or restaurant courses may handle beer, wine, or spirituous liquor for purposes of participating in the courses, but nothing in this section shall be construed to authorize consumption of liquor by persons under twenty-one years of age or to authorize possession of liquor by persons under twenty-one years of age at any time or place other than while preparing food under the supervision of the course instructor.

(4) Beer, wine, and/or spirituous liquor to be used in culinary or restaurant courses shall be purchased at retail from the board or a retailer licensed under this title. All such liquor shall be securely stored in the food preparation area and shall not be displayed in an area open to the general public.

(5) Colleges, universities, community colleges, area vocational technical institutes, and private vocational schools shall obtain the prior written approval of the board for use of beer, wine, and/or spirituous liquor for cooking purposes in their culinary or restaurant courses. [1982 c 85 § 8.]

66.12.145 Persons engaged in medical or dental pursuits—Persons engaged in mechanical, manufacturing, or scientific pursuits. (1) Any person engaged in medical or dental pursuits, any person in charge of an institution regularly conducted as a hospital or sanitarium for the care of persons in ill health, or a home devoted exclusively to the care of aged persons, may obtain alcohol in a nonbeverage form

directly from a supplier under a permit issued under RCW 66.20.010(1).

(2) Any person engaged in the mechanical or manufacturing business or in scientific pursuits requiring the use of alcohol may obtain alcohol in a nonbeverage form directly from a supplier under a permit issued under RCW 66.20.010(2). [2008 c 64 § 1.]

66.12.150 Beer or wine offered by hospital or nursing home for consumption on the premises. Nothing in this title shall apply to or prevent a hospital, as defined in *RCW 70.39.020, or a nursing home as defined in RCW 18.51.010, from offering or supplying without charge beer or wine by the individual glass to any patient, member of a patient's family, or patient visitor, for consumption on the premises: PROVIDED, That such patient, family member, or visitor shall be at least twenty-one years of age, and that the beer or wine shall be purchased under this title. [1982 c 85 § 9.]

*Reviser's note: RCW 70.39.020 was repealed by 1982 c 223 § 10, effective June 30, 1990.

66.12.160 Manufacture or sale of confections or food containing liquor. Nothing in this title shall apply to or prevent the manufacture or sale of confections or food products containing alcohol or liquor if: (1) The confection or food product does not contain more than one percent of alcohol by weight; and (2) the confection or food product has a label stating: "This product contains liquor and the alcohol content is one percent or less of the weight of the product." Manufacturers of confections or food products are not required to obtain a license under this title. [1984 c 78 § 3.]

Finding and declaration—1984 c 78: "The legislature finds that confectioners operating in the state are at an economic disadvantage due to a continued prohibition on the use of natural alcohol flavor in candies and that other related business entities, such as bakeries and delicatessens, may use natural alcohol flavors in the preparation of food for retail sale. Therefore, the legislature declares that the use of natural alcohol flavorings in an amount not to exceed the limit established in RCW 69.04.240 presents no threat to the public health and safety." [1984 c 78 § 1.]

Severability—1984 c 78: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 78 § 7.]

66.12.170 Obtaining liquor for manufacturing confections or food products. Nothing in this title shall be construed as limiting the right of any manufacturer of confections or food products from obtaining liquor from any source whatsoever if: (1) It is acquired pursuant to a permit issued under RCW 66.20.010(5); and (2) the applicable taxes imposed by this title are paid. [1984 c 78 § 4.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

66.12.180 Wine commission—Wine donations—Promotional activities. The Washington wine commission created under RCW 15.88.030 may purchase or receive donations of wine from wineries and may use such wine for promotional purposes. Wine furnished to the commission under this section which is used within the state is subject to the taxes imposed under RCW 66.24.210. No license, permit, or bond is required of the Washington wine commission under

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this title for promotional activities conducted under chapter 15.88 RCW. [1993 c 160 § 1; 1987 c 452 § 14.]

Effective date—1993 c 160: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 160 § 3.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

66.12.185 Beer commission—Beer or malt donations—Promotional activities. The Washington beer commission created under RCW 15.89.030 may purchase or receive donations of beer or malt beverages from any brewery, in any state, or in any country and may use such beer or malt beverages for any promotional purposes as outlined in RCW 15.89.070. Beer and malt beverages that are furnished to the commission under this section that are used within the state are subject to the taxes imposed under RCW 66.24.290. No license, permit, or bond is required of the Washington beer commission under this title for promotional activities conducted under chapter 15.89 RCW. [2006 c 330 § 23.]

Construction—Severability—2006 c 330: See RCW 15.89.900 and 15.89.901.

Chapter 66.16 RCW STATE LIQUOR STORES

Sections

66.16.010	Board may establish—Price standards—Prices in special instances.
66.16.040	Sales of liquor by employees—Identification cards—Permit holders—Sales for cash—Exception.
66.16.041	Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund balance reduction.
66.16.050	Sale of beer and wine to person licensed to sell.
66.16.060	Sealed packages may be required, exception.
66.16.070	Liquor cannot be opened or consumed on store premises.
66.16.080	Sunday closing.
66.16.090	Record of individual purchases confidential—Penalty for disclosure.
66.16.100	Fortified wine sales.
66.16.110	Birth defects from alcohol—Warning required.
66.16.120	Employees working on Sabbath.

66.16.010 Board may establish—Price standards—Prices in special instances. (1) There shall be established at such places throughout the state as the liquor control board, constituted under this title, shall deem advisable, stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this title and the regulations: PROVIDED, That the prices of all liquor shall be fixed by the board from time to time so that the net annual revenue received by the board therefrom shall not exceed thirty-five percent. Effective no later than July 1, 2005, the liquor control board shall add an equivalent surcharge of \$0.42 per liter on all retail sales of spirits, excluding licensee, military, and tribal sales. The intent of this surcharge is to raise revenue for the general fund-state for the 2003-2005 and 2005-2007 bienniums. The board shall remove the surcharge June 30, 2007.

(2) The liquor control board may, from time to time, fix the special price at which pure ethyl alcohol may be sold to physicians and dentists and institutions regularly conducted as hospitals, for use or consumption only in such hospitals;

and may also fix the special price at which pure ethyl alcohol may be sold to schools, colleges and universities within the state for use for scientific purposes. Regularly conducted hospitals may have right to purchase pure ethyl alcohol on a federal permit.

(3) The liquor control board may also fix the special price at which pure ethyl alcohol may be sold to any department, branch or institution of the state of Washington, federal government, or to any person engaged in a manufacturing or industrial business or in scientific pursuits requiring alcohol for use therein.

(4) The liquor control board may also fix a special price at which pure ethyl alcohol may be sold to any private individual, and shall make regulations governing such sale of alcohol to private individuals as shall promote, as nearly as may be, the minimum purchase of such alcohol by such persons. [2005 c 518 § 935; 2003 1st sp.s. c 25 § 928; 1939 c 172 § 10; 1937 c 62 § 1; 1933 ex.s. c 62 § 4; RRS § 7306-4. Formerly RCW 66.16.010 and 66.16.020.]

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

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

66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash—Exception. Except as otherwise provided by law, an employee in a state liquor store or contract liquor store may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(2) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an imbedded, digital signature in lieu of a visible signature.

(3) Passport.

(4) Merchant Marine identification card issued by the United States Coast Guard.

(5) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card.

The board may adopt such regulations as it deems proper covering the cards of identification listed in this section.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash, except as allowed under RCW 66.16.041. The use of a personal credit

card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution. [2005 c 206 § 1; 2005 c 151 § 5; 2005 c 102 § 1; 2004 c 61 § 1; 1996 c 291 § 1; 1995 c 16 § 1; 1981 1st ex.s. c 5 § 8; 1979 c 158 § 217; 1973 1st ex.s. c 209 § 3; 1971 ex.s. c 15 § 1; 1959 c 111 § 1; 1933 ex.s. c 62 § 7; RRS § 7306-7.]

Reviser's note: This section was amended by 2005 c 102 § 1, 2005 c 151 § 5, and by 2005 c 206 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 15 § 8.]

Renewal driver's license accepted as proper identification: RCW 46.20.185.

66.16.041 Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund balance reduction. (1) The state liquor control board shall accept bank credit card and debit cards for purchases in state liquor stores, under such rules as the board may adopt. The board shall authorize contract liquor stores appointed under RCW 66.08.050 to accept bank credit cards and debit cards for liquor purchases under this title, under such rules as the board may adopt.

(2) If a contract liquor store chooses to use credit or debit cards for liquor purchases, the board shall provide equipment and installation and maintenance of the equipment necessary to implement the use of credit and debit cards. Any equipment provided by the board to a contract liquor store for this purpose may be used only for the purchase of liquor. [2005 c 151 § 6; 2004 c 63 § 2; 1998 c 265 § 3; 1997 c 148 § 2; 1996 c 291 § 2.]

Intent—1998 c 265: "It is the intent of the legislature that expenditures associated with the implementation of using credit and debit cards in state liquor stores and agency liquor vendor stores not have a negative impact to the liquor revolving fund balance and that transfers to the state general fund, the cities, and the counties not be reduced because of these costs." [1998 c 265 § 1.]

66.16.050 Sale of beer and wine to person licensed to sell. An employee may sell beer and wines to any licensee holding a license to sell under this title in accordance with the terms of said license. [1933 ex.s. c 62 § 8; RRS § 7306-8.]

66.16.060 Sealed packages may be required, exception. The board may in its discretion by regulation prescribe that any or all liquors other than malt liquor shall be delivered to any purchaser at a state liquor store only in a package sealed with the official seal. [1943 c 216 § 1; 1933 ex.s. c 62 § 9; RRS § 7306-9.]

66.16.070 Liquor cannot be opened or consumed on store premises. No employee in a state liquor store shall open or consume, or allow to be opened or consumed any liquor on the store premises. [1933 ex.s. c 62 § 10; RRS § 7306-10.]

66.16.080 Sunday closing.

Reviser's note: RCW 66.16.080 was amended by 2005 c 151 § 7 with-out reference to its repeal by 2005 c 231 § 6. It has been decodified for publication purposes under RCW 1.12.025.

66.16.090 Record of individual purchases confidential—Penalty for disclosure. All records whatsoever of the board showing purchases by any individual of liquor shall be deemed confidential, and, except subject to audit by the state auditor, shall not be permitted to be inspected by any person whatsoever, except by employees of the board to the extent permitted by the regulations; and no member of the board and no employee whatsoever shall give out any information concerning such records and neither such records nor any information relative thereto which shall make known the name of any individual purchaser shall be competent to be admitted as evidence in any court or courts except in prosecutions for illegal possession of and/or sale of liquor. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1933 ex.s. c 62 § 89; RRS § 7306-89.]

66.16.100 Fortified wine sales. No state liquor store in a county with a population over three hundred thousand may sell fortified wine if the board finds that the sale would be against the public interest based on the factors in RCW 66.24.360. The burden of establishing that the sale would be against the public interest is on those persons objecting. [1997 c 321 § 42; 1987 c 386 § 5.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.16.110 Birth defects from alcohol—Warning required. The board shall cause to be posted in conspicuous places, in a number determined by the board, within each state liquor store, notices in print not less than one inch high warning persons that consumption of alcohol shortly before conception or during pregnancy may cause birth defects, including fetal alcohol syndrome and fetal alcohol effects. [1993 c 422 § 2.]

Reviser's note: 1993 c 422 directed that this section be added to chapter 66.08 RCW. This section has been codified in chapter 66.16 RCW, which relates more directly to liquor stores.

Finding—1993 c 422: "The United States surgeon general warns that women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. The legislature finds that these defects include fetal alcohol syndrome, a birth defect that causes permanent antisocial behavior in the sufferer, disrupts the functions of his or her family, and, at an alarmingly increasing rate, extracts a safety and fiscal toll on society." [1993 c 422 § 1.]

Intent—1993 c 422: See RCW 70.83C.005.

66.16.120 Employees working on Sabbath. Employees in state liquor stores, including agency vendor liquor stores, may not be required to work on their Sabbath for the purpose of selling liquor if doing so would violate their religious beliefs. [2005 c 231 § 5.]

Severability—2005 c 231: See note following RCW 66.08.165.

Chapter 66.20 RCW LIQUOR PERMITS

Sections

66.20.010	Permits classified—Issuance—Fees—Waiver of provisions during state of emergency.
66.20.020	Permits not transferable—False name or address prohibited—Sacramental liquor, wine.

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66.20.040	Applicant must sign permit.
66.20.060	Duration.
66.20.070	Suspension or cancellation.
66.20.080	Surrender of suspended or canceled permit—New permit, when.
66.20.085	License suspension—Noncompliance with support order—Reissuance.
66.20.090	Retaining permits wrongfully presented.
66.20.100	Physician may prescribe or administer liquor—Penalty.
66.20.110	Dentist may administer liquor—Penalty.
66.20.120	Hospital, etc., may administer liquor—Penalty.
66.20.140	Limitation on application after cancellation or suspension.
66.20.150	Purchases prohibited under canceled, suspended permit or under another's permit.
66.20.160	"Card of identification," "licensee," "store employee" defined for certain purposes.
66.20.170	Card of identification may be accepted as identification card and evidence of legal age.
66.20.180	Card of identification to be presented on request of licensee.
66.20.190	Identification card holder may be required to sign certification card—Contents—Procedure—Statement.
66.20.200	Unlawful acts relating to identification or certification card—Penalties.
66.20.210	Licensee's immunity to prosecution or suit—Certification card as evidence of good faith.
66.20.300	Alcohol servers—Definitions.
66.20.310	Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions (as amended by 2008 c 94).
66.20.310	Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions (as amended by 2008 c 41).
66.20.320	Alcohol servers—Education program—Fees—Issuance of permits.
66.20.330	Alcohol servers—Rules.
66.20.340	Alcohol servers—Violation of rules—Penalties.
66.20.350	Alcohol servers—Deposit of fees.
66.20.360	Direct sale of wine to consumer—Holder of license to manufacture wine.
66.20.365	Direct sale of wine to consumer—Requirements for wineries.
66.20.370	Direct sale of wine to consumer—Wine shipper's permit—Requirements.
66.20.375	Direct sale of wine to consumer—Labeling and private carrier requirements.
66.20.380	Direct sale of wine to consumer—Monthly reporting—Display of permit or license number.
66.20.385	Direct sale of wine to consumer—Fee for wine shipper's permit.
66.20.390	Direct sale of wine to consumer—Consent to jurisdiction—Revocation or suspension of permit.

66.20.010 Permits classified—Issuance—Fees—Waiver of provisions during state of emergency. Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit, except

that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation at prices to be fixed by the board;

(8) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in Title 66 RCW to the contrary not-

withstanding. Any such spirituous liquor shall be purchased from the board and any such beer or wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a facility offering from one to eight lodging units and breakfast to travelers and guests. [2008 c 181 § 602; (2008 c 181 § 601 expired July 1, 2008); 2007 c 370 § 16; 1998 c 126 § 1; 1997 c 321 § 43; 1984 c 78 § 6; 1984 c 45 § 1; 1983 c 13 § 1; 1982 c 85 § 1; 1975-'76 2nd ex.s. c 62 § 2; 1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

Effective date—2008 c 181 § 602: "Section 602 of this act takes effect July 1, 2008." [2008 c 181 § 604.]

Expiration date—2008 c 181 § 601: "Section 601 of this act expires July 1, 2008." [2008 c 181 § 603.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: "This act takes effect July 1, 1998." [1998 c 126 § 17.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

66.20.020 Permits not transferable—False name or address prohibited—Sacramental liquor, wine. (1) Every permit shall be issued in the name of the applicant therefor, and no permit shall be transferable, nor shall the holder of any permit allow any other person to use the permit.

(2) No person shall apply in any false or fictitious name for the issuance to him of a permit, and no person shall furnish a false or fictitious address in his application for a permit.

(3) Nothing in this title shall be construed as limiting the right of any minister, priest or rabbi, or religious organization from obtaining wine for sacramental purposes directly from any source whatsoever, whether from within the limits of the state of Washington or from outside the state; nor shall any fee be charged, directly or indirectly, for the exercise of this right. The board shall have the power and authority to make reasonable rules and regulations concerning the importing of any such liquor or wine, for the purpose of preventing any unlawful use of such right. [1933 ex.s. c 62 § 13; RRS § 7306-13. Formerly RCW 66.12.100, 66.20.020, and 66.20.030.]

66.20.040 Applicant must sign permit. No permit shall be valid or be accepted or used for the purchase of liquor until the applicant for the permit has written his signature thereon in the prescribed manner, for the purposes of identification as the holder thereof, in the presence of the employee to whom the application is made. [1933 ex.s. c 62 § 14; RRS § 7306-14.]

66.20.060 Duration. Every permit issued for use after October 1, 1955, shall expire at midnight on the thirtieth day

of June of the fiscal year for which the permit was issued, except special permits for banquets and special permits to physicians, dentists, or persons in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people. [1955 c 180 § 1; 1935 c 174 § 1; 1933 ex.s. c 62 § 16; RRS § 7306-16.]

66.20.070 Suspension or cancellation. Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit. [1933 ex.s. c 62 § 17; RRS § 7306-17.]

66.20.080 Surrender of suspended or canceled permit—New permit, when. Upon receipt of notice of the suspension or cancellation of his permit, the holder of the permit shall forthwith deliver up the permit to the board. Where the permit has been suspended only, the board shall return the permit to the holder at the expiration or termination of the period of suspension. Where the permit has been suspended or canceled, no employee shall knowingly issue to the person whose permit is suspended or canceled a permit under this title until the end of the period of suspension or within the period of one year from the date of cancellation. [1933 ex.s. c 62 § 18; RRS § 7306-18.]

66.20.085 License suspension—Noncompliance with support order—Reissuance. The board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 861.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

66.20.090 Retaining permits wrongfully presented. Where any permit is presented to an employee by a person who is not the holder of the permit, or where any permit which is suspended or canceled is presented to an employee, the employee shall retain the permit in his custody and shall

forthwith notify the board of the fact of its retention. [1933 ex.s. c 62 § 19; RRS § 7306-19.]

66.20.100 Physician may prescribe or administer liquor—Penalty. Any physician who deems liquor necessary for the health of a patient, whether an interdicted person or not, whom he has seen or visited professionally may give to the patient a prescription therefor, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician may administer the liquor purchased by him under special permit and may charge for the liquor so administered; but no prescription shall be given or liquor be administered by a physician except to bona fide patients in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary; and any physician who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 20; RRS § 7306-20.]

66.20.110 Dentist may administer liquor—Penalty. Any dentist who deems it necessary that any patient then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor obtained by him under special permit pursuant to this title, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to bona fide patients in cases of actual need; and every dentist who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 21; RRS § 7306-21.]

66.20.120 Hospital, etc., may administer liquor—Penalty. Any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this title for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for medicinal purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need and every person in charge of an institution who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 22; RRS § 7306-22.]

66.20.140 Limitation on application after cancellation or suspension. No person whose permit has been canceled within the period of twelve months next preceding, or is suspended, shall make application to any employee under this title for another permit. [1933 ex.s. c 62 § 40; RRS § 7306-40.]

66.20.150 Purchases prohibited under canceled, suspended permit or under another's permit. No person shall purchase or attempt to purchase liquor under a permit which

is suspended, or which has been canceled, or of which he is not the holder. [1933 ex.s. c 62 § 41; RRS § 7306-41.]

66.20.160 "Card of identification," "licensee," "store employee" defined for certain purposes. Words and phrases as used in RCW 66.20.160 to 66.20.210, inclusive, shall have the following meaning:

"Card of identification" means any one of those cards described in RCW 66.16.040.

"Licensee" means the holder of a retail liquor license issued by the board, and includes any employee or agent of the licensee.

"Store employee" means a person employed in a state liquor store to sell liquor. [2005 c 151 § 8; 1973 1st ex.s. c 209 § 4; 1971 ex.s. c 15 § 2; 1959 c 111 § 4; 1949 c 67 § 1; Rem. Supp. 1949 § 7306-19A.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.170 Card of identification may be accepted as identification card and evidence of legal age. A card of identification may for the purpose of this title and for the purpose of procuring liquor, be accepted as an identification card by any licensee or store employee and as evidence of legal age of the person presenting such card, provided the licensee or store employee complies with the conditions and procedures prescribed herein and such regulations as may be made by the board. [1973 1st ex.s. c 209 § 5; 1971 ex.s. c 15 § 3; 1959 c 111 § 5; 1949 c 67 § 2; Rem. Supp. 1949 § 7306-19B.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.180 Card of identification to be presented on request of licensee. A card of identification shall be presented by the holder thereof upon request of any licensee, store employee, contract liquor store manager, contract liquor store employee, peace officer, or enforcement officer of the board for the purpose of aiding the licensee, store employee, contract liquor store manager, contract liquor store employee, peace officer, or enforcement officer of the board to determine whether or not such person is of legal age to purchase liquor when such person desires to procure liquor from a licensed establishment or state liquor store or contract liquor store. [2005 c 151 § 9; 1973 1st ex.s. c 209 § 6; 1971 ex.s. c 15 § 4; 1959 c 111 § 6; 1949 c 67 § 3; Rem. Supp. 1949 § 7306-19C.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.190 Identification card holder may be required to sign certification card—Contents—Procedure—Statement. In addition to the presentation by the holder and verification by the licensee or store employee of such card of identification, the licensee or store employee who is still in doubt about the true age of the holder shall require the person whose age may be in question to sign a certification card and record an accurate description and serial number of his card

of identification thereon. Such statement shall be upon a five-inch by eight-inch file card, which card shall be filed alphabetically by the licensee or store employee at or before the close of business on the day on which the statement is executed, in the file box containing a suitable alphabetical index and the card shall be subject to examination by any peace officer or agent or employee of the board at all times. The certification card shall also contain in bold-face type a statement stating that the signer understands that conviction for unlawful purchase of alcoholic beverages or misuse of the certification card may result in criminal penalties including imprisonment or fine or both. [1981 1st ex.s. c 5 § 9; 1975 1st ex.s. c 173 § 4; 1973 1st ex.s. c 209 § 7; 1971 ex.s. c 15 § 5; 1959 c 111 § 7; 1949 c 67 § 4; Rem. Supp. 1949 § 7306-19D.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.200 Unlawful acts relating to identification or certification card—Penalties. (1) It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his or her card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee or gain admission to a premises or portion of a premises classified by the board as off-limits to persons under twenty-one years of age, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution.

(2) Any person not entitled thereto who unlawfully procures or has issued or transferred to him or her a card of identification, and any person who possesses a card of identification not issued to him or her, and any person who makes any false statement on any certification card required by RCW 66.20.190, to be signed by him or her, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution. [2003 c 53 § 295; 2002 c 175 § 41; 1994 c 201 § 1; 1987 c 101 § 4; 1973 1st ex.s. c 209 § 8; 1971 ex.s. c 15 § 6; 1969 ex.s. c 178 § 2; 1959 c 111 § 8; 1949 c 67 § 5; Rem. Supp. 1949 § 7306-19E.]

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

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

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

Unlawful transfer to minor of age identification: RCW 66.44.325.

66.20.210 Licensee's immunity to prosecution or suit—Certification card as evidence of good faith. No licensee or the agent or employee of the licensee, or store employee, shall be prosecuted criminally or be sued in any civil action for serving liquor to a person under legal age to purchase liquor if such person has presented a card of identification in accordance with RCW 66.20.180, and has signed a certification card as provided in RCW 66.20.190.

Such card in the possession of a licensee may be offered as a defense in any hearing held by the board for serving liquor to the person who signed the card and may be considered by the board as evidence that the licensee acted in good faith. [1973 1st ex.s. c 209 § 9; 1971 ex.s. c 15 § 7; 1959 c 111 § 9; 1949 c 67 § 6; Rem. Supp. 1949 § 7306-19F.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.300 Alcohol servers—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 66.20.310 through 66.20.350.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, and 66.24.570;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production; and

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4). [2008 c 94 § 10; 2008 c 41 § 1; 1997 c 321 § 44; 1996 c 218 § 2; 1995 c 51 § 2.]

Reviser's note: This section was amended by 2008 c 41 § 1 and by 2008 c 94 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1997 c 321: See note following RCW 66.24.010.

Findings—1995 c 51: "The legislature finds that education of alcohol servers on issues such as the physiological effects of alcohol on consumers, liability and legal implications of serving alcohol, driving while intoxicated, and methods of intervention with the problem customer are important in protecting the health and safety of the public. The legislature further finds that it is in the best interest of the citizens of the state of Washington to have an alcohol server education program." [1995 c 51 § 1.]

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions (as amended by 2008 c 94).

(1)(a) There shall be an alcohol server permit, known as a class 12 permit, for (2008 Ed.)

a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every ((person)) alcohol server employed, under contract or otherwise ((by an annual retail liquor licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.590, or 66.24.570, who as part of his or her employment participates in any manner in the sale or service of alcoholic beverages)) at a retail licensed premise, shall have issued to them a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) No licensee ((described in (a) of this subsection)) holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, and 66.24.570, except as provided in (d) of this subsection, may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350. [2008 c 94 § 11; 2007 c 370 § 17; 1997 c 321 § 45. Prior: 1996 c 311 § 1; 1996 c 218 § 3; 1995 c 51 § 3.]

Effective date—2008 c 94 §§ 4 and 11: See note following RCW 66.04.010.

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions (as amended by 2008 c 41).

(1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every ~~((person)) alcohol server~~ employed, under contract or otherwise, ~~(by an annual retail liquor licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.590, or 66.24.570, who as part of his or her employment participates in any manner in the sale or service of alcoholic beverages)) at a retail licensed premise shall have issued to them a class 12 or class 13 permit.~~

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

~~(c) ((No licensee described in (a) of this subsection;))~~ Except as provided in (d) of this subsection, ~~no licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, and 66.24.570~~ may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350. [2008 c 41 § 3; (2008 c 41 § 2 expired July 1, 2008); 2007 c 370 § 17; 1997 c 321 § 45. Prior: 1996 c 311 § 1; 1996 c 218 § 3; 1995 c 51 § 3.]

Reviser's note: RCW 66.20.310 was amended twice during the 2008 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2008 c 41 §§ 3, 10, and 11: "Sections 3, 10, and 11 of this act take effect July 1, 2008." [2008 c 41 § 16.]

Expiration date—2008 c 41 § 2: "Section 2 of this act expires July 1, 2008." [2008 c 41 § 13.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.320 Alcohol servers—Education program—Fees—Issuance of permits. (1) The board shall regulate a required alcohol server education program that includes:

(a) Development of the curriculum and materials for the education program;

(b) Examination and examination procedures;

(c) Certification procedures, enforcement policies, and penalties for education program instructors and providers;

(d) The curriculum for an approved class 12 alcohol permit training program that includes but is not limited to the following subjects:

(i) The physiological effects of alcohol including the effects of alcohol in combination with drugs;

(ii) Liability and legal information;

(iii) Driving while intoxicated;

(iv) Intervention with the problem customer, including ways to stop service, ways to deal with the belligerent customer, and alternative means of transportation to get the customer safely home;

(v) Methods for checking proper identification of customers;

(vi) Nationally recognized programs, such as TAM (Techniques in Alcohol Management) and TIPS (Training for Intervention Programs) modified to include Washington laws and regulations.

(2) The board shall provide the program through liquor licensee associations, independent contractors, private persons, private or public schools certified by the board, or any combination of such providers.

(3) Each training entity shall provide a class 12 permit to the manager or bartender who has successfully completed a course the board has certified. A list of the individuals receiving the class 12 permit shall be forwarded to the board on the completion of each course given by the training entity.

(4) After January 1, 1997, the board shall require all alcohol servers applying for a class 13 alcohol server permit to view a video training session. Retail liquor licensees shall fully compensate employees for the time spent participating in this training session.

(5) When requested by a retail liquor licensee, the board shall provide copies of videotaped training programs that have been produced by private vendors and make them available for a nominal fee to cover the cost of purchasing and shipment, with the fees being deposited in the liquor revolving fund for distribution to the board as needed.

(6) Each training entity may provide the board with a video program of not less than one hour that covers the subjects in subsection (1)(d)(i) through (v) of this section that will be made available to a licensee for the training of a class 13 alcohol server.

(7) Applicants shall be given a class 13 permit upon the successful completion of the program.

(8) A list of the individuals receiving the class 13 permit shall be forwarded to the board on the completion of each video training program.

(9) The board shall develop a model permit for the class 12 and 13 permits. The board may provide such permits to training entities or licensees for a nominal cost to cover production.

(10)(a) Persons who have completed a nationally recognized alcohol management or intervention program since July 1, 1993, may be issued a class 12 or 13 permit upon providing proof of completion of such training to the board.

(b) Persons who completed the board's alcohol server training program after July 1, 1993, but before July 1, 1995, may be issued a class 13 permit upon providing proof of completion of such training to the board. [1996 c 311 § 2; 1995 c 51 § 4.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.330 Alcohol servers—Rules. The board shall adopt rules to implement RCW 66.20.300 through 66.20.350 including, but not limited to, procedures and grounds for denying, suspending, or revoking permits. [1995 c 51 § 5.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.340 Alcohol servers—Violation of rules—Penalties. A violation of any of the rules of the board adopted to implement RCW 66.20.300 through 66.20.350 is a misdemeanor, punishable by a fine of not more than two hundred fifty dollars for a first offense. A subsequent offense is punishable by a fine of not more than five hundred dollars, or imprisonment for not more than ninety days, or both the fine and imprisonment. [1995 c 51 § 6.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.350 Alcohol servers—Deposit of fees. Fees collected by the board under RCW 66.20.300 through 66.20.350 shall be deposited in the liquor revolving fund in accordance with RCW 66.08.170. [1995 c 51 § 7.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.360 Direct sale of wine to consumer—Holder of license to manufacture wine. The holder of a license to manufacture wine issued by this state or another state may ship its wine to a person who is a resident of Washington and is twenty-one years of age or older for that person's personal use and not for resale. [2006 c 49 § 1.]

66.20.365 Direct sale of wine to consumer—Requirements for wineries. Before wine may be shipped by a domestic winery or an out-of-state winery to a person who is a resident of Washington, the winery must:

(1) Obtain a wine shipper's permit under procedures prescribed by the board by rule and pay a fee established by the board, if the winery is located outside the state; or

(2) Be licensed as a domestic winery by the board and have paid the annual license fee. [2006 c 49 § 2.]

66.20.370 Direct sale of wine to consumer—Wine shipper's permit—Requirements. (1) An applicant for a wine shipper's permit under RCW 66.20.365 must:

(a) Operate a winery located in the United States;

(b) Provide the board a copy of its valid license to manufacture wine issued by another state;

(c) Certify that it holds all state and federal licenses and permits necessary to operate a winery; and

(d) Register with the department of revenue under RCW 82.32.030.

(2) Holders of a winery certificate of approval under RCW 66.24.206(1)(a) are deemed to hold a wine shipper's permit without further application or fee, if the holder meets all requirements for a wine shipper's permit. A winery certifi-

(2008 Ed.)

cate of approval holder who wants to ship wine under its wine shipper's permit privilege must notify the liquor control board in a manner determined by the board before shipping any wine to a Washington consumer.

(3) Holders of a wine shipper's permit must:

(a) Pay the tax under RCW 66.24.210 for sales of wine to Washington state residents; and

(b) Collect and remit to the department of revenue all applicable state and local sales and use taxes imposed by or under the authority of chapters 82.08, 82.12, and 82.14 RCW on all sales of wine delivered to buyers in this state, regardless of whether the permit holder has a physical presence in this state. [2006 c 49 § 3.]

66.20.375 Direct sale of wine to consumer—Labeling and private carrier requirements. (1) A domestic winery or a wine shipper's permit holder must clearly label all wine cases or outside shipping packages of wine sent into or out of this state under chapter 49, Laws of 2006 to indicate that the package cannot be delivered to a person under twenty-one years of age or to an intoxicated person.

(2) A domestic winery or a wine shipper's permit holder must ensure that the private carrier used to deliver wine (a) obtains the signature of the person who receives the wine upon delivery, (b) verifies the age of the recipient, and (c) verifies that the recipient does not appear intoxicated at the time of delivery. [2006 c 49 § 4.]

66.20.380 Direct sale of wine to consumer—Monthly reporting—Display of permit or license number. (1) A wine shipper's permit holder and a domestic winery must report to the board, on or before the twentieth day of each month, all shipments of wine made during the preceding calendar month directly to Washington consumers under a wine shipper's permit or a domestic winery license in effect for all or any portion of the preceding year. All reports will be on forms prescribed by the board.

(2) A wine shipper's permit holder, a winery certificate of approval holder, or domestic winery who advertises or offers wine for direct shipment to customers within this state must clearly and conspicuously display the permit or license number in its advertising. [2006 c 49 § 5.]

66.20.385 Direct sale of wine to consumer—Fee for wine shipper's permit. A fee for a wine shipper's permit may be established by the board. [2006 c 49 § 6.]

66.20.390 Direct sale of wine to consumer—Consent to jurisdiction—Revocation or suspension of permit. (1) Holders of a wine shipper's permit are deemed to have consented to the jurisdiction of Washington concerning enforcement of chapter 49, Laws of 2006 and all laws, rules, and regulations related to the shipment of wine from wine manufacturers directly to consumers.

(2)(a) A permit issued under chapter 49, Laws of 2006 to a wine manufacturer located outside this state who fails to comply with the provisions of chapter 49, Laws of 2006 shall be suspended or revoked.

(b) The privilege to ship wine directly to Washington consumers under a domestic winery license shall be sus-

pendent or revoked if the domestic winery fails to comply with the provisions of chapter 49, Laws of 2006. [2006 c 49 § 7.]

Chapter 66.24 RCW

LICENSES—STAMP TAXES

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Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.24.010 Licensure—Issuance—Conditions and restrictions—Limitations—Temporary licenses. (1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, or the renewal of a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the board and a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. Subject to the provisions of this section, the board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (8)(d) and (12) of this section. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person doing business as a sole proprietor who has not resided in the state for at least one month prior to receiving a license, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or

holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized

by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by rules adopted by the board. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8)(a) Unless (b) of this subsection applies, before the board issues a new or renewal license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) If the application for a special occasion license is for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on property owned by the county but located within an incorporated city or town, the county legislative authority shall be the entity notified by the board under (a) of this subsection. The board shall send a duplicate notice to the incorporated city or town within which the fair is located.

(c) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the new or renewal license is asked. The board may extend the time period for submitting written objections.

(d) The written objections shall include a statement of all facts upon which such objections are based, and in case written objections are filed, the city or town or county legislative authority may request and the liquor control board may in its discretion hold a hearing subject to the applicable provisions of Title 34 RCW. If the board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If such a hearing is held at the request of the applicant, liquor control board representatives shall present and defend the board's initial decision to deny a license or renewal.

(e) Upon the granting of a license under this title the board shall send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns. When the license is for a special occasion license for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on county-owned property but located within an incorporated city or town, the written notification shall be sent to both the incorporated city or town and the county legislative authority.

(9)(a) Before the board issues any license to any applicant, it shall give (i) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (ii) written notice, with receipt verification, of the application to public institutions identified by the board as appropriate to receive such notice, churches, and schools within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license for either on-premises or off-premises consumption or wine retailer license for either on-premises or off-premises consumption or spirits, beer, and wine restaurant license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the main entrance of the school to the nearest public entrance of the premises proposed for license, and if, after receipt by the school of the notice as provided in this subsection, the board receives written objection, within twenty days after receiving such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. The board may extend the time period for submitting objections. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. For the purpose of this section, public institution shall mean institutions of higher education, parks, community centers, libraries, and transit centers.

(b) No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies.

(c) It is the intent under this subsection (9) that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11)(a) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant to operate the retail or distributor premises during the period the application for the license is

pending. The board may establish a fee for a temporary license by rule.

(b) A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for additional periods of sixty days upon payment of an additional fee and upon compliance with all conditions required in this section.

(c) Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 applies to temporary licenses.

(d) Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

(12) In determining whether to grant or deny a license or renewal of any license, the board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest. [2007 c 473 § 1; 2006 c 359 § 1; 2004 c 133 § 1; 2002 c 119 § 3; 1998 c 126 § 2. Prior: 1997 c 321 § 1; 1997 c 58 § 873; 1995 c 232 § 1; 1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c 5 § 10; 1981 c 67 § 31; 1974 ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1935 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306-27. Formerly RCW 66.24.010, part and 66.24.020 through 66.24.100. FORMER PART OF SECTION: 1937 c 217 § 1 (23U) now codified as RCW 66.24.025.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: "This act takes effect July 1, 1998." [1997 c 321 § 64.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 c 70 § 4.]

66.24.012 License suspension—Noncompliance with support order—Reissuance. The board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 862.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

66.24.015 Nonrefundable application fee for retail license. An application for a new annual retail license under this title shall be accompanied by payment of a nonrefundable seventy-five dollar fee to cover expenses incurred in processing the application. If the application is approved, the application fee shall be applied toward the fee charged for the license. [1988 c 200 § 4.]

66.24.025 Transfer of license—Fee—Exception—Corporate changes, approval—Fee. (1) If the board approves, a license may be transferred, without charge, to the surviving spouse only of a deceased licensee if the parties were maintaining a marital community and the license was issued in the names of one or both of the parties. For the purpose of considering the qualifications of the surviving party or parties to receive a liquor license, the liquor control board may require a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation.

(2) The proposed sale of more than ten percent of the outstanding and/or issued stock of a licensed corporation or any proposed change in the officers of a licensed corporation must be reported to the board, and board approval must be obtained before such changes are made. A fee of seventy-five dollars will be charged for the processing of such change of

stock ownership and/or corporate officers. [2002 c 119 § 4; 1995 c 232 § 2; 1981 1st ex.s. c 5 § 11; 1973 1st ex.s. c 209 § 11; 1971 c 70 § 2; 1937 c 217 § 1 (23U) (adding new section 23-U to 1933 ex.s. c 62); RRS § 7306-23U.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: See note following RCW 66.24.010.

66.24.120 Vacation of suspension on payment of penalty. The board in suspending any license may further provide in the order of suspension that such suspension shall be vacated upon payment to the board by the licensee of a monetary penalty in an amount then fixed by the board. [1973 1st ex.s. c 209 § 12; 1939 c 172 § 7 (adding new section 27-C to 1933 ex.s. c 62); RRS § 7306-27C.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.140 Distiller's license—Fee. There shall be a license to distillers, including blending, rectifying and bottling; fee two thousand dollars per annum, unless provided otherwise as follows:

(1) For distillers producing twenty thousand gallons or less of spirits with at least half of the raw materials used in the production grown in Washington, the license fee shall be reduced to one hundred dollars per annum;

(2) The board shall license stills used and to be used solely and only by a commercial chemist for laboratory purposes, and not for the manufacture of liquor for sale, at a fee of twenty dollars per annum;

(3) The board shall license stills used and to be used solely and only for laboratory purposes in any school, college or educational institution in the state, without fee; and

(4) The board shall license stills which shall have been duly licensed as fruit and/or wine distilleries by the federal government, used and to be used solely as fruit and/or wine distilleries in the production of fruit brandy and wine spirits, at a fee of two hundred dollars per annum. [2008 c 94 § 1; 1981 1st ex.s. c 5 § 28; 1937 c 217 § 1 (23D) (adding new section 23-D to 1933 ex.s. c 62); RRS § 7306-23D.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.145 Craft distillery—Sales and samples of spirits. (1) Any craft distillery may sell spirits of its own production for consumption off the premises, up to two liters per person per day. Spirits sold under this subsection must be purchased from the board and sold at the retail price established by the board. A craft distillery selling spirits under this subsection must comply with the applicable laws and rules relating to retailers.

(3) [(2)] Any craft distillery licensed under this section may provide, free of charge, one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery. The maximum total per person per day is two ounces. Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit. Spirits used for samples must be purchased from the board.

(4) [(3)] The board shall adopt rules to implement the alcohol server permit requirement and may adopt additional rules to implement this section.

(5) [(4)] Distilling is an agricultural practice. [2008 c 94 § 2.]

66.24.150 Manufacturer's license—Scope—Fee.

There shall be a license to manufacturers of liquor, including all kinds of manufacturers except those licensed as distillers, domestic brewers, microbreweries, wineries, and domestic wineries, authorizing such licensees to manufacture, import, sell, and export liquor from the state; fee five hundred dollars per annum. [1997 c 321 § 2; 1981 1st ex.s. c 5 § 29; 1937 c 217 § 1 (23A) (adding new section 23-A to 1933 ex.s. c 62); RRS § 7306-23A.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.160 Liquor importer's license—Fee. A liquor importer's license may be issued to any qualified person, firm or corporation, entitling the holder thereof to import into the state any liquor other than beer or wine; to store the same within the state, and to sell and export the same from the state; fee six hundred dollars per annum. Such liquor importer's license shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board, and shall be issued only upon such terms and conditions as may be imposed by the board. No liquor importer's license shall be required in sales to the Washington state liquor control board. [1981 1st ex.s. c 5 § 30; 1970 ex.s. c 13 § 1. Prior: 1969 ex.s. c 275 § 2; 1969 ex.s. c 21 § 1; 1937 c 217 § 1 (23J) (adding new section 23-J to 1933 ex.s. c 62); RRS § 7306 (23J).]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets. (1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; (c) a winery may not act as a distributor at any such additional location; and (d) any person selling or serving wine at an additional location for on-premise consumption must obtain a class 12 or class 13 alcohol server permit. Each additional location is deemed to be part of the winery license for the purpose of this title. At additional locations operated by multiple wineries under this section, if the board cannot connect a violation of RCW 66.44.200 or 66.44.270 to a single licensee, the board may hold all licensees operating the additional location jointly liable. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a winery. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be

withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [2008 c 41 § 5; 2007 c 16 § 2; 2006 c 302 § 1; 2003 c 44 § 1; 2000 c 141 § 1; 1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180, and 66.24.190.]

Effective date—2006 c 302: "Except for sections 10 and 12 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 14, 2006." [2006 c 302 § 16.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.185 Bonded wine warehouse storage license—Qualifications and requirements—Fee. (1) There shall be a license for bonded wine warehouses which shall authorize the storage and handling of bottled wine. Under this license a licensee may maintain a warehouse for the storage of wine off the premises of a winery.

(2008 Ed.)

(2) The board shall adopt similar qualifications for a bonded wine warehouse license as required for obtaining a domestic winery license as specified in RCW 66.24.010 and 66.24.170. A licensee must be a sole proprietor, a partnership, a limited liability company, or a corporation. One or more domestic wineries may operate as a partnership, corporation, business co-op, or agricultural co-op for the purposes of obtaining a bonded wine warehouse license.

(3) All bottled wine shipped to a bonded wine warehouse from a winery or another bonded wine warehouse shall remain under bond and no tax imposed under RCW 66.24.210 shall be due, unless the wine is removed from bond and shipped to a licensed Washington wine distributor. Wine may be removed from a bonded wine warehouse only for the purpose of being (a) exported from the state, (b) shipped to a licensed Washington wine distributor, (c) returned to a winery or bonded wine warehouse, or [(d)] shipped to a consumer pursuant to RCW 66.20.360 through 66.20.390.

(4) Warehousing of wine by any person other than (a) a licensed domestic winery or a bonded wine warehouse licensed under the provisions of this section, (b) a licensed Washington wine distributor, (c) a licensed Washington wine importer, (d) a wine certificate of approval holder (W7), or (e) the liquor control board, is prohibited.

(5) A license applicant shall hold a federal permit for a bonded wine cellar and may be required to post a continuing wine tax bond of such an amount and in such a form as may be required by the board prior to the issuance of a bonded wine warehouse license. The fee for this license shall be one hundred dollars per annum.

(6) The board shall adopt rules requiring a bonded wine warehouse to be physically secure, zoned for the intended use and physically separated from any other use.

(7) Every licensee shall submit to the board a monthly report of movement of bottled wines to and from a bonded wine warehouse in a form prescribed by the board. The board may adopt other necessary procedures by which bonded wine warehouses are licensed and regulated.

(8) Handling of bottled wine, as provided for in this section, includes packaging and repackaging services; bottle labeling services; creating baskets or variety packs that may or may not include nonwine products; and picking, packing, and shipping wine orders direct to consumer. A winery contracting with a bonded wine warehouse for handling bottled wine must comply with all applicable state and federal laws and shall be responsible for financial transactions in direct to consumer shipping activities. [2008 c 41 § 4; 1999 c 281 § 4; 1997 c 321 § 4; 1984 c 19 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.200 Wine distributor's license—Fee. There shall be a license for wine distributors to sell wine, purchased from licensed Washington wineries, wine certificate of approval holders, licensed wine importers, or suppliers of foreign wine located outside of the United States, to licensed wine retailers and other wine distributors and to export the same from the state; fee six hundred sixty dollars per year for each distributing unit. [2004 c 160 § 2; 1997 c 321 § 5; 1981 1st ex.s. c 5 § 32; 1969 ex.s. c 21 § 2; 1937 c 217 § 1 (23K)]

[Title 66 RCW—page 29]

(adding new section 23-K to 1933 ex.s. c 62); RRS § 7306-23K.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.203 Wine importer's license—Principal office—Report—Labels—Fee. There shall be a license for wine importers that authorizes the licensee to import wine purchased from certificate of approval holders into the state of Washington. The licensee may also import, from suppliers located outside of the United States, wine manufactured outside the United States.

(1) Wine so imported may be sold to licensed wine distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a wine importer shall establish and maintain a principal office within the state at which shall be kept proper records of all wine imported into the state under this license.

(3) No wine importer's license shall be granted to a non-resident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a wine importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of wine sold or delivered to each licensed wine distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Wine imported under this license must conform to the provisions of RCW 66.28.110 and have received label approval from the board. The board shall not certify wines labeled with names that may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic winery or imported nor wines that fail to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [2004 c 160 § 3; 1997 c 321 § 6.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.206 Out-of-state winery—Certificate of approval—Fee. (1)(a) A United States winery located outside the state of Washington must hold a certificate of approval to allow sales and shipment of the certificate of approval holder's wine to licensed Washington wine distributors, importers, or retailers. A certificate of approval holder with a direct shipment endorsement may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a certificate of approval holder with a direct shipment endorsement may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A certificate of approval holder may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production.

(b) Authorized representatives must hold a certificate of approval to allow sales and shipment of United States produced wine to licensed Washington wine distributors or importers.

(c) Authorized representatives must also hold a certificate of approval to allow sales and shipments of foreign produced wine to licensed Washington wine distributors or importers.

(2) The certificate of approval shall not be granted unless and until such winery or authorized representative shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of wine sold or delivered to each licensed wine distributor, importer, or retailer, during the preceding month, and shall further have agreed with the board, that such wineries, manufacturers, or authorized representatives, and all general sales corporations or agencies maintained by them, and all of their trade representatives, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(3) The fee for the certificate of approval and related endorsements, issued pursuant to the provisions of this title, shall be from time to time established by the board at a level that is sufficient to defray the costs of administering the certificate of approval program. The fee shall be fixed by rule by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

(4) Certificate of approval holders are deemed to have consented to the jurisdiction of Washington concerning enforcement of this chapter and all laws and rules related to the sale and shipment of wine. [2007 c 16 § 1; 2006 c 302 § 4; 2004 c 160 § 4; 1997 c 321 § 7; 1981 1st ex.s. c 5 § 34; 1973 1st ex.s. c 209 § 13; 1969 ex.s. c 21 § 10.]

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.210 Imposition of taxes on sales of wine and cider—Additional taxes—Distributions. (1) There is hereby imposed upon all wines except cider sold to wine distributors and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter. Any domestic winery or certificate of approval holder acting as a distributor of its own production shall pay taxes imposed by this section. There is hereby imposed on all cider sold to wine distributors and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter. However, wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax.

(a) The tax provided for in this section shall be collected by direct payments based on wine purchased by wine distributors.

(b) Except as provided in subsection (7) of this section, every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. The board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(c) Any licensed retailer authorized to purchase wine from a certificate of approval holder with a direct shipment endorsement or a domestic winery shall make monthly reports to the liquor control board on wine purchased during the preceding calendar month in the manner and upon such forms as may be prescribed by the board.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed on cider sold after June 30, 1996. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010 when bottled or packaged by the manufacturer, one cent per liter on all other wine except cider, and eighteen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(5)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection (5) shall be deposited in the health services account under RCW 43.72.900.

(6) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must.

(7) For the purposes of this section, out-of-state wineries shall pay taxes under this section on wine sold and shipped directly to Washington state residents in a manner consistent with the requirements of a wine distributor under subsections (1) through (4) of this section, except wineries shall be responsible for the tax and not the resident purchaser. [2008 c 94 § 8. Prior: 2006 c 302 § 5; 2006 c 101 § 4; 2006 c 49 § 8; 2001 c 124 § 1; 1997 c 321 § 8; 1996 c 118 § 1; 1995 c 232 § 3; 1994 sp.s. c 7 § 901 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 160 § 2; 1991 c 192 § 3; 1989 c 271 § 501; 1987 c 452 § 11; 1983 2nd ex.s. c 3 § 10; 1982 1st ex.s. c 35 § 23; 1981 1st ex.s. c 5 § 12; 1973 1st ex.s. c 204 § 2; 1969 ex.s. c 21 § 3; 1943 c 216 § 2; 1939 c 172 § 3; 1935 c 158 § 3 (adding new section 24-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-24A. Formerly RCW 66.04.120, 66.24.210, part, 66.24.220, and 66.24.230, part. FORMER PART OF SECTION: 1933 ex.s. c 62 § 25, part, now codified as RCW 66.24.230.]

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2001 c 124: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 124 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1996 c 118: "This act shall take effect July 1, 1996." [1996 c 118 § 2.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: "Sections 901 through 909, chapter 7, Laws of 1994 sp. sess. shall be submitted as a single ballot measure to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof unless section 13, chapter 2, Laws of 1994, has been declared invalid or otherwise enjoined or stayed by a court of competent jurisdiction." [1994 sp.s. c 7 § 911 (Referendum Bill No. 43, approved November 8, 1994).]

Reviser's note: Sections 901 through 909, chapter 7, Laws of 1994 sp. sess., were adopted and ratified by the people at the November 8, 1994, general election.

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

Effective date—1993 c 160: See note following RCW 66.12.180.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Floor stocks tax: "There is hereby imposed upon every licensed wine distributor who possesses wine for resale upon which the tax has not been paid under section 2, chapter 204, Laws of 1973, a floor stocks tax of sixty-five cents per wine gallon on wine in his or her possession or under his or her control on June 30, 1973. Each such distributor shall within twenty days

after June 30, 1973, file a report with the Washington state liquor control board in such form as the board may prescribe, showing the wine products on hand July 1, 1973, converted to gallons thereof and the amount of tax due thereon. The tax imposed by this section shall be due and payable within twenty days after July 1, 1973, and thereafter bear interest at the rate of one percent per month." [1997 c 321 § 9; 1973 1st ex.s. c 204 § 3.]

Effective date—1973 1st ex.s. c 204: See note following RCW 82.08.150.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

Giving away liquor prohibited—Exceptions: RCW 66.28.040.

No tax on wine shipped to bonded warehouse: RCW 66.24.185.

66.24.215 Levy of assessment on wine producers and growers to fund wine commission—Assessment rate changes—Procedures—Disbursement—Continuation.

(1) To provide for permanent funding of the wine commission after July 1, 1989, agricultural commodity assessments shall be levied by the board on wine producers and growers as follows:

(a) Beginning on July 1, 1989, the assessment on wine producers shall be two cents per gallon on sales of packaged Washington wines.

(b) Beginning on July 1, 1989, the assessment on growers of Washington vinifera wine grapes shall be levied as provided in RCW 15.88.130.

(c) After July 1, 1993, assessment rates under subsection (1)(a) of this section may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of wine producers. The weight of each producer's vote shall be equal to the percentage of that producer's share of Washington vinifera wine production in the prior year.

(d) After July 1, 1993, assessment amounts under subsection (1)(b) of this section may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of grape growers. The weight of each grower's vote shall be equal to the percentage of that grower's share of Washington vinifera grape sales in the prior year.

(2) Assessments collected under this section shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(3) Prior to July 1, 1996, a referendum shall be conducted to determine whether to continue the Washington wine commission as representing both wine producers and grape growers. The voting shall not be weighted. The wine producers shall vote whether to continue the commission's coverage of wineries and wine production. The grape producers shall vote whether to continue the commission's coverage of issues pertaining to grape growing. If a majority of both wine and grape producers favor the continuation of the commission, the assessments shall continue as provided in subsection (2)(b) and (d) of this section. If only one group of producers favors the continuation, the assessments shall only be levied on the group which favored the continuation. [1988 c 257 § 7; 1987 c 452 § 13.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

66.24.230 Monthly reports of domestic winery, wine certificate of approval holder, wine importer, and wine distributor—Prohibited, authorized sales. Every domestic

winery, wine certificate of approval holder, wine importer, and wine distributor licensed under this title shall make monthly reports to the board pursuant to the regulations. Such domestic winery, wine certificate of approval holder, wine importer, and wine distributor shall make no sales of wine within the state of Washington except to the board, or as otherwise provided in this title. [2004 c 160 § 5; 1997 c 321 § 10; 1969 ex.s. c 21 § 4; 1933 ex.s. c 62 § 25; RRS § 7306-25. Formerly RCW 66.24.210 and 66.24.230. FORMER PART OF SECTION: 1943 c 216 § 2, part, now codified in RCW 66.24.210.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.240 Domestic brewery's license—Fee. (1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under RCW 66.04.010(6), licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A domestic brewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) A domestic brewery may hold up to two retail licenses to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant. This retail license is separate from the brewery license. A brewery that holds a tavern license, a spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(4) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under RCW 66.04.010(6), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

(5)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2008 c 41 § 7; (2008 c 41 § 6 expired June

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30, 2008); 2007 c 370 § 7; (2007 c 370 § 6 expired June 30, 2008). Prior: 2006 c 302 § 2; 2006 c 44 § 1; 2003 c 154 § 1; 2000 c 142 § 2; 1997 c 321 § 11; 1985 c 226 § 1; 1982 c 85 § 5; 1981 1st ex.s. c 5 § 13; 1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

Effective date—2008 c 41 §§ 7 and 9: "Sections 7 and 9 of this act take effect June 30, 2008." [2008 c 41 § 15.]

Expiration date—2008 c 41 §§ 6 and 8: "Sections 6 and 8 of this act expire June 30, 2008." [2008 c 41 § 14.]

Effective date—2007 c 370 §§ 5 and 7: See note following RCW 66.24.244.

Expiration date—2007 c 370 §§ 4 and 6: See note following RCW 66.24.244.

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.244 Microbrewery's license—Fee. (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a microbrewery operating as a distributor may maintain a warehouse off the premises of the microbrewery for the distribution of beer provided that (a) the warehouse has been approved by the board under RCW 66.24.010 and (b) the number of warehouses off the premises of the microbrewery does not exceed one. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) The board may issue up to two retail licenses allowing a microbrewery to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant.

(4) A microbrewery that holds a tavern license, spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(5)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the

microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (5) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (5) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (5):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Any microbrewery licensed under this section may contract-produce beer for another microbrewer. This contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180. [2008 c 248 § 2; (2008 c 248 § 1 expired June 30, 2008); 2008 c 41 § 9; (2008 c 41 § 8 expired June 30, 2008). Prior: 2007 c 370 § 5; (2007 c 370 § 4 expired June 30, 2008); 2007 c 222 § 2; (2007 c 222 § 1 expired June 30, 2008); 2006 c 302 § 3; 2006 c 44 § 2; prior: 2003 c 167 § 1; 2003 c 154 § 2; 1998 c 126 § 3; 1997 c 321 § 12.]

Reviser's note: This section was amended by 2008 c 41 § 9 and by 2008 c 248 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2008 c 248 § 2: "Section 2 of this act takes effect June 30, 2008." [2008 c 248 § 4.]

Expiration date—2008 c 248 § 1: "Section 1 of this act expires June 30, 2008." [2008 c 248 § 3.]

Effective date—2008 c 41 §§ 7 and 9: See note following RCW 66.24.240.

Expiration date—2008 c 41 §§ 6 and 8: See note following RCW 66.24.240.

Effective date—2007 c 370 §§ 5 and 7: "Sections 5 and 7 of this act take effect June 30, 2008." [2007 c 370 § 22.]

Expiration date—2007 c 370 §§ 4 and 6: "Sections 4 and 6 of this act expire June 30, 2008." [2007 c 370 § 21.]

Effective date—2007 c 222 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 222 § 5.]

Expiration date—2007 c 222 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 222 § 4.]

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2003 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 167 § 14.]

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.250 Beer distributor's license—Fee. There shall be a license for beer distributors to sell beer and strong beer, purchased from licensed Washington breweries, beer certificate of approval holders, licensed beer importers, or suppliers of foreign beer located outside of the United States, to licensed beer retailers and other beer distributors and to export same from the state of Washington; fee six hundred sixty dollars per year for each distributing unit. [2004 c 160 § 6; 2003 c 167 § 2; 1997 c 321 § 13; 1981 1st ex.s. c 5 § 14; 1937 c 217 § 1 (23E) (adding new section 23-E to 1933 ex.s. c 62); RRS § 7306-23E.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Report to legislature—2003 c 167: "The liquor control board shall report to the legislature by December 1, 2004, on the impacts of strong beer sales." [2003 c 167 § 13.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.261 Beer importer's license—Principal office—Report—Labels—Fee. There shall be a license for beer importers that authorizes the licensee to import beer and strong beer purchased from beer certificate of approval holders into the state of Washington. The licensee may also import, from suppliers located outside of the United States, beer and strong beer manufactured outside the United States.

(1) Beer and strong beer so imported may be sold to licensed beer distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a beer importer shall establish and maintain a principal office within the state at which shall be kept proper records of all beer and strong beer imported into the state under this license.

(3) No beer importer's license shall be granted to a non-resident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a beer importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of beer and strong beer sold or delivered to each licensed beer distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Beer and strong beer imported under this license must conform to the provisions of RCW 66.28.120 and have received label approval from the board. The board shall not certify beer or strong beer labeled with names which may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic brewery or imported nor shall it certify beer or strong beer which fails to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [2004 c 160 § 7; 2003 c 167 § 3; 1997 c 321 § 14.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.270 Manufacturer's monthly report of malt liquor or strong beer sales—Certificate of approval—Report for out-of-state or imported beer—Fee. (1) Every person, firm or corporation, holding a license to manufacture malt liquors or strong beer within the state of Washington, shall, on or before the twentieth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors and strong beer sold for resale during the preceding calendar month to each beer distributor within the state of Washington.

(2)(a) A United States brewery or manufacturer of beer or strong beer, located outside the state of Washington, must hold a certificate of approval to allow sales and shipment of the certificate of approval holder's beer or strong beer to licensed Washington beer distributors, importers, or retailers. A certificate of approval holder with a direct shipment endorsement may act as a distributor for beer of its own production.

(b) Authorized representatives must hold a certificate of approval to allow sales and shipment of United States produced beer or strong beer to licensed Washington beer distributors or importers.

(c) Authorized representatives must also hold a certificate of approval to allow sales and shipments of foreign produced beer or strong beer to licensed Washington beer distributors or importers.

(3) The certificate of approval shall not be granted unless and until such brewer or manufacturer of beer or strong beer or authorized representative shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of beer and strong beer sold or delivered to each licensed beer distributor, importer, or retailer during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of beer or strong beer or authorized representative and all general sales corporations or agencies maintained by them, and all of their trade representatives, corporations, and agencies, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(4) The fee for the certificate of approval and related endorsements, issued pursuant to the provisions of this title, shall be from time to time established by the board at a level that is sufficient to defray the costs of administering the certificate of approval program. The fee shall be fixed by rule by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

(5) Certificate of approval holders are deemed to have consented to the jurisdiction of Washington concerning enforcement of this chapter and all laws and rules related to the sale and shipment of beer. [2006 c 302 § 6; 2004 c 160 § 8; 2003 c 167 § 4; 1997 c 321 § 15; 1981 1st ex.s. c 5 § 35; 1973 1st ex.s. c 209 § 14; 1969 ex.s. c 178 § 4; 1937 c 217 § 1 (23F) (adding new section 23-F to 1933 ex.s. c 62); RRS § 7306-23F. Formerly RCW 66.24.270 and 66.24.280.]

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes. (1) Any microbrewer or domestic brewery or beer distributor licensed under this title may sell and deliver beer and strong beer to holders of authorized licenses direct, but to no other person, other than the board. Any certificate of approval holder authorized to act as a distributor under RCW 66.24.270 shall pay the taxes imposed by this section.

(a) Every such brewery or beer distributor shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer and strong beer within the state a tax of one dollar and thirty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer, including strong beer, shall pay a tax computed in gallons at the rate of one dollar and thirty cents per barrel of thirty-one gallons.

(b) Any brewery or beer distributor whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer and strong beer shall be sold by breweries and distributors in sealed barrels or packages.

(c) The moneys collected under this subsection shall be distributed as follows: (i) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (ii) of the remaining moneys: (A) Twenty percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (B) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(d) Any licensed retailer authorized to purchase beer from a certificate of approval holder with a direct shipment endorsement or a brewery or microbrewery shall make monthly reports to the liquor control board on beer purchased during the preceding calendar month in the manner and upon such forms as may be prescribed by the board.

(2) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the health services account under RCW 43.72.900.

(4) An additional tax is imposed on all beer and strong beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer and strong beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one

dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distributed to border areas under RCW 66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5) The board may make refunds for all taxes paid on beer and strong beer exported from the state for use outside the state.

(6) The board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his or her license until all taxes are paid. [2006 c 302 § 7; 2003 c 167 § 5; 1999 c 281 § 14. Prior: 1997 c 451 § 1; 1997 c 321 § 16; 1995 c 232 § 4; 1994 sp.s. c 7 § 902 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 311; 1989 c 271 § 502; 1983 2nd ex.s. c 3 § 11; 1982 1st ex.s. c 35 § 24; 1981 1st ex.s. c 5 § 16; 1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 451: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 451 § 5.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

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

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1965 ex.s. c 173: See note following RCW 82.98.030.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.24.305 Refunds of taxes on unsalable wine and beer. The board may refund the tax on wine imposed by RCW 66.24.210, and the tax on beer imposed by RCW 66.24.290, when such taxpaid products have been deemed to be unsalable and are destroyed within the state in accordance with procedures established by the board. [1975 1st ex.s. c 173 § 11.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.24.310 Representative's license—Qualifications—Conditions and restrictions—Fee. (1) No person shall canvass for, solicit, receive, or take orders for the purchase or sale of liquor, nor contact any licensees of the board in good-

will activities, unless such person shall be the accredited representative of a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer distributor's license, a microbrewer's license, a domestic brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, and shall have applied for and received a representative's license: PROVIDED, HOWEVER, That the provisions of this section shall not apply to drivers who deliver beer or wine;

(2) Every representative's license issued under this title shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board; the board, for the purpose of maintaining an orderly market, may limit the number of representative's licenses issued for representation of specific classes of eligible employers;

(3) Every application for a representative's license must be approved by a holder of a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a licensed beer distributor, a licensed domestic brewer, a licensed beer importer, a licensed microbrewer, a licensed domestic winery, a licensed wine importer, a licensed wine distributor, or by a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, as the rules and regulations of the board shall require;

(4) The fee for a representative's license shall be twenty-five dollars per year;

(5) An accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may, after he or she has applied for and received a representative's license, contact retail licensees of the board only in goodwill activities pertaining to spirituous liquor products. [1997 c 321 § 17; 1981 1st ex.s. c 5 § 36; 1975-'76 2nd ex.s. c 74 § 1; 1971 ex.s. c 138 § 1; 1969 ex.s. c 21 § 5; 1939 c 172 § 2; 1937 c 217 § 1 (23I) (adding new section 23-I to 1933 ex.s. c 62); RRS § 7306-23I.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1975-'76 2nd ex.s. c 74: "The effective date of this 1976 amendatory act shall be July 1, 1976." [1975-'76 2nd ex.s. c 74 § 4.]

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement. There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and,

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except as provided in subsection (3) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with [a] catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty dollars shall be required for such duplicate licenses.

(3) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or the passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

(4) The holder of this license or its manager may furnish beer or wine to the licensee's employees free of charge as may be required for use in connection with instruction on beer and wine. The instruction may include the history, nature, values, and characteristics of beer or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling beer or wine. The beer and/or wine licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the beer and/or wine licensee.

(5) If the license is issued to a person who contracts with the Washington state ferry system to provide food and alcohol service on a designated ferry route, the license shall cover any vessel assigned to the designated route. A separate license is required for each designated ferry route. [2007 c 370 § 9. Prior: 2006 c 362 § 1; 2006 c 101 § 2; 2005 c 152 §

1; 2004 c 62 § 2; prior: 2003 c 345 § 1; 2003 c 167 § 6; 1998 c 126 § 4; 1997 c 321 § 18; 1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.330 Tavern license—Fees. There shall be a beer and wine retailer's license to be designated as a tavern license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. Such licenses may be issued only to a person operating a tavern that may be frequented only by persons twenty-one years of age and older.

The annual fee for such license shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license. Licensees who have a fee increase of more than one hundred dollars as a result of this change shall have their fees increased fifty percent of the amount the first renewal year and the remaining amount beginning with the second renewal period. New licensees obtaining a license after July 1, 1998, shall pay the full amount of four hundred dollars. [2003 c 167 § 7; 1997 c 321 § 19; 1995 c 232 § 7; 1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.350 Snack bar license—Fee. There shall be a beer retailer's license to be designated as a snack bar license to sell beer by the opened bottle or can at retail, for consumption upon the premises only, such license to be issued to places where the sale of beer is not the principal business conducted; fee one hundred twenty-five dollars per year. [1997 c 321 § 20; 1991 c 42 § 3; 1981 1st ex.s. c 5 § 40; 1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.354 Combined license—Sale of beer and wine for consumption on and off premises—Conditions—Fee. There shall be a beer and wine retailer's license that may be combined only with the on-premises licenses described in either RCW 66.24.320 or 66.24.330. The combined license permits the sale of beer and wine for consumption off the premises.

(1) Beer and wine sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler.

(2) Beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale.

(3) Licensees holding this type of license also may sell malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200.

(4) The board may impose conditions upon the issuance of this license to best protect and preserve the health, safety, and welfare of the public.

(5) The annual fee for this license shall be one hundred twenty dollars. [1997 c 321 § 21.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—Endorsements. There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food prod-

ucts for human consumption, not including pop, beer, strong beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) A holder of this special endorsement to the grocery store license shall be considered not in violation of RCW 66.28.010.

(d) Any beer, strong beer, or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(e) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license.

(6) A grocery store licensee holding a snack bar license under RCW 66.24.350 may receive an endorsement to allow the sale of confections containing more than one percent but not more than ten percent alcohol by weight to persons twenty-one years of age or older. [2007 c 226 § 2; 2003 c 167 § 8; 1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

Application to certain retailers—2003 c 167 §§ 8 and 9: "Sections 8 and 9 of this act apply to retailers who hold a restricted grocery store license or restricted beer and/or wine specialty shop license on or after July 1, 2003." [2003 c 167 § 12.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.

66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. (1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this (2008 Ed.)

section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine. [2003 c 167 § 9; 1997 c 321 § 23.]

Application to certain retailers—2003 c 167 §§ 8 and 9: See note following RCW 66.24.360.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.375 "Society or organization" defined for certain purposes. "Society or organization" as used in RCW 66.24.380 means a not-for-profit group organized and operated (1) solely for charitable, religious, social, political, educational, civic, fraternal, athletic, or benevolent purposes, or (2) as a local wine industry association registered under section 501(c)(6) of the internal revenue code as it exists on July 22, 2007. No portion of the profits from events sponsored by a not-for-profit group may be paid directly or indirectly to members, officers, directors, or trustees except for services performed for the organization. Any compensation paid to its officers and executives must be only for actual services and at levels comparable to the compensation for like positions within the state. A society or organization which is registered with the secretary of state or the federal internal revenue service as a nonprofit organization shall submit such registration, upon request, as proof that it is a not-for-profit group. [2007 c 370 § 1; 1997 c 321 § 61; 1981 c 287 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1981 c 287: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 287 § 3.]

66.24.380 Special occasion license—Fee—Penalty. There shall be a retailer's license to be designated as a special

occasion license to be issued to a not-for-profit society or organization to sell spirits, beer, and wine by the individual serving for on-premises consumption at a specified event, such as at picnics or other special occasions, at a specified date and place; fee sixty dollars per day.

(1) The not-for-profit society or organization is limited to sales of no more than twelve calendar days per year. For the purposes of this subsection, special occasion licensees that are "agricultural area fairs" or "agricultural county, district, and area fairs," as defined by RCW 15.76.120, that receive a special occasion license may, once per calendar year, count as one event fairs that last multiple days, so long as alcohol sales are at set dates, times, and locations, and the board receives prior notification of the dates, times, and locations. The special occasion license applicant will pay the sixty dollars per day for this event.

(2) The licensee may sell beer and/or wine in original, unopened containers for off-premises consumption if permission is obtained from the board prior to the event.

(3) Sale, service, and consumption of spirits, beer, and wine is to be confined to specified premises or designated areas only.

(4) Spirituous liquor sold under this special occasion license must be purchased at a state liquor store or contract liquor store without discount at retail prices, including all taxes.

(5) Any violation of this section is a class 1 civil infraction having a maximum penalty of two hundred fifty dollars as provided for in chapter 7.80 RCW. [2005 c 151 § 10; 2004 c 133 § 2; 1997 c 321 § 24; 1988 c 200 § 2; 1981 1st ex.s. c 5 § 43; 1973 1st ex.s. c 209 § 17; 1969 ex.s. c 178 § 5; 1937 c 217 § 1 (23S) (adding new section 23-S to 1933 ex.s. c 62); RRS § 7306-23S.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

"Society or organization" defined for certain purposes: RCW 66.24.375.

66.24.395 Interstate common carrier's licenses—Class CCI—Fees—Scope. (1)(a) There shall be a license that may be issued to corporations, associations, or persons operating as federally licensed commercial common passenger carriers engaged in interstate commerce, in or over territorial limits of the state of Washington on passenger trains, vessels, or airplanes. Such license shall permit the sale of spirituous liquor, wine, and beer at retail for passenger consumption within the state upon one such train passenger car, vessel, or airplane, while in or over the territorial limits of the state. Such license shall include the privilege of transporting into and storing within the state such liquor for subsequent retail sale to passengers in passenger train cars, vessels or airplanes. The fees for such master license shall be seven hundred fifty dollars per annum (class CCI-1): PROVIDED, That upon payment of an additional sum of five dollars per annum per car, or vessel, or airplane, the privileges authorized by such license classes shall extend to additional cars, or vessels, or airplanes operated by the same licensee within the state, and a duplicate license for each additional car, or vessel, or airplane shall be issued: PROVIDED, FURTHER,

That such licensee may make such sales and/or service upon cars, or vessels, or airplanes in emergency for not more than five consecutive days without such license: AND PROVIDED, FURTHER, That such license shall be valid only while such cars, or vessels, or airplanes are actively operated as common carriers for hire in interstate commerce and not while they are out of such common carrier service.

(b) Alcoholic beverages sold and/or served for consumption by such interstate common carriers while within or over the territorial limits of this state shall be subject to such board markup and state liquor taxes in an amount to approximate the revenue that would have been realized from such markup and taxes had the alcoholic beverages been purchased in Washington: PROVIDED, That the board's markup shall be applied on spirituous liquor only. Such common carriers shall report such sales and/or service and pay such markup and taxes in accordance with procedures prescribed by the board.

(2) Alcoholic beverages sold and delivered in this state to interstate common carriers for use under the provisions of this section shall be considered exported from the state, subject to the conditions provided in subsection (1)(b) of this section. The storage facilities for liquor within the state by common carriers licensed under this section shall be subject to written approval by the board. [1997 c 321 § 25; 1981 1st ex.s. c 5 § 44; 1975 1st ex.s. c 245 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when. (1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only. A club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the club for consumption in guest rooms, hospitality rooms, or at banquets in the club. A patron of a bona fide restaurant or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell bottled wine

for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section except as provided in subsection (4) of this section. The annual fee for the endorsement under this subsection is one hundred twenty dollars.

(3) The holder of a spirits, beer, and wine license or its manager may furnish beer, wine, or spirituous liquor to the licensee's employees free of charge as may be required for use in connection with instruction on beer, wine, or spirituous liquor. The instruction may include the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, and spirituous liquor. The spirits, beer, and wine restaurant licensee must use the beer, wine, or spirituous liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the spirits, beer, and wine restaurant licensee.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200. The annual fee for the endorsement under this subsection is one hundred twenty dollars. [2008 c 41 § 10. Prior: 2007 c 370 § 13; 2007 c 53 § 1; 2005 c 152 § 2; 2001 c 199 § 4; 1998 c 126 § 5; 1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

Effective date—2008 c 41 §§ 3, 10, and 11: See note following RCW 66.20.310.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1986 c 208: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on May 1, 1986." [1986 c 208 § 2.]

Severability—1949 c 5: See RCW 66.98.080.

66.24.410 Liquor by the drink, spirits, beer, and wine restaurant license—Terms defined. (1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.450, inclusive, means "liquor" as defined in RCW 66.04.010, except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to 66.24.450, inclusive, means an establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains: PROVIDED, That such establishments shall be approved by the board and that the board shall be satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders or such food and victuals as sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition.

(2008 Ed.)

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to 66.24.450, inclusive, with the meaning given in chapter 66.04 RCW. [2007 c 370 § 18; 1983 c 3 § 164; 1981 1st ex.s. c 5 § 17; 1969 ex.s. c 112 § 1; 1957 c 263 § 2. Prior: 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	\$2,000
50% or more dedicated dining area	\$1,600
Service bar only	\$1,000

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a restaurant in an airport terminal facility must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises. An additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a dining place at such a publicly or privately owned civic or convention center must maintain in a substantial manner at least one place on the premises for preparing,

cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises. An additional license fee of ten dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each one thousand three hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with a catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty dollars shall be required for such duplicate licenses.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services. [2007 c 370 § 19; 2007 c 370 § 8. Prior: 2006 c 101 § 3; 2006 c 85 § 1; 2004 c 62 § 3; 2003 c 345 § 2; 1998 c 126 § 6; 1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2; prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Reviser's note: This section was amended by 2007 c 370 § 8 and by 2007 c 370 § 19, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.425 Liquor by the drink, spirits, beer, and wine restaurant license—Restaurants not serving the general public.

(1) The board may, in its discretion, issue a spirits, beer, and wine restaurant license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered spirits, beer, and wine restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to spirits, beer, and wine restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

(3) The board may issue an endorsement to the spirits, beer, and wine restaurant license issued under this section that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement is an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours before the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter [section] is one hundred twenty dollars. [2001 c 199 § 3; 2001 c 198 § 1; 1998 c 126 § 7; 1997 c 321 § 28; 1982 c 85 § 3.]

Reviser's note: This section was amended by 2001 c 198 § 1 and by 2001 c 199 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.440 Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, and sports entertainment facility license—Purchase of liquor by licensees—Discount. Each spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, and sports entertainment facility licensee shall be entitled to purchase any spirituous liquor items salable under such license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes. [2007 c 370 § 20; 1998 c 126 § 8; 1997 c 321 § 29; 1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1949 c 5: See RCW 66.98.080.

66.24.450 Liquor by the drink, spirits, beer, and wine private club license—Qualifications—Fee. (1) No club shall be entitled to a spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction

of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the spirits, beer, and wine private club, as defined in *RCW 66.04.010(7).

(2) The annual fee for a spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year.

(3) The board may issue an endorsement to the spirits, beer, and wine private club license that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine private club license that allows the holder of a spirits, beer, and wine private club license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter [section] is one hundred twenty dollars. [2001 c 199 § 1; 1999 c 281 § 5. Prior: 1998 c 126 § 9; 1998 c 114 § 1; 1997 c 321 § 30; 1981 1st ex.s. c 5 § 18; 1949 c 5 § 6; 1937 c 217 § 1 (23T) (adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

***Reviser's note:** RCW 66.04.010 was amended by 2004 c 160 § 1, changing subsection (7) to subsection (8), effective January 1, 2005.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1998 c 114: "This act takes effect July 1, 1998." [1998 c 114 § 3.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.452 Private club beer and wine license—Fee.

(1) There shall be a beer and wine license to be issued to a private club for sale of beer, strong beer, and wine for on-premises consumption.

(2) Beer, strong beer, and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred eighty dollars per year.

(4) The board may issue an endorsement to the private club beer and wine license that allows the holder of a private club beer and wine license to sell for off-premises consumption wine vinted and bottled in the state of Washington and

carrying a label exclusive to the license holder selling the wine. Spirits, strong beer, and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars. [2003 c 167 § 10; 2001 c 199 § 2; 1997 c 321 § 31.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.455 Bowling establishments—Extension of premises to concourse and lane areas—Beer and/or wine restaurant, tavern, snack bar, spirits, beer, and wine restaurant, spirits, beer, and wine private club, or beer and wine private club licensees. Subject to approval by the board, holders of beer and/or wine restaurant, tavern, snack bar, spirits, beer, and wine restaurant, spirits, beer, and wine private club, or beer and wine private club licenses may extend their premises for the sale, service, and consumption of liquor authorized under their respective licenses to the concourse or lane areas in a bowling establishment where the concourse or lane areas are adjacent to the food preparation service facility. [1998 c 126 § 10; 1997 c 321 § 32; 1994 c 201 § 2; 1974 ex.s. c 65 § 1.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.480 Bottle clubs—License required. "Bottle club" means a club or association operating for profit or otherwise and conducting or maintaining premises in which the members or other persons may resort for the primary or incidental purpose of keeping or consuming liquor on the premises.

Except as permitted under a license issued by the Washington state liquor control board, it is unlawful for any person to conduct or maintain by himself or by associating with others, or to in any manner aid, assist, or abet in conducting or maintaining a bottle club. [1951 c 120 § 2 (adding a new section to Title 66 RCW).]

Reviser's note: As to the constitutionality of this section, see *Derby Club v. Beckett*, 41 Wn. 2d 869 (1953).

66.24.481 Public place or club—License or permit required—Penalty. No public place or club, or agent, servant or employee thereof, shall keep or allow to be kept, either by itself, its agent, servant or employee, or any other person, any liquor in any place maintained or conducted by such public place or club, nor shall it permit the drinking of any liquor in any such place, unless the sale of liquor in said place is authorized by virtue of a valid and subsisting license issued by the Washington state liquor control board, or the consumption of liquor in said place is authorized by a special banquet permit issued by said board. Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

"Public place," for purposes of this section only, shall mean in addition to the definition set forth in RCW 66.04.010, any place to which admission is charged or in which any pecuniary gain is realized by the owner or operator of such place in selling or vending food or soft drinks. [2008

c 94 § 9; 1969 ex.s. c 250 § 2; 1953 c 141 § 1 (adding a new section to chapter 66.24 RCW).]

66.24.495 Nonprofit arts organization license—Fee.

(1) There shall be a license to be designated as a nonprofit arts organization license. This shall be a special license to be issued to any nonprofit arts organization which sponsors and presents productions or performances of an artistic or cultural nature in a specific theater or other appropriate designated indoor premises approved by the board. The license shall permit the licensee to sell liquor to patrons of productions or performances for consumption on the premises at these events. The fee for the license shall be two hundred fifty dollars per annum.

(2) For the purposes of this section, the term "nonprofit arts organization" means an organization which is organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (3) of this section, for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The proceeds derived from sales of liquor, except for reasonable operating costs, must be used in furtherance of the purposes of the organization;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The liquor control board shall have access to its books in order to determine whether the corporation is entitled to a license.

(3) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public

on an artistic, cultural, or historical subject. [1997 c 321 § 33; 1981 c 142 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.520 Grower's license—Fee. There shall be a grower's license to sell wine made from grapes or other agricultural products owned at the time of vinification by the licensee in bulk to holders of domestic wineries', distillers', or manufacturers' licenses or for export. The wine shall be made upon the premises of a domestic winery licensee and is referred to in this section as grower's wine. A grower's license authorizes the agricultural product grower to contract for the manufacturing of wine from the grower's own agricultural product, store wine in bulk made from agricultural products produced by the holder of this license, and to sell wine in bulk made from the grower's own agricultural products to a winery or distillery in the state of Washington or to export in bulk for sale out-of-state. The annual fee for a grower's license shall be seventy-five dollars. For the purpose of chapter 66.28 RCW, a grower licensee shall be deemed a manufacturer. [1986 c 214 § 1.]

66.24.530 Duty free exporter's license—Class S—Fee. (1) There shall be a license to be designated as a class S license to qualified duty free exporters authorizing such exporters to sell beer and wine to vessels for consumption outside the state of Washington.

(2) To qualify for a license under subsection (1) of this section, the exporter shall have:

(a) An importer's basic permit issued by the United States bureau of alcohol, tobacco, and firearms and a customs house license in conjunction with a common carriers bond;

(b) A customs bonded warehouse, or be able to operate from a foreign trade zone; and

(c) A notarized signed statement from the purchaser stating that the product is for consumption outside the state of Washington.

(3) The license for qualified duty free exporters shall authorize the duty free exporter to purchase from a brewery, winery, beer wholesaler, wine wholesaler, beer importer, or wine importer licensed by the state of Washington.

(4) Beer and/or wine sold and delivered in this state to duty free exporters for use under this section shall be considered exported from the state.

(5) The fee for this license shall be one hundred dollars per annum. [1987 c 386 § 1.]

66.24.540 Motel license—Fee. There shall be a retailer's license to be designated as a motel license. The motel license may be issued to a motel regardless of whether it holds any other class of license under this title. No license may be issued to a motel offering rooms to its guests on an hourly basis. The license authorizes the licensee to:

(1) Sell, at retail, in locked honor bars, spirits in individual bottles not to exceed fifty milliliters, beer in individual cans or bottles not to exceed twelve ounces, and wine in individual bottles not to exceed one hundred eighty-seven milliliters, to registered guests of the motel for consumption in guest rooms.

(2008 Ed.)

(a) Each honor bar must also contain snack foods. No more than one-half of the guest rooms may have honor bars.

(b) All spirits to be sold under the license must be purchased from the board.

(c) The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar.

(2) Provide without additional charge, to overnight guests of the motel, beer and wine by the individual serving for on-premises consumption at a specified regular date, time, and place as may be fixed by the board. Self-service by attendees is prohibited. All beer and wine service must be done by an alcohol server as defined in RCW 66.20.300 and comply with RCW 66.20.310.

The annual fee for a motel license is five hundred dollars.

"Motel" as used in this section means a transient accommodation licensed under chapter 70.62 RCW.

As used in this section, "spirits," "beer," and "wine" have the meanings defined in RCW 66.04.010. [1999 c 129 § 1; 1997 c 321 § 34; 1993 c 511 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.550 Beer and wine gift delivery license—Fee—Limitations. There shall be a beer and wine retailer's license to be designated as a beer and wine gift delivery license to solicit, take orders for, sell, and deliver beer and/or wine in bottles and original packages to persons other than the person placing the order. A beer and wine gift delivery license may be issued only to a business solely engaged in the sale or sale and delivery of gifts at retail which holds no other class of license under this title or to a person in the business of selling flowers or floral arrangements at retail. No minimum beer and/or wine inventory requirement shall apply to holders of beer and wine gift delivery licenses. The fee for this license is seventy-five dollars per year. Delivery of beer and/or wine under a beer and wine gift delivery license shall be made in accordance with all applicable provisions of this title and the rules of the board, and no beer and/or wine so delivered shall be opened on any premises licensed under this title. A beer and wine gift delivery license does not authorize door-to-door solicitation of gift wine delivery orders. Deliveries of beer and/or wine under a beer and wine gift delivery license shall be made only in conjunction with gifts or flowers. [1997 c 321 § 35; 1989 c 149 § 1; 1986 c 40 § 1; 1982 c 85 § 10.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.570 Sports entertainment facility license—Fee—Caterer's endorsement—Financial arrangements—Reporting. (1) There is a license for sports entertainment facilities to be designated as a sports entertainment facility license to sell beer, wine, and spirits at retail, for consumption upon the premises only, the license to be issued to the entity providing food and beverage service at a sports entertainment facility as defined in this section. The cost of the license is two thousand five hundred dollars per annum.

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(2) For purposes of this section, a sports entertainment facility includes a publicly or privately owned arena, coliseum, stadium, or facility where sporting events are presented for a price of admission. The facility does not have to be exclusively used for sporting events.

(3) The board may impose reasonable requirements upon a licensee under this section, such as requirements for the availability of food and victuals including but not limited to hamburgers, sandwiches, salads, or other snack food. The board may also restrict the type of events at a sports entertainment facility at which beer, wine, and spirits may be served. When imposing conditions for a licensee, the board must consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a sports entertainment facility.

(4)(a) The board may issue a caterer's endorsement to the license under this section to allow the licensee to remove from the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(5) The board may issue an endorsement to the beer, wine, and spirits sports entertainment facility license that allows the holder of a beer, wine, and spirits sports entertainment facility license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars.

(6)(a) A licensee and an affiliated business may enter into arrangements with a manufacturer, importer, or distributor for brand advertising at the sports entertainment facility or promotion of events held at the sports entertainment facility, with a capacity of five thousand people or more. The financial arrangements providing for the brand advertising or promotion of events shall not be used as an inducement to purchase the products of the manufacturer, importer, or distributor entering into the arrangement nor shall it result in the exclusion of brands or products of other companies.

(b) The arrangements allowed under this subsection (6) are an exception to arrangements prohibited under RCW 66.28.010. The board shall monitor the impacts of these arrangements. The board may conduct audits of the licensee and the affiliated business to determine compliance with this subsection (6). Audits may include but are not limited to product selection at the facility; purchase patterns of the licensee; contracts with the liquor manufacturer, importer, or

distributor; and the amount allocated or used for liquor advertising by the licensee, affiliated business, manufacturer, importer, or distributor under the arrangements.

(c) The board shall report to the appropriate committees of the legislature by December 30, 2008, and biennially thereafter, on the impacts of arrangements allowed between sports entertainment licensees and liquor manufacturers, importers, and distributors for brand advertising and promotion of events at the facility. [2007 c 369 § 2; 2003 c 345 § 3; 2001 c 199 § 5; 1997 c 321 § 36; 1996 c 218 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.580 Public house license—Fees—Limitations.

(1) A public house license allows the licensee:

(a) To annually manufacture no less than two hundred fifty gallons and no more than two thousand four hundred barrels of beer on the licensed premises;

(b) To sell product, that is produced on the licensed premises, at retail on the licensed premises for consumption on the licensed premises;

(c) To sell beer or wine not of its own manufacture for consumption on the licensed premises if the beer or wine has been purchased from a licensed beer or wine wholesaler;

(d) To hold other classes of retail licenses at other locations without being considered in violation of RCW 66.28.010;

(e) To apply for and, if qualified and upon the payment of the appropriate fee, be licensed as a spirits, beer, and wine restaurant to do business at the same location. This fee is in addition to the fee charged for the basic public house license.

(2) While the holder of a public house license is not to be considered in violation of the prohibitions of ownership or interest in a retail license in RCW 66.28.010, the remainder of RCW 66.28.010 applies to such licensees.

(3) A public house licensee must pay all applicable taxes on production as are required by law, and all appropriate taxes must be paid for any product sold at retail on the licensed premises.

(4) The employees of the licensee must comply with the provisions of mandatory server training in RCW 66.20.300 through 66.20.350.

(5) The holder of a public house license may not hold a wholesaler's or importer's license, act as the agent of another manufacturer, wholesaler, or importer, or hold a brewery or winery license.

(6) The annual license fee for a public house is one thousand dollars.

(7) The holder of a public house license may hold other licenses at other locations if the locations are approved by the board.

(8) Existing holders of annual retail liquor licenses may apply for and, if qualified, be granted a public house license at one or more of their existing liquor licensed locations without discontinuing business during the application or construction stages. [1999 c 281 § 6; 1996 c 224 § 2.]

Intent—1996 c 224: "It is the intent of the legislature that holders of annual on-premises retail liquor licenses be allowed to operate manufacturing facilities on those premises. This privilege is viewed as a means of enhancing and meeting the needs of the licensees' patrons without being in violation of the tied-house statute prohibitions of RCW 66.28.010. Furthermore, it is the intention of the legislature that this type of business not be viewed as primarily a manufacturing facility. Rather, the public house lic-

ensee shall be viewed as an annual retail licensee who is making malt liquor for on-premises consumption by the patrons of the licensed premises." [1996 c 224 § 1.]

66.24.590 Hotel license—Fee—Limitations. (1)

There shall be a retailer's license to be designated as a hotel license. No license may be issued to a hotel offering rooms to its guests on an hourly basis. Food service provided for room service, banquets or conferences, or restaurant operation under this license shall meet the requirements of rules adopted by the board.

(2) The hotel license authorizes the licensee to:

(a) Sell spiritous liquor, beer, and wine, by the individual glass, at retail, for consumption on the premises, including mixed drinks and cocktails compounded and mixed on the premises;

(b) Sell, at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms. The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar;

(c) Provide without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for on-premises consumption at a specified regular date, time, and place as may be fixed by the board. Self-service by attendees is prohibited;

(d) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings that include the hotel;

(e) Sell beer, including strong beer, or wine, in the manufacturer's sealed container at retail sales locations within the hotel premises;

(f) Sell for on or off-premises consumption, including through room service and service to occupants of private residential units managed by the hotel, wine carrying a label exclusive to the hotel license holder;

(g) Place in guest rooms at check-in, a complimentary bottle of beer, including strong beer, or wine in a manufacturer-sealed container, and make a reference to this service in promotional material.

(3) If all or any facilities for alcoholic beverage service and the preparation, cooking, and serving of food are operated under contract or joint venture agreement, the operator may hold a license separate from the license held by the operator of the hotel. Food and beverage inventory used in separate licensed operations at the hotel may not be shared and shall be separately owned and stored by the separate licensees.

(4) All spirits to be sold under this license must be purchased from the board.

(5) All on-premise alcoholic beverage service must be done by an alcohol server as defined in RCW 66.20.300 and must comply with RCW 66.20.310.

(2008 Ed.)

(6)(a) The hotel license allows the licensee to remove from the liquor stocks at the licensed premises, liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived.

(b) The holder of this license shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) Licensees may cater events on a domestic winery premises.

(7) The holder of this license or its manager may furnish spirits, beer, or wine to the licensee's employees who are twenty-one years of age or older free of charge as may be required for use in connection with instruction on spirits, beer, and wine. The instruction may include the history, nature, values, and characteristics of spirits, beer, or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling spirits, beer, or wine. The licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the licensee.

(8) Minors may be allowed in all areas of the hotel where alcohol may be consumed; however, the consumption must be incidental to the primary use of the area. These areas include, but are not limited to, tennis courts, hotel lobbies, and swimming pool areas. If an area is not a mixed use area, and is primarily used for alcohol service, the area must be designated and restricted to access by minors.

(9) The annual fee for this license is two thousand dollars.

(10) As used in this section, "hotel," "spirits," "beer," and "wine" have the meanings defined in RCW 66.24.410 and 66.04.010. [2008 c 41 § 11; 2007 c 370 § 11.]

Effective date—2008 c 41 §§ 3, 10, and 11: See note following RCW 66.20.310.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Chapter 66.28 RCW

MISCELLANEOUS REGULATORY PROVISIONS

Sections

- | | |
|-----------|---|
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- 66.28.050 Solicitation of orders prohibited.
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- 66.28.260 Beer distributors—Restricted transactions.

Grower licensee deemed a manufacturer: RCW 66.24.520.

Labels, unlawful refilling, etc., of trademarked containers: Chapter 19.76 RCW.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.28.010 Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions. (1)(a) No manufacturer, importer, distributor, or authorized representative, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, distributor, or authorized representative own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, distributor, or authorized representative has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors,

the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, distributor, or authorized representative shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, distributor, or authorized representative as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, distributor, or authorized representative shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, distributor, or authorized representative sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and at one additional off-site retail only location and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor. Nothing in this section shall prohibit a microbrewery holding a beer and/or wine restaurant license under RCW 66.24.320 from holding the same privileges and endorsements attached to the beer and/or wine restaurant license. Nothing in this section shall prohibit a licensed craft distillery from selling spirits of its own production under RCW 66.24.145.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, micro-

brewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW. Nothing in this section shall prohibit a microbrewery holding a spirits, beer, and wine restaurant license under RCW 66.24.420 from holding the same privileges and endorsements attached to the spirits, beer, and wine restaurant license. This section does not prohibit a brewery or microbrewery holding a spirits, beer, and wine restaurant license or a beer and/or wine license under chapter 66.24 RCW operated on the premises of the brewery or microbrewery from holding a second retail only license at a location separate from the premises of the brewery or microbrewery.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(e) Nothing in this section prohibits an organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(f) Nothing in this section prohibits a bona fide charitable nonprofit society or association registered under section 501(c)(3) of the internal revenue code, or a local wine industry association registered under section 501(c)(6) of the internal revenue code as it exists on July 22, 2007, and having an officer, director, owner, or employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(g)(i) Nothing in this section prohibits domestic wineries and retailers licensed under chapter 66.24 RCW from producing, jointly or together with regional, state, or local wine industry associations, brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, domestic wineries, and their products.

(ii) Nothing in this section prohibits: (A) Domestic wineries, domestic breweries, microbreweries, and certificate of approval holders licensed under this chapter from listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites; and (B) retailers licensed under this chapter from listing on their internet web sites information related to domestic wineries, domestic breweries, microbreweries, and certificate of approval holders whose products those retailers sell or promote, including direct links to the domestic wineries', domestic breweries', microbreweries', and certificate of approval holders' web sites.

(h) Nothing in this section prohibits the performance of personal services offered from time to time by a domestic winery or certificate of approval holder licensed under RCW 66.24.206(1)(a) for or on behalf of a licensed retail business when the personal services are (i) conducted at a licensed premises, and (ii) intended to inform, educate, or enhance cus-

tomers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring at the premises of a retailer holding a spirits, beer, and wine restaurant license, a wine and/or beer restaurant license, or a specialty wine shop license; bottle signings; and other similar informational or educational activities. A domestic winery or certificate of approval holder is not obligated to perform any such personal services, and a retail licensee may not require a domestic winery or certificate of approval holder to conduct any personal service as a condition for selling any alcohol to the retail licensee. Except as provided in RCW 66.28.150, the cost of sampling may not be borne, directly or indirectly, by any liquor manufacturer, importer, or distributor. Nothing in this section prohibits domestic wineries and retail licensees from identifying the wineries on private labels authorized under RCW *66.24.400, 66.24.425, and 66.24.450.

(i) Until July 1, 2007, nothing in this section prohibits a nonprofit statewide organization of microbreweries formed for the purpose of promoting Washington's craft beer industry as a trade association registered as a 501(c) with the internal revenue service from holding a special occasion license to conduct up to six beer festivals.

(j) Nothing in this section shall prohibit a manufacturer, importer, or distributor from entering into an arrangement with any holder of a sports/entertainment facility license or an affiliated business for brand advertising at the licensed facility or promoting events held at the sports entertainment facility as authorized under RCW 66.24.570.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and

(iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsections (1)(g) and (h) and (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer. [2008 c 94 § 5. Prior: 2007 c 370 § 2; 2007 c 369 § 1; 2007 c 222 § 3; 2007 c 217 § 1; prior: 2006 c 330 § 28; 2006 c 92 § 1; 2006 c 43 § 1; prior: 2004 c 160 § 9; 2004 c 62 § 1; 2002 c 109 § 1; 2000 c 177 § 1; prior: 1998 c 127 § 1; 1998 c 126 § 11; 1997 c 321 § 46; prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c 78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90; prior: 1909 c 84 § 1.]

*Reviser's note: RCW 66.24.400 was amended by 2008 c 41 § 10, removing reference to private label identification from the statute.

Construction—Severability—2006 c 330: See RCW 15.89.900 and 15.89.901.

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1998 c 127: "This act takes effect July 1, 1998." [1998 c 127 § 2.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Intent—1996 c 224: See note following RCW 66.24.580.

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.28.030 Responsibility of breweries, microbreweries, wineries, certificate of approval holders, and importers for conduct of distributors—Penalties. Every domestic brewery and microbrewery, domestic winery, certificate of approval holder, licensed wine importer, and licensed beer importer shall be responsible for the conduct of any licensed beer or wine distributor in selling, or contracting to sell, to retail licensees, beer or wine manufactured by such domestic brewery, microbrewery, domestic winery, manufacturer holding a certificate of approval, sold by an authorized representative holding a certificate of approval, or imported by such beer or wine importer. Where the board finds that any licensed beer or wine distributor has violated any of the provisions of this title or of the regulations of the board in selling or contracting to sell beer or wine to retail licensees, the board may, in addition to any punishment inflicted or imposed upon such distributor, prohibit the sale of the brand or brands of beer or wine involved in such violation to any or all retail licensees within the trade territory usually served by such distributor for such period of time as the board may fix, irrespective of whether the brewer manufacturing such beer or the beer importer importing such beer or the domestic winery manufacturing such wine or the wine importer importing such wine or the certificate of approval holder manufacturing such beer or wine or acting as authorized representative actu-

ally participated in such violation. [2004 c 160 § 10; 1997 c 321 § 47; 1975 1st ex.s. c 173 § 8; 1969 ex.s. c 21 § 6; 1939 c 172 § 8 (adding new section 27-D to 1933 ex.s. c 62); RRS § 7306-27D.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.040 Giving away of liquor prohibited—Exceptions. Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor shall, within the state of Washington, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a domestic brewery, microbrewery, distributor, domestic winery, distiller, certificate of approval holder, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150; nothing in this section shall prevent a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) or (6) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3) or (6)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises; and nothing in this section shall prevent a craft distillery from serving spirits without charge, on the distillery premises subject to RCW 66.24.145. [2008 c 94 § 6; 2008 c 41 § 12; 2004 c 160 § 11; 2000 c 179 § 1. Prior: 1998 c 256 § 1; 1998 c 126 § 12; 1997 c 39 § 1; 1987 c 452 § 15; 1983 c 13 § 2; 1983 c 3 § 165; 1982 1st ex.s. c 26 § 2; 1981 c 182 § 2; 1975 1st ex.s. c 173 § 10;

1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306-30.]

Reviser's note: This section was amended by 2008 c 41 § 12 and by 2008 c 94 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.042 Providing food and beverages for business meetings permitted. A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may provide to licensed retailers and their employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and may provide local ground transportation to and from such meetings. The value of the food, beverage, or transportation provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of *RCW 68.28.040. The board may adopt rules for the implementation of this section. [2004 c 160 § 12; 1990 c 125 § 1.]

***Reviser's note:** The reference to RCW 68.28.040 appears to be erroneous. RCW 66.28.040 was apparently intended.

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.043 Providing food, beverages, transportation, and admission to events permitted. A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may provide to licensed retailers and their employees tickets or admission fees for athletic events or other forms of entertainment occurring within the state of Washington, if the manufacturer, importer, distributor, authorized representative holding a certificate of approval, or any of their employees accompanies the licensed retailer or its employees to the event. A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may also provide to licensed retailers and their employees food and beverages for consumption at such events, and local ground transportation to and from activities allowed under this section. The value of the food, beverage, transportation, or admission to events provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of *RCW 68.28.040. The board may adopt rules for the implementation of this section. [2004 c 160 § 13; 1990 c 125 § 2.]

***Reviser's note:** The reference to RCW 68.28.040 appears to be erroneous. RCW 66.28.040 was apparently intended.

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.045 Furnishing samples to board—Standards for accountability—Regulations. The legislature finds the furnishing of samples of liquor to the state liquor control

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board is an integral and essential part of the operation of the state liquor business. The legislature further finds that it is necessary to establish adequate standards for the accountability of the receipt, use and disposition of liquor samples. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. [1975 1st ex.s. c 173 § 9.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.28.050 Solicitation of orders prohibited. No person shall canvass for, solicit, receive, or take orders for the purchase or sale of any liquor, or act as representative for the purchase or sale of liquor except as authorized by RCW 66.24.310 or by RCW 66.24.550. [1997 c 321 § 49; 1982 c 85 § 11; 1975-'76 2nd ex.s. c 74 § 2; 1969 ex.s. c 21 § 8; 1937 c 217 § 4; 1933 ex.s. c 62 § 42; RRS § 7306-42.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.060 Distillers to make monthly report—No sale except to board. Every distillery licensed under this title shall make monthly reports to the board pursuant to the regulations. No such distillery shall make any sale of spirits within the state of Washington except to the board and as provided in RCW 66.24.145. [2008 c 94 § 7; 1933 ex.s. c 62 § 26; RRS § 7306-26.]

66.28.070 Restrictions on purchases of beer or wine by retail beer or wine licensees or special occasion licensees. (1) Except as provided in subsection (2) of this section, it shall be unlawful for any retail beer or wine licensee to purchase beer or wine, except from a duly licensed distributor, domestic winery, domestic brewer, certificate of approval holder with a direct shipment endorsement, or the board.

(2) A beer or wine retailer licensee may purchase beer or wine from a government agency which has lawfully seized beer or wine from a licensed beer or wine retailer, or from a board-authorized retailer, or from a licensed retailer which has discontinued business if the distributor has refused to accept beer or wine from that retailer for return and refund. Beer and wine purchased under this subsection shall meet the quality standards set by its manufacturer.

(3) Special occasion licensees holding a special occasion license may only purchase beer or wine from a beer or wine retailer duly licensed to sell beer or wine for off-premises consumption, the board, or from a duly licensed beer or wine distributor. [2006 c 302 § 8. Prior: 1994 c 201 § 5; 1994 c 63 § 2; 1987 c 205 § 1; 1937 c 217 § 1(23H) (adding new section 23-H to 1933 ex.s. c 62); RRS § 7306-23H.]

Effective date—2006 c 302: See note following RCW 66.24.170.

66.28.080 Permit for music and dancing upon licensed premises. It shall be unlawful for any person, firm or corporation holding any retailer's license to permit or allow upon the premises licensed any music, dancing, or entertainment whatsoever, unless and until permission thereto is specifically granted by appropriate license or per-

mit of the proper authorities of the city or town in which such licensed premises are situated, or the board of county commissioners, if the same be situated outside an incorporated city or town: PROVIDED, That the words "music and entertainment," as herein used, shall not apply to radios or mechanical musical devices. [1969 ex.s. c 178 § 8; 1949 c 5 § 7; 1937 c 217 § 3 (adding new section 27-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-27A.]

Severability—1949 c 5: See RCW 66.98.080.

66.28.090 Licensed premises or banquet permit premises open to inspection—Failure to allow, violation. (1) All licensed premises used in the manufacture, storage, or sale of liquor, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business, and/or any premises where a banquet permit has been granted, shall at all times be open to inspection by any liquor enforcement officer, inspector or peace officer.

(2) Every person, being on any such premises and having charge thereof, who refuses or fails to admit a liquor enforcement officer, inspector or peace officer demanding to enter therein in pursuance of this section in the execution of his/her duty, or who obstructs or attempts to obstruct the entry of such liquor enforcement officer, inspector or officer of the peace, or who refuses to allow a liquor enforcement officer, and/or an inspector to examine the books of the licensee, or who refuses or neglects to make any return required by this title or the regulations, shall be guilty of a violation of this title. [1981 1st ex.s. c 5 § 20; 1935 c 174 § 7; 1933 ex.s. c 62 § 52; RRS § 7306-52.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.28.100 Spirits to be labeled—Contents. Every person manufacturing spirits as defined in this title shall put upon all packages containing spirits so manufactured a distinctive label, showing the nature of the contents, the name of the person by whom the spirits were manufactured, the place where the spirits were manufactured, and showing the alcoholic content of such spirits. For the purpose of this section the contents of packages containing spirits shall be shown by the use of the words "whiskey", "rum", "brandy", and the like, on the outside of such packages. [1933 ex.s. c 62 § 46; RRS § 7306-46.]

66.28.110 Wine to be labeled—Contents. Every person producing, manufacturing, bottling or distributing wine shall put upon all packages a distinctive label such as will provide the consumer with adequate information as to the identity and quality of the product, the alcoholic content thereof, the net contents of the package, the name of the producer, manufacturer or bottler thereof and such other information as the board may by regulation prescribe. [1939 c 172 § 4; 1933 ex.s. c 62 § 45; RRS § 7306-45.]

66.28.120 Malt liquor to be labeled—Contents. Every person manufacturing or distributing malt liquor for sale within the state shall put upon all packages containing malt liquor so manufactured or distributed a distinctive label showing the nature of the contents, the name of the person by

whom the malt liquor was manufactured, and the place where it was manufactured. For the purpose of this section, the contents of packages containing malt liquor shall be shown by the use of the word "beer," "ale," "malt liquor," "lager," "stout," or "porter," on the outside of the packages. [1997 c 100 § 1; 1982 c 39 § 2; 1961 c 36 § 1; 1933 ex.s. c 62 § 44; RRS § 7306-44.]

Severability—1982 c 39: See note following RCW 66.04.010.

66.28.130 Selling or serving of liquor to or consumption by standing or walking person. It shall not be unlawful for a retail licensee whose premises are open to the general public to sell, supply or serve liquor to a person for consumption on the licensed retail premises if said person is standing or walking, nor shall it be unlawful for such licensee to permit any said person so standing or walking to consume liquor on such premises: PROVIDED HOWEVER, That the retail licensee of such a premises may at his discretion, promulgate a house rule that no person shall be served nor allowed to consume liquor unless said person is seated. [1969 ex.s. c 112 § 2.]

66.28.140 Removing family beer or wine from home for exhibition or use at wine tastings or competitions—Conditions. (1) An adult member of a household may remove family beer or wine from the home for exhibition or use at organized beer or wine tastings or competitions, subject to the following conditions:

(a) The quantity removed by a producer for these purposes is limited to a quantity not exceeding one gallon;

(b) Family beer or wine is not removed for sale or for the use of any person other than the producer. This subparagraph does not preclude any necessary tasting of the beer or wine when the exhibition or beer or wine tasting includes judging the merits of the wine by judges who have been selected by the organization sponsoring the affair; and

(c) When the display contest or judging purpose has been served, any remaining portion of the sample is returned to the family premises from which removed.

(2) As used in this section, "family beer or wine" means beer or wine manufactured in the home for consumption therein, and not for sale. [1994 c 201 § 6; 1981 c 255 § 2.]

66.28.150 Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct courses of instruction on beer and wine. A domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, including chefs, on the subject of beer, wine, or spirituous liquor, including but not limited to, the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, or spirituous liquor, and what wines go well with different types of food. The domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may furnish beer, wine, or spirituous liquor and such other equipment, materials, and

utensils as may be required for use in connection with the instruction or courses of instruction. The instruction or courses of instruction may be given at the premises of the domestic brewery, microbrewery, domestic winery, distillery, or authorized representative holding a certificate of approval, at the premises of a retail licensee, or elsewhere within the state of Washington. [2007 c 217 § 2; 2004 c 160 § 14; 1997 c 39 § 2; 1982 1st ex.s. c 26 § 1.]

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.155 Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct educational activities on licensed premises of retailer. A domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may conduct educational activities or provide product information to the consumer on the licensed premises of a retailer. Information on the subject of wine, beer, or spirituous liquor, including but not limited to, the history, nature, quality, and characteristics of a wine, beer, or spirituous liquor, methods of harvest, production, storage, handling, and distribution of a wine, beer, or spirituous liquor, and the general development of the wine, beer, and spirituous liquor industry may be provided by a domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent to the public on the licensed premises of a retailer. The retailer requesting such activity shall attempt to schedule a series of brewery, winery, authorized representative, or distillery and distributor appearances in an effort to equitably represent the industries. Nothing in this section permits a domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent to receive compensation or financial benefit from the educational activities or product information presented on the licensed premises of a retailer. The promotional value of such educational activities or product information shall not be considered advancement of moneys or of moneys' worth within the meaning of RCW 66.28.010. [2004 c 160 § 15; 1997 c 39 § 3; 1984 c 196 § 1.]

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.160 Promotion of liquor at colleges and universities. No liquor manufacturer, importer, distributor, retailer, authorized representative holding a certificate of approval, agent thereof, or campus representative of any of the foregoing, may conduct promotional activities for any liquor product on the campus of any college or university nor may any such entities engage in activities that facilitate or promote the consumption of alcoholic beverages by the students of the college or university at which the activity takes place. This section does not prohibit the following:

- (1) The sale of alcoholic beverages, by retail licensees on their licensed premises, to persons of legal age and condition to consume alcoholic beverages;
- (2) Sponsorship of broadcasting services for events on a college or university campus;
- (3) Liquor advertising in campus publications; or
- (4) Financial assistance to an activity and acknowledgment of the source of the assistance, if the assistance, activity,

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and acknowledgment are each approved by the college or university administration. [2004 c 160 § 16; 1985 c 352 § 20.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Severability—1985 c 352: See note following RCW 10.05.010.

66.28.170 Wine or malt beverage manufacturers—Discrimination in price to purchaser for resale prohibited. It is unlawful for a manufacturer of wine or malt beverages holding a certificate of approval issued under RCW 66.24.270 or 66.24.206 or the manufacturer's authorized representative, a brewery, or a domestic winery to discriminate in price in selling to any purchaser for resale in the state of Washington. [2004 c 160 § 17; 1997 c 321 § 50; 1985 c 226 § 3.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda. It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer distributor's license, a domestic brewery license, a microbrewery license, a beer importer's license, a beer distributor's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(1) Intent. This section is enacted, pursuant to the authority of this state under the twenty-first amendment to the United States Constitution, to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board rules as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and distributors.

(2) Beer and wine distributor price posting.

(a) Every beer or wine distributor shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine distributor shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth:

- (i) All brands, types, packages, and containers of beer offered for sale by such beer and/or wine distributor;
- (ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine distributor may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer and/or wine distributor and then in effect, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be posted that is below acquisition cost plus ten percent of

acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(e) Distributor prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the distributor who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting that it deems to be in violation of this section or any rule, or portion thereof, or that would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board rejects any posting, the licensee submitting the posting may be heard by the board and shall have the burden of showing that the posting is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer and wine. If the posting is accepted, it shall become effective at the time fixed by the board. If the posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this section.

(g) Prior to the effective date of the posted prices, all price postings filed as required by this section constitute investigative information and shall not be subject to disclosure, pursuant to RCW 42.56.240(1).

(h) Any beer and/or wine distributor or employee authorized by the distributor-employer may sell beer and/or wine at the distributor's posted prices to any annual or special occasion retail licensee upon presentation to the distributor or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every annual or special occasion retail licensee, upon purchasing any beer and/or wine from a distributor, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(ii) Beer and wine sold as provided in this section shall be delivered by the distributor or an authorized employee either to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. When a domestic winery, brewery, microbrewery, or certificate of approval holder with a direct shipping endorsement is acting as a distributor of its own production, a licensed retailer may contract with a common carrier to obtain the product directly from the domestic winery, brewery, microbrewery, or certificate of approval holder with a direct shipping endorsement. A distributor's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts, and memoranda.

(a) Every domestic brewery, microbrewery, and domestic winery offering beer and/or wine for sale within the state shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral agreement which such brewery or winery may have with any beer or wine distributor, which contracts or memoranda shall

contain a schedule of prices charged to distributors for all items and all terms of sale, including all regular and special discounts; all advertising, sales and trade allowances, and incentive programs; and all commissions, bonuses or gifts, and any and all other discounts or allowances. Whenever changed or modified, such revised contracts or memoranda shall forthwith be filed with the board as provided for by rule. The provisions of this section also apply to certificate of approval holders, beer and/or wine importers, and beer and/or wine distributors who sell to other beer and/or wine distributors.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery; all additional information required may be filed as a supplement to the price schedule forms.

(b) Prices filed by a domestic brewery, microbrewery, domestic winery, or certificate of approval holder shall be uniform prices to all distributors or retailers on a statewide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be filed that is below acquisition/production cost plus ten percent of that cost, except that acquisition cost plus ten percent of acquisition cost does not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine distributor, or to a beer or wine distributor who sells beer or wine to another beer or wine distributor. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition/production cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(c) No domestic brewery, microbrewery, domestic winery, certificate of approval holder, beer or wine importer, or beer or wine distributor may sell or offer to sell any beer or wine to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No domestic brewery, microbrewery, domestic winery, or certificate of approval holder may sell or offer to sell any package or container of beer or wine to any distributor at a price differing from the price for such package or container as shown in the schedule of prices filed by the domestic brewery, microbrewery, domestic winery, or certificate of approval holder and then in effect, according to rules adopted by the board.

(e) The board may reject any supplier's price filing, contract, or memorandum of oral agreement, or portion thereof that it deems to be in violation of this section or any rule or that would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board rejects any such price filing, contract, or memorandum, the licensee submitting the price filing, contract, or memorandum may be heard by the board and shall have the burden of showing that the price filing, contract, or memorandum is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer or wine. If the price filing, contract, or memorandum is accepted, it shall become effective at a time fixed by the board. If the price filing, contract, or memoran-

dum, or portion thereof, is rejected, the last effective price filing, contract, or memorandum shall remain in effect until such time as an amended price filing, contract, or memorandum is filed and approved, in accordance with the provisions of this section.

(f) Prior to the effective date of the posted prices, all prices, contracts, and memoranda filed as required by this section constitute investigative information and shall not be subject to disclosure, pursuant to RCW 42.56.240(1). [2006 c 302 § 10; (2006 c 302 § 9 expired July 1, 2006); 2005 c 274 § 327. Prior: 2004 c 269 § 1; 2004 c 160 § 18; 1997 c 321 § 51; 1995 c 232 § 10; 1985 c 226 § 4.]

Effective date—2006 c 302 §§ 10 and 12: "Sections 10 and 12 of this act take effect July 1, 2006." [2006 c 302 § 15.]

Expiration date—2006 c 302 §§ 9 and 11: "Sections 9 and 11 of this act expire July 1, 2006." [2007 c 9 § 1; 2006 c 302 § 14.]

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

Effective date—2004 c 269: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 269 § 2.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.190 Sales of nonliquor food and food ingredients. RCW 66.28.010 notwithstanding, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food and food ingredients on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records shall be maintained on all sales of nonliquor food and food ingredients to ensure that such persons are in compliance with RCW 66.28.010.

For the purpose of this section, "nonliquor food and food ingredients" includes all food and food ingredients for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 2004. [2003 c 168 § 305; 1997 c 321 § 52; 1988 c 50 § 1.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.200 Keg registration—Special endorsement for grocery store licensee—Requirements of seller. (1) Licensees holding a beer and/or wine restaurant or a tavern license in combination with an off-premises beer and wine retailer's license or licensees holding a spirits, beer, and wine restaurant license with an endorsement issued under RCW 66.24.400(4) may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Under a special endorsement from the board, a grocery store licensee may sell malt liquor in containers no larger than five and one-half gallons. The sale of any container holding four gallons or more must comply with the provisions of this section and RCW 66.28.210 through 66.28.240.

(2) Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not

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licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(a) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(b) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(c) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(i) The purchaser is of legal age to purchase, possess, or use malt liquor;

(ii) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(iii) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under RCW 66.28.220 to be affixed to the container;

(d) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(e) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(3) A violation of this section is a gross misdemeanor. [2007 c 53 § 2; 2003 c 53 § 296; 1998 c 126 § 13; 1997 c 321 § 38; 1993 c 21 § 2; 1989 c 271 § 229.]

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

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective dates—1989 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except:

(1) Sections 502 and 504 of this act shall take effect June 1, 1989; and

(2) Sections 229 through 233, 501, 503, and 505 through 509 of this act shall take effect July 1, 1989." [1989 c 271 § 607.]

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.210 Keg registration—Requirements of purchaser. (1) Any person who purchases the contents of kegs or other containers containing four gallons or more of malt liquor, or purchases or leases the container shall:

(a) Sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(b) Provide one piece of identification pursuant to RCW 66.16.040;

(c) Be of legal age to purchase, possess, or use malt liquor;

(d) Not allow any person under the age of twenty-one to consume the beverage except as provided by RCW 66.44.270;

(e) Not remove, obliterate, or allow to be removed or obliterated, the identification required under rules adopted by the board;

(f) Not move, keep, or store the keg or its contents, except for transporting to and from the distributor, at any

place other than that particular address declared on the receipt and declaration; and

(g) Maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 297; 1989 c 271 § 230.]

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

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.220 Keg registration—Identification of containers—Rules—Fees—Sale in violation of rules unlawful. (1) The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four gallons or more of malt liquor for the purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a statewide basis or on the basis of smaller geographical areas.

(2) The board shall develop and make available forms for the declaration and receipt required by RCW 66.28.200. The board may charge spirits, beer, and wine restaurant licensees with an endorsement issued under RCW 66.24.400(4) and grocery store licensees for the costs of providing the forms and that money collected for the forms shall be deposited into the liquor revolving fund for use by the board, without further appropriation, to continue to administer the cost of the keg registration program.

(3) It is unlawful for any person to sell or offer for sale kegs or other containers containing four gallons or more of malt liquor to consumers who are not licensed under chapter 66.24 RCW if the kegs or containers are not identified in compliance with rules adopted by the board.

(4) A violation of this section is a gross misdemeanor. [2007 c 53 § 3; 2003 c 53 § 298; 1999 c 281 § 7; 1993 c 21 § 3; 1989 c 271 § 231.]

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

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.230 Keg registration—Furnishing to minors—Penalties. Except as provided in RCW 66.44.270, a person who intentionally furnishes a keg or other container containing four or more gallons of malt liquor to a person under the age of twenty-one years is guilty of a gross misdemeanor punishable under RCW 9.92.020. [1999 c 189 § 1; 1989 c 271 § 232.]

Application—1999 c 189: "This act applies to crimes committed on or after July 25, 1999." [1999 c 189 § 5.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.240 Keg registration—State preemption. The state of Washington fully occupies and preempts the entire field of keg registration. Cities, towns, and counties or other municipalities may enact only those laws and ordinances

relating to keg registration that are consistent with this chapter. Such local ordinances shall have the same or lesser penalties as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality. [1989 c 271 § 233.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.260 Beer distributors—Restricted transactions. Licensed beer distributors may not buy or sell beer, for purposes of distribution, at farmers market locations authorized by the board pursuant to chapter 154, Laws of 2003. [2003 c 154 § 3.]

Chapter 66.32 RCW SEARCH AND SEIZURE

Sections

66.32.010	Possession of contraband liquor.
66.32.020	Search warrant—Search and seizure.
66.32.030	Service of warrant—Receipt for seized property.
66.32.040	Forfeiture of liquor directed if kept unlawfully.
66.32.050	Hearing.
66.32.060	Claimants may appear.
66.32.070	Judgment of forfeiture—Disposition of proceeds of property sold.
66.32.080	Forfeiture action no bar to criminal prosecution.
66.32.090	Seized liquor to be reported to board.

66.32.010 Possession of contraband liquor. Except as permitted by the board, no liquor shall be kept or had by any person within this state unless the package in which the liquor was contained had, while containing that liquor, been sealed with the official seal adopted by the board, except in the case of:

- (1) Liquor imported by the board; or
- (2) Liquor manufactured in the state for sale to the board or for export; or
- (3) Beer, purchased in accordance with the provisions of law; or
- (4) Wine or beer exempted in RCW 66.12.010. [1955 c 39 § 3. Prior: 1943 c 216 § 3(1); 1933 ex.s. c 62 § 33(1); Rem. Supp. 1943 § 7306-33(1).]

66.32.020 Search warrant—Search and seizure. If, upon the sworn complaint of any person, it is made to appear to any judge of the superior court or district court, that there is probable cause to believe that intoxicating liquor is being manufactured, sold, bartered, exchanged, given away, furnished, or otherwise disposed of or kept in violation of the provisions of this title, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to a civil officer of the state duly authorized to enforce or assist in enforcing any law thereof, or to an inspector of the board, commanding the civil officer or inspector to search the premises, room, house, building, boat, vehicle, structure or place designated and described in the complaint and warrant, and to seize all intoxicating liquor there found, together with the vessels in which it is contained, and all implements, fur-

niture, and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing, or otherwise disposing of the liquor, and to safely keep the same, and to make a return of the warrant within ten days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession they were found, if any, and if no person is found in the possession of the articles, the return shall so state. [1987 c 202 § 220; 1955 c 288 § 1; 1955 c 39 § 4. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

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

66.32.030 Service of warrant—Receipt for seized property. A copy of the warrant, together with a detailed receipt for the property taken shall be served upon the person found in possession of any intoxicating liquor, furniture, or fixtures so seized, and if no person is found in possession thereof, a copy of the warrant and receipt shall be left in a conspicuous place upon the premises wherein they are found. [1955 c 39 § 5. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

66.32.040 Forfeiture of liquor directed if kept unlawfully. All liquor seized pursuant to the authority of a search warrant or an arrest shall, upon adjudication that it was kept in violation of this title, be forfeited and upon forfeiture be disposed of by the agency seizing the liquor. [1993 c 26 § 1; 1955 c 39 § 6. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 23(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

66.32.050 Hearing. Upon the return of the warrant as provided herein, the judge shall fix a time, not less than ten days, and not more than thirty days thereafter, for the hearing of the return, when he or she shall proceed to hear and determine whether or not the articles seized, or any part thereof, were used or in any manner kept or possessed by any person with the intention of violating any of the provisions of this title. [1987 c 202 § 221; 1955 c 39 § 7. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

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

66.32.060 Claimants may appear. At the hearing, any person claiming any interest in any of the articles seized may appear and be heard upon filing a written claim setting forth particularly the character and extent of his interest, and the burden shall rest upon the claimant to show, by competent evidence, his property right or interest in the articles claimed, and that they were not used in violation of any of the provisions of this title, and were not in any manner kept or possessed with the intention of violating any of its provisions. [1955 c 39 § 8. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

66.32.070 Judgment of forfeiture—Disposition of proceeds of property sold. If, upon the hearing, the evidence warrants, or, if no person appears as claimant, the judge shall thereupon enter a judgment of forfeiture, and order such articles destroyed forthwith: PROVIDED, That if,

in the opinion of the judge, any of the forfeited articles other than intoxicating liquors are of value and adapted to any lawful use, the judge shall, as a part of the order and judgment, direct that the articles other than intoxicating liquor be sold as upon execution by the officer having them in custody, and the proceeds of the sale after payment of all costs of the proceedings shall be paid into the liquor revolving fund. [1987 c 202 § 222; 1955 c 39 § 9. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

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

66.32.080 Forfeiture action no bar to criminal prosecution. Action under RCW 66.32.010 through 66.32.080 and the forfeiture, destruction, or sale of any articles thereunder shall not bar prosecution under any other provision. [1955 c 39 § 10. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

66.32.090 Seized liquor to be reported to board. In every case in which liquor is seized by a sheriff or deputy of any county or by a police officer of any municipality or by a member of the Washington state patrol, or any other authorized peace officer or inspector, it shall be the duty of the sheriff or deputy of any county, or chief of police of the municipality, or the chief of the Washington state patrol, as the case may be, to forthwith report in writing to the board of particulars of such seizure. [1993 c 26 § 2; 1987 c 202 § 223; 1935 c 174 § 8; 1933 ex.s. c 62 § 55; RRS § 7306-55.]

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

Chapter 66.36 RCW

ABATEMENT PROCEEDINGS

Sections

66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen.

66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen. Any room, house, building, boat, vehicle, structure or place, except premises licensed under this title, where liquor, as defined in this title, is manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such a place, are hereby declared to be a common nuisance. The prosecuting attorney of the county in which such nuisance is situated shall institute and maintain an action in the superior court of such county in the name of the state of Washington to abate and perpetually enjoin such nuisance. The plaintiff shall not be required to give bond in such action, and restraining orders, temporary injunctions and permanent injunctions may be granted in said cause as in other injunction proceedings, and upon final judgment against the defendant, such court may also order that said room, house, building, boat, vehicle, structure or place, shall be closed for a period of one year; or until the owner, lessee, tenant or occu-

pant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal sum of not less than one thousand dollars payable to the state of Washington, and conditioned that liquor will not thereafter be manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereon or therein in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and that he will pay all fines, costs and damages assessed against him for any violation of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. If any condition of such bond be violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

In all cases where any person has been convicted of a violation of this title or the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor an action may be brought in the superior court of the county in which the premises are situated, to abate as a nuisance any real estate or other property involved in the commission of said offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and prima facie evidence that the room, house, building, boat, vehicle, structure or place against which such action is brought is a public nuisance. [1939 c 172 § 9 (adding new section 33-A to 1933 ex.s. c 62); RRS § 7306-33A. Formerly RCW 66.36.010 through 66.36.040.]

Chapter 66.40 RCW LOCAL OPTION

Sections

66.40.010	Local option units.
66.40.020	Election may be held.
66.40.030	License elections.
66.40.040	Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection.
66.40.100	Check of petitions.
66.40.110	Form of ballot.
66.40.120	Canvass of votes—Effect.
66.40.130	Effect of election as to licenses.
66.40.140	Certificate of result to board—Grace period—Permitted activities.
66.40.150	Concurrent liquor elections in same election unit prohibited.

66.40.010 Local option units. For the purpose of an election upon the question of whether the sale of liquors shall be permitted, the election unit shall be any incorporated city or town, or all that portion of any county not included within the limits of incorporated cities and towns. [1957 c 263 § 3. Prior: (i) 1933 ex.s. c 62 § 82; RRS § 7306-82. (ii) 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.020 Election may be held. Within any unit referred to in RCW 66.40.010, upon compliance with the conditions hereinafter prescribed, there may be held, at the time and as a part of any general election, an election upon the question of whether the sale of liquor shall be permitted within such unit; and in the event that any such election is

held in any such unit, no other election under this section shall be held prior to the next succeeding general election. [1933 ex.s. c 62 § 83; RRS § 7306-83.]

66.40.030 License elections. Within any unit referred to in RCW 66.40.010, there may be held a separate election upon the question of whether the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses, shall be permitted within such unit. The conditions and procedure for holding such election shall be those prescribed by RCW 66.40.020, 66.40.040, 66.40.100, 66.40.110 and 66.40.120. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "against the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and after ninety days from and after the date of the canvass, it shall not be lawful for licensees to maintain and operate premises within the election unit licensed under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses. The addition after an election under this section of new territory to a city, town, or county, by annexation, disincorporation, or otherwise, shall not extend the prohibition against the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses to the new territory. Elections held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, shall be limited to the question of whether the sale of liquor by means other than under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses shall be permitted within such election unit. [1999 c 281 § 8; 1994 c 55 § 1; 1949 c 5 § 12 (adding new section 83-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-83A.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection. Any unit referred to in RCW 66.40.010 may hold such election upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit, upon the filing with the county auditor of the county within which such unit is located, of a petition subscribed by qualified electors of the unit equal in number to at least thirty percent of the electors voting at the last general election within such unit. Such petition shall designate the unit in which the election is desired to be had, the date upon which the election is desired to be held, and the question that is desired to be submitted. The persons signing such a petition shall state their post office address, the name or number of the precinct in which they reside, and in case the subscriber be a resident of a city, the street and house number, if any, of his residence, and the date of signature. Said petition shall be filed not less than sixty days nor more than ninety days prior to the date upon which the election is to be held. No signature shall be valid unless the above requirements are complied with, and unless the date of signing the same is less than ninety days

preceding the date of filing. No signature shall be withdrawn after the filing of such petition. Such petition may consist of one or more sheets and shall be fastened together as one document, filed as a whole, and when filed shall not be withdrawn or added to. Such petition shall be a public document and shall be subject to the inspection of the public. Upon the request of anyone filing such a petition and paying, or tendering to the county auditor one dollar for each hundred names, or fraction thereof, signed thereto, together with a copy thereof, said county auditor shall immediately compare the original and copy and attach to such copy and deliver to such person his official certificate that such copy is a true copy of the original, stating the date when such original was filed in his office; and said officer shall furnish, upon the demand of any person, a copy of said petition, upon payment of the same fee required for the filing of original petitions. [1933 ex.s. c 62 § 84; RRS § 7306-84. Formerly RCW 66.40.040 through 66.40.090.]

66.40.100 Check of petitions. Upon the filing of a petition as hereinbefore provided, the county auditor with whom it is filed shall cause the names on said petition to be compared with the names on the voters' official registration records provided for by law with respect to such unit. The officer or deputy making the comparison shall place his initials in ink opposite the signatures of those persons who are shown by such registration records to be legal voters and shall certify that the signatures so initialed are the signatures of legal voters of the state of Washington and of said unit, and shall sign such certificate. In the event that said petition, after such comparison, shall be found to have been signed by the percentage of legal voters of said unit referred to in RCW 66.40.040, the question shall be placed upon the ballot at the next general election. [1933 ex.s. c 62 § 85; RRS § 7306-85.]

66.40.110 Form of ballot. Upon the ballot to be used at such general election the question shall be submitted in the following form:

"Shall the sale of liquor be permitted within (here specify the unit in which election is to be held)." Immediately below said question shall be placed the alternative answers, as follows:

- "For sale of liquor ()
- Against sale of liquor ()."

Each person desiring to vote in favor of permitting the sale of liquor within the unit in which the election is to be held shall designate his choice beside the words "For sale of liquor", and those desiring to vote against the permitting of the sale of liquor within such unit shall designate their choice beside the words "Against sale of liquor", and the ballot shall be counted accordingly. [1933 ex.s. c 62 § 86; RRS § 7306-86.]

66.40.120 Canvass of votes—Effect. The returns of any such election shall be canvassed in the manner provided by law. If the majority of qualified electors voting upon said question at said election shall have voted "For sale of liquor" within the unit in which the election is held, the sale of liquor may be continued in accordance with the provisions of this

title. If the majority of the qualified electors voting on such question at any such election shall vote "Against sale of liquor", then, within thirty days after such canvass no sale or purchase of liquor, save as herein provided, shall be made within such unit until such permission so to do be subsequently granted at an election held for that purpose under the provisions of this title. [1933 ex.s. c 62 § 87; RRS § 7306-87.]

66.40.130 Effect of election as to licenses. Ninety days after December 2, 1948, spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses may be issued in any election unit in which the sale of liquor is then lawful. No spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility license shall be issued in any election unit in which the sale of liquor is forbidden as the result of an election held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, unless a majority of the qualified electors in such election unit voting upon this initiative at the general election in November, 1948, vote in favor of this initiative, or unless at a subsequent general election in which the question of whether the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses shall be permitted within such unit is submitted to the electorate, as provided in RCW 66.40.030, a majority of the qualified electors voting upon such question vote "for the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses." [1999 c 281 § 9; 1949 c 5 § 13 (adding new section 87-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-87A.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.140 Certificate of result to board—Grace period—Permitted activities. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "Against sale of liquor", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and thereafter, except as hereinafter provided, it shall not be lawful for a liquor store to be operated therein nor for licensees to maintain and operate licensed premises therein except as hereinafter provided:

(1) As to any stores maintained by the board within any such unit at the time of such licensing, the board shall have a period of thirty days from and after the date of the canvass of the vote upon such election to continue operation of its store or stores therein.

(2) As to any premises licensed hereunder within any such unit at the time of such election, such licensee shall have a period of sixty days from and after the date of the canvass of the vote upon such election in which to discontinue operation of its store or stores therein.

(3) Nothing herein contained shall prevent any distillery, brewery, rectifying plant or winery or the licensed operators thereof from selling its manufactured product, manufactured within such unit, outside the boundaries thereof.

(4) Nothing herein contained shall prevent any person residing in any unit in which the sale of liquor shall have been forbidden by popular vote as herein provided, who is other-

wise qualified to receive and hold a permit under this title, from lawfully purchasing without the unit and transporting into or receiving within the unit, liquor lawfully purchased by him outside the boundaries of such unit. [1933 ex.s. c 62 § 88; RRS § 7306-88.]

66.40.150 Concurrent liquor elections in same election unit prohibited. No election in any unit referred to in RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit shall be held at the same time as an election is held in the same unit upon the question of whether the sale of liquor under the provisions of RCW 66.40.030 shall be permitted. In the event valid and sufficient petitions are filed which would otherwise place both questions on the same ballot that question upon which the petition was filed with the county auditor first shall be placed on the ballot to the exclusion of the other. [1949 c 93 § 1 (adding new section 88-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-88A.]

Chapter 66.44 RCW ENFORCEMENT—PENALTIES

Sections

66.44.010	Local officers to enforce law—Authority of board—Liquor enforcement officers.
66.44.040	Sufficiency of description of offenses in complaints, informations, process, etc.
66.44.050	Description of offense in words of statutes—Proof required.
66.44.060	Proof of unlawful sale establishes prima facie intent.
66.44.070	Certified analysis is prima facie evidence of alcoholic content.
66.44.080	Service of process on corporation.
66.44.090	Acting without license.
66.44.100	Opening or consuming liquor in public place—Penalty.
66.44.120	Unlawful use of seal.
66.44.130	Sales of liquor by drink or bottle.
66.44.140	Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash.
66.44.150	Buying liquor illegally.
66.44.160	Illegal possession, transportation of alcoholic beverages.
66.44.170	Illegal possession of liquor with intent to sell—Prima facie evidence, what is.
66.44.175	Violations of law.
66.44.180	General penalties—Jurisdiction for violations.
66.44.193	Sales on university or college campus.
66.44.200	Sales to persons apparently under the influence of liquor—Purchases or consumption by persons apparently under the influence of liquor on licensed premises—Penalty—Notice—Separation of actions.
66.44.210	Obtaining liquor for ineligible person.
66.44.240	Drinking in public conveyance—Penalty against carrier—Exception.
66.44.250	Drinking in public conveyance—Penalty against individual—Restricted application.
66.44.265	Candidates giving or purchasing liquor on election day prohibited.
66.44.270	Furnishing liquor to minors—Possession, use—Penalties—Exhibition of effects—Exceptions.
66.44.280	Minor applying for permit.
66.44.290	Minor purchasing or attempting to purchase liquor—Penalty.
66.44.292	Sales to minors by licensee or employee—Board notification to prosecuting attorney to formulate charges against minors.
66.44.300	Treats, gifts, purchases of liquor for or from minor, or holding out minor as at least twenty-one, in public place where liquor sold.
66.44.310	Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees.
66.44.316	Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment.
66.44.318	Employees aged eighteen to twenty-one stocking, merchandising, and handling beer and wine.
66.44.325	Unlawful transfer to minor of age identification.

66.44.328	Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty.
66.44.330	Prosecutions to be reported by prosecuting attorney and police court.
66.44.340	Employees eighteen years and over allowed to sell and handle beer and wine for certain licensed employers.
66.44.350	Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for certain licensed employers.
66.44.365	Juvenile driving privileges—Alcohol or drug violations.
66.44.370	Resisting or opposing officers in enforcement of title.
66.44.800	Compliance by Washington wine and beer commissions.

Minors

access to tobacco, role of liquor control board: Chapter 70.155 RCW. prohibited to enter bars or taverns: RCW 26.28.080.

Sale or gift of tobacco to persons under certain age is gross misdemeanor: RCW 26.28.080.

State institutions, bringing in liquor prohibited: RCW 72.23.300.

66.44.010 Local officers to enforce law—Authority of board—Liquor enforcement officers. (1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor.

(3) In addition to the other duties under this section, the board shall enforce chapters 82.24 and 82.26 RCW.

(4) The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW. They shall have the power to arrest without a warrant any person or persons found in the act of violating any of the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW. [1998 c 18 § 1; 1987 c 202 § 224; 1969 ex.s. c 199 § 28; 1939

c 172 § 5; 1935 c 174 § 11; 1933 ex.s. c 62 § 70; RRS § 7306-70. Formerly RCW 66.44.010 through 66.44.030.]

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

66.44.040 Sufficiency of description of offenses in complaints, informations, process, etc. In describing the offense respecting the sale, or keeping for sale or other disposal, of liquor, or the having, keeping, giving, purchasing or consumption of liquor in any information, summons, conviction, warrant, or proceeding under this title, it shall be sufficient to simply state the sale, or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of liquor, without stating the name or kind of such liquor or the price thereof, or to whom it was sold or disposed of, or by whom consumed, or from whom it was purchased or received; and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. [1933 ex.s. c 62 § 57; RRS § 7306-57.]

66.44.050 Description of offense in words of statutes—Proof required. The description of any offense under this title, in the words of this title, or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this title, may be proved by the defendant, but need not be specified or negated in the information; but if it is so specified or negated, no proof in relation to the matter so specified or negated shall be required on the part of the informant or complainant. [1933 ex.s. c 62 § 58; RRS § 7306-58.]

66.44.060 Proof of unlawful sale establishes prima facie intent. In any proceeding under this title, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this title. [1933 ex.s. c 62 § 59; RRS § 7306-59.]

66.44.070 Certified analysis is prima facie evidence of alcoholic content. A certificate, signed by any person appointed or designated by the board in writing as an analyst, as to the percentage of alcohol contained in any liquid, drink, liquor, or combination of liquors, when produced in any court or before any court shall be prima facie evidence of the percentage of alcohol contained therein. [1933 ex.s. c 62 § 60; RRS § 7306-60.]

66.44.080 Service of process on corporation. In all prosecutions, actions, or proceedings under the provisions of this title against a corporation, every summons, warrant, order, writ or other proceeding may be served on the corporation in the same manner as is now provided by law for service of civil process. [1933 ex.s. c 62 § 61; RRS § 7306-61.]

66.44.090 Acting without license. Any person doing any act required to be licensed under this title without having in force a license issued to him shall be guilty of a gross misdemeanor. [1955 c 289 § 2. Prior: (i) 1933 ex.s. c 62 § 28;

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RRS § 7306-28.(ii) 1939 c 172 § 6(1); 1935 c 174 § 6(1); 1933 ex.s. c 62 § 92(1); RRS § 7306-92(1).]

66.44.100 Opening or consuming liquor in public place—Penalty. Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a class 3 civil infraction under chapter 7.80 RCW. [1999 c 189 § 3; 1981 1st ex.s. c 5 § 21; 1933 ex.s. c 62 § 34; RRS § 7306-34.]

Application—1999 c 189: See note following RCW 66.28.230.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.120 Unlawful use of seal. (1) No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a liquor store or contract liquor store; nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

(2)(a) Except as provided in (b) of this subsection, every person who willfully violates this section is guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine, and for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine.

(b) A third or subsequent offense is a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than two years. [2005 c 151 § 11; 2003 c 53 § 299; 1992 c 7 § 42; 1933 ex.s. c 62 § 47; RRS § 7306-47.]

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

66.44.130 Sales of liquor by drink or bottle. Except as otherwise provided in this title, every person who sells by the drink or bottle, any liquor shall be guilty of a violation of this title. [1955 c 289 § 3. Prior: 1939 c 172 § 6(2); 1935 c 174 § 15(2); 1933 ex.s. c 62 § 92(2); RRS § 7306-92(2).]

66.44.140 Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash. Every person who shall sell or offer for sale, or transport in any manner, any spirituous liquor, without government stamp or seal attached thereto, or who shall operate without a license, any still or other device for the production of spirituous liquor, or shall have in his possession or under his control any mash capable of being distilled into spirituous liquor except as provided in RCW 66.12.130, shall be guilty of a gross misdemeanor and upon conviction thereof shall upon his first conviction be fined not less than five hundred dollars and confined in the county jail

not less than six months, and upon second and subsequent conviction shall be fined not less than one thousand dollars and confined in the county jail not less than one year. [1980 c 140 § 4; 1955 c 289 § 4. Prior: 1939 c 172 § 6(3); 1935 c 174 § 15(3); 1933 ex.s. c 62 § 92(3); RRS § 7306-92(3).]

66.44.150 Buying liquor illegally. If any person in this state buys alcoholic beverages from any person other than the board, a state liquor store, or some person authorized by the board to sell them, he shall be guilty of a misdemeanor. [1955 c 289 § 5. Prior: 1939 c 172 § 6(4); 1935 c 174 § 15(4); 1933 ex.s. c 62 § 92(4); RRS § 7306-92(4).]

66.44.160 Illegal possession, transportation of alcoholic beverages. Except as otherwise provided in this title, any person who has or keeps or transports alcoholic beverages other than those purchased from the board, a state liquor store, or some person authorized by the board to sell them, shall be guilty of a violation of this title. [1955 c 289 § 6. Prior: 1939 c 172 § 6(5); 1935 c 174 § 15(5); 1933 ex.s. c 62 § 92(5); RRS § 7306-92(5).]

66.44.170 Illegal possession of liquor with intent to sell—Prima facie evidence, what is. Any person who keeps or possesses liquor upon his person or in any place, or on premises conducted or maintained by him as principal or agent with the intent to sell it contrary to provisions of this title, shall be guilty of a violation of this title. The possession of liquor by the principal or agent on premises conducted or maintained, under federal authority, as a retail dealer in liquors, shall be prima facie evidence of the intent to sell liquor. [1955 c 289 § 7. Prior: 1937 c 144 § 1 (adding new section 92A to 1933 ex.s. c 62); RRS § 7306-92A.]

66.44.175 Violations of law. Every person who violates any provision of this title or the regulations shall be guilty of a violation of this title, whether otherwise declared or not. [1933 ex.s. c 62 § 91; RRS § 7306-91.]

66.44.180 General penalties—Jurisdiction for violations. (1) Every person guilty of a violation of this title for which no penalty has been specifically provided:

(a) For a first offense, is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than two months, or both;

(b) For a second offense, is guilty of a gross misdemeanor punishable by imprisonment for not more than six months; and

(c) For a third or subsequent offense, is guilty of a gross misdemeanor punishable by imprisonment for not more than one year.

(2) If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

(3) Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title

and may impose any punishment provided therefor. [2003 c 53 § 300; 1987 c 202 § 225; 1981 1st ex.s. c 5 § 22; 1935 c 174 § 16; 1933 ex.s. c 62 § 93; RRS § 7306-93.]

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

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

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.193 Sales on university or college campus. If an institution of higher education chooses to allow the sale of alcoholic beverages on campus, the legislature encourages the institution to feature products produced in the state of Washington. [2003 c 51 § 2.]

66.44.200 Sales to persons apparently under the influence of liquor—Purchases or consumption by persons apparently under the influence of liquor on licensed premises—Penalty—Notice—Separation of actions. (1) No person shall sell any liquor to any person apparently under the influence of liquor.

(2)(a) No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board.

(b) A violation of this subsection is an infraction punishable by a fine of not more than five hundred dollars.

(c) A defendant's intoxication may not be used as a defense in an action under this subsection.

(d) Until July 1, 2000, every establishment licensed under RCW 66.24.330 or 66.24.420 shall conspicuously post in the establishment notice of the prohibition against the purchase or consumption of liquor under this subsection.

(3) An administrative action for violation of subsection (1) of this section and an infraction issued for violation of subsection (2) of this section arising out of the same incident are separate actions and the outcome of one shall not determine the outcome of the other. [1998 c 259 § 1; 1933 ex.s. c 62 § 36; RRS § 7306-36.]

66.44.210 Obtaining liquor for ineligible person.

Except in the case of liquor administered by a physician or dentist or sold upon a prescription in accordance with the provisions of this title, no person shall procure or supply, or assist directly or indirectly in procuring or supplying, liquor for or to anyone whose permit is suspended or has been canceled. [1933 ex.s. c 62 § 38; RRS § 7306-38.]

66.44.240 Drinking in public conveyance—Penalty against carrier—Exception. Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who knowingly permits any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. This section does not apply to a public conveyance that is commercially chartered for group use or a for-hire vehicle licensed under city, county, or state law. [1983 c 165 § 29; 1909 c 249 § 442; RRS § 2694.]

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

Alcoholic beverages, drinking or open container in vehicle on highway, exceptions: RCW 46.61.519.

66.44.250 Drinking in public conveyance—Penalty against individual—Restricted application. Every person who drinks any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. With respect to a public conveyance that is commercially chartered for group use and with respect to a for-hire vehicle licensed under city, county, or state law, this section applies only to the driver of the vehicle. [1983 c 165 § 30; 1909 c 249 § 441; RRS § 2693.]

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

Alcoholic beverages, drinking or open container in vehicle on highway, exceptions: RCW 46.61.519.

66.44.265 Candidates giving or purchasing liquor on election day prohibited. It shall be unlawful for a candidate for office or for nomination thereto whose name appears upon the ballot at any election to give to or purchase for another person, not a member of his or her family, any liquor in or upon any premises licensed by the state for the sale of any such liquor by the drink during the hours that the polls are open on the day of such election. [1971 ex.s. c 112 § 2.]

66.44.270 Furnishing liquor to minors—Possession, use—Penalties—Exhibition of effects—Exceptions. (1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(2)(a) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(b) It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection (2)(b) does not apply if the person is in the presence of a parent or guardian or has consumed or is consuming liquor under circumstances described in subsection (4) or (5) of this section.

(3) Subsections (1) and (2)(a) of this section do not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor

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by a person under the age of twenty-one years on any premises licensed under chapter 66.24 RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years. [1998 c 4 § 1; 1993 c 513 § 1; 1987 c 458 § 3; 1955 c 70 § 2. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1); prior: Code 1881 § 939; 1877 p 205 § 5.]

Severability—1987 c 458: See note following RCW 48.21.160.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.44.280 Minor applying for permit. Every person under the age of twenty-one years who makes application for a permit shall be guilty of an offense against this title. [1955 c 70 § 3. Prior: 1935 c 174 § 6(2); 1933 ex.s. c 62 § 37(2); RRS § 7306-37(2).]

66.44.290 Minor purchasing or attempting to purchase liquor—Penalty. (1) Every person under the age of twenty-one years who purchases or attempts to purchase liquor shall be guilty of a violation of this title. This section does not apply to persons between the ages of eighteen and twenty-one years who are participating in a controlled purchase program authorized by the liquor control board under rules adopted by the board. Violations occurring under a private, controlled purchase program authorized by the liquor control board may not be used for criminal or administrative prosecution.

(2) An employer who conducts an in-house controlled purchase program authorized under this section shall provide his or her employees a written description of the employer's in-house controlled purchase program. The written description must include notice of actions an employer may take as a consequence of an employee's failure to comply with company policies regarding the sale of alcohol during an in-house controlled purchase.

(3) An in-house controlled purchase program authorized under this section shall be for the purposes of employee training and employer self-compliance checks. An employer may not terminate an employee solely for a first-time failure to comply with company policies regarding the sale of alcohol during an in-house controlled purchase program authorized under this section.

(4) Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of this section is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution. [2003 c 53 § 301; 2001

c 295 § 1; 1965 c 49 § 1; 1955 c 70 § 4. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1).]

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

66.44.292 Sales to minors by licensee or employee—Board notification to prosecuting attorney to formulate charges against minors. The Washington state liquor control board shall furnish notification of any hearing or hearings held, wherein any licensee or his employee is found to have sold liquor to a minor, to the prosecuting attorney of the county in which the sale took place, upon which the prosecuting attorney may formulate charges against said minor or minors for such violation of RCW 66.44.290 as may appear. [1981 1st ex.s. c 5 § 23; 1965 c 49 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.300 Treats, gifts, purchases of liquor for or from minor, or holding out minor as at least twenty-one, in public place where liquor sold. Any person who invites a minor into a public place where liquor is sold and treats, gives or purchases liquor for such minor, or permits a minor to treat, give or purchase liquor for the adult; or holds out such minor to be twenty-one years of age or older to the owner or employee of the liquor establishment, a law enforcement officer, or a liquor enforcement officer shall be guilty of a misdemeanor. [1994 c 201 § 7; 1941 c 78 § 1; Rem. Supp. 1941 § 7306-37A.]

66.44.310 Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licenses. (1) Except as otherwise provided by RCW 66.44.316, 66.44.350, and 66.24.590, it shall be a misdemeanor:

(a) To serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain in any area classified as off-limits to such a person, but persons under twenty-one years of age may pass through a restricted area in a facility holding a spirits, beer, and wine private club license;

(c) For any person under the age of twenty-one years to represent his or her age as being twenty-one or more years for the purpose of purchasing liquor or securing admission to, or remaining in any area classified by the board as off-limits to such a person.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify licensed premises or portions of licensed premises as off-limits to persons under the age of twenty-one years of age. [2007 c 370 § 12; 1998 c 126 § 14; 1997 c 321 § 53; 1994 c 201 § 8; 1981 1st ex.s. c 5 § 24; 1943 c 245 § 1 (adding new section 36-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-36A. Formerly RCW 66.24.130 and 66.44.310.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.44.316 Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment. It is lawful for:

(1) Professional musicians, professional disc jockeys, or professional sound or lighting technicians actively engaged in support of professional musicians or professional disc jockeys, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians, disc jockeys, or sound or lighting technicians;

(2) Persons eighteen years of age and older performing janitorial services to enter and remain on premises licensed under the provisions of Title 66 RCW when the premises are closed but only during and in the course of their performance of janitorial services;

(3) Employees of amusement device companies, which employees are eighteen years of age or older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment for the purpose of installing, maintaining, repairing, or removing an amusement device. For the purposes of this section amusement device means coin-operated video games, pinball machines, juke boxes, or other similar devices; and

(4) Security and law enforcement officers, and firefighters eighteen years of age or older to enter and to remain in any premises licensed under Title 66 RCW, but only during and in the course of their official duties and only if they are not the direct employees of the licensee. However, the application of the [this] subsection to security officers is limited to casual, isolated incidents arising in the course of their duties and does not extend to continuous or frequent entering or remaining in any licensed premises.

This section shall not be construed as permitting the sale or distribution of any alcoholic beverages to any person under the age of twenty-one years. [1985 c 323 § 1; 1984 c 136 § 1; 1980 c 22 § 1; 1973 1st ex.s. c 96 § 1.]

66.44.318 Employees aged eighteen to twenty-one stocking, merchandising, and handling beer and wine. Licensees holding nonretail class liquor licenses are permitted to allow their employees between [the] ages of eighteen and twenty-one to stock, merchandise, and handle beer or wine on or about the nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises. [1995 c 100 § 2.]

66.44.325 Unlawful transfer to minor of age identification. Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcoholic beverages shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution: PROVIDED, That corroborative testimony of a witness other than the minor shall be a condition precedent to

conviction. [2002 c 175 § 43; 1987 c 101 § 2; 1961 c 147 § 1.]

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

Cards of identification: RCW 66.20.160 through 66.20.210.

66.44.328 Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty. No person may forge, alter, counterfeit, otherwise prepare or acquire and supply to a person under the age of twenty-one years a facsimile of any of the officially issued cards of identification that are required for presentation under RCW 66.16.040. A violation of this section is a gross misdemeanor punishable as provided by RCW 9A.20.021 except that a minimum fine of two thousand five hundred dollars shall be imposed. [1987 c 101 § 3.]

66.44.330 Prosecutions to be reported by prosecuting attorney and police court. See RCW 36.27.020(12).

66.44.340 Employees eighteen years and over allowed to sell and handle beer and wine for certain licensed employers. Employers holding grocery store or beer and/or wine specialty shop licenses exclusively are permitted to allow their employees, between the ages of eighteen and twenty-one years, to sell, stock, and handle beer or wine in, on or about any establishment holding a grocery store or beer and/or wine specialty shop license exclusively: PROVIDED, That there is an adult twenty-one years of age or older on duty supervising the sale of liquor at the licensed premises: PROVIDED, That minor employees may make deliveries of beer and/or wine purchased from licensees holding grocery store or beer and/or wine specialty shop licenses exclusively, when delivery is made to cars of customers adjacent to such licensed premises but only, however, when the minor employee is accompanied by the purchaser. [1999 c 281 § 11; 1986 c 5 § 1; 1981 1st ex.s. c 5 § 48; 1969 ex.s. c 38 § 1.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for certain licensed employers. Notwithstanding provisions of RCW 66.44.310, employees holding beer and/or wine restaurant; beer and/or wine private club; snack bar; spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses who are licensees eighteen years of age and over may take orders for, serve and sell liquor in any part of the licensed premises except cocktail lounges, bars, or other areas classified by the Washington state liquor control board as off-limits to persons under twenty-one years of age: PROVIDED, That such employees may enter such restricted areas to perform work assignments including picking up liquor for service in other parts of the licensed premises, performing clean up work, setting up and arranging tables, delivering supplies, delivering messages, serving food, and seating patrons: PROVIDED FURTHER, That such employees shall remain in the areas off-limits to minors no longer than is necessary to carry out their aforementioned duties: PROVIDED FURTHER, That such

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employees shall not be permitted to perform activities or functions of a bartender. [1999 c 281 § 12; 1988 c 160 § 1; 1975 1st ex.s. c 204 § 1.]

66.44.365 Juvenile driving privileges—Alcohol or drug violations. (1) If a juvenile thirteen years of age or older and under the age of eighteen is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, a juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 118; 1988 c 148 § 3.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

66.44.370 Resisting or opposing officers in enforcement of title. No person shall knowingly or wilfully resist or oppose any state, county, or municipal peace officer, or liquor enforcement officer, in the discharge of his/her duties under Title 66 RCW, or aid and abet such resistance or opposition. Any person who violates this section shall be guilty of a violation of this title and subject to arrest by any such officer. [1981 1st ex.s. c 5 § 27.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.800 Compliance by Washington wine and beer commissions. (1) Nothing contained in chapter 15.88 RCW shall affect the compliance by the Washington wine commission with this chapter.

(2) Nothing contained in chapter 15.89 RCW shall affect the compliance by the Washington beer commission with this chapter. [2006 c 330 § 22; 1987 c 452 § 17.]

Construction—Severability—2006 c 330: See RCW 15.89.900 and 15.89.901.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Chapter 66.98 RCW CONSTRUCTION

Sections

66.98.010 Short title.
66.98.020 Severability and construction—1933 ex.s. c 62.

66.98.030	Effect of act on certain laws—1933 ex.s. c 62.
66.98.040	Effective date and application—1937 c 217.
66.98.050	Effective date and application—1939 c 172.
66.98.060	Rights of spirits, beer, and wine restaurant licensees—1949 c 5.
66.98.070	Regulations by board—1949 c 5.
66.98.080	Severability—1949 c 5.
66.98.090	Severability—1981 1st ex.s. c 5.
66.98.100	Effective date—1981 1st ex.s. c 5.

66.98.010 Short title. This act may be cited as the "Washington State Liquor Act." [1933 ex.s. c 62 § 1; RRS § 7306-1.]

66.98.020 Severability and construction—1933 ex.s. c 62. If any clause, part or section of this act shall be adjudged invalid, such judgment shall not affect nor invalidate the remainder of the act, but shall be confined in its operation to the clause, part or section directly involved in the controversy in which such judgment was rendered. If the operation of any clause, part or section of this act shall be held to impair the obligation of contract, or to deny to any person any right or protection secured to him by the Constitution of the United States of America, or by the Constitution of the state of Washington, it is hereby declared that, had the invalidity of such clause, part or section been considered at the time of the enactment of this act, the remainder of the act would nevertheless have been adopted without such and any and all such invalid clauses, parts or sections. [1933 ex.s. c 62 § 94; RRS § 7306-94.]

66.98.030 Effect of act on certain laws—1933 ex.s. c 62. Nothing in this act shall be construed to amend or repeal chapter 2 of the Laws of 1933, or any portion thereof. [1933 ex.s. c 62 § 95; RRS § 7306-95.]

Reviser's note: 1933 c 2 referred to herein consisted of two sections, section 1 of which is codified as RCW 66.44.320 and section 2 was a repeal of earlier liquor laws.

66.98.040 Effective date and application—1937 c 217. This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: PROVIDED, HOWEVER, That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under *chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1937: AND PROVIDED FURTHER, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1937 c 217 § 8; RRS § 7306-97.]

***Reviser's note:** Chapter 62, Laws of 1933, extraordinary session, is the basic liquor act codified in this title. The 1937 act in which it appears amended it.

66.98.050 Effective date and application—1939 c 172. This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: PROVIDED, HOWEVER, That any person,

who shall at the time this act takes effect be the bona fide holder of a license duly issued under *chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935 and chapters 62 and 217, Laws of 1937, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1939: AND PROVIDED FURTHER, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1939 c 172 § 11; RRS § 7306-97a.]

***Reviser's note:** Chapter 62, Laws of 1933, extraordinary session, is the basic liquor act codified in this title. The 1939 act in which it appears amended it.

66.98.060 Rights of spirits, beer, and wine restaurant licensees—1949 c 5. Notwithstanding any provisions of chapter 62, Laws of 1933 ex. sess., as last amended, or of any provisions of any other law which may otherwise be applicable, it shall be lawful for the holder of a spirits, beer, and wine restaurant license to sell beer, wine, and spirituous liquor in this state in accordance with the terms of chapter 5, Laws of 1949. [1998 c 126 § 15; 1997 c 321 § 54; 1949 c 5 § 14; No RRS. Formerly: RCW 66.24.460.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.98.070 Regulations by board—1949 c 5. For the purpose of carrying into effect the provisions of this act, the board shall have the same power to make regulations not inconsistent with the spirit of this act as is provided by RCW 66.08.030. [1949 c 5 § 15; No RRS. Formerly: RCW 66.24.470.]

66.98.080 Severability—1949 c 5. If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as whole or any section, provision, or part thereof not adjudged to be invalid. [1949 c 5 § 17; No RRS.]

66.98.090 Severability—1981 1st ex.s. c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 1st ex.s. c 5 § 50.]

66.98.100 Effective date—1981 1st ex.s. c 5. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. [1981 1st ex.s. c 5 § 51.]

Title 67

SPORTS AND RECREATION—CONVENTION FACILITIES

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Chapter 67.04 RCW

BASEBALL

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- 67.04.010 Penalty for bribery in relation to baseball game.
- 67.04.020 Penalty for acceptance of bribe.
- 67.04.030 Elements of offense outlined.
- 67.04.040 "Bribe" defined.
- 67.04.050 Corrupt baseball playing—Penalty.
- 67.04.060 Venue of action.
- 67.04.070 Bonus or extra compensation.
- 67.04.080 Scope of provisions as to bribes.
- 67.04.090 Baseball contracts with minors—Definitions.
- 67.04.100 Contract with minor void unless approved.
- 67.04.110 Contract with minor—Approval by prosecuting attorney.
- 67.04.120 Contract with minor—Basis of approval.
- 67.04.130 Contract with minor—Effect of disapproval.

67.04.140 Negotiations with minor prohibited.
67.04.150 Contract with minor—Penalty for violation.

Age of majority: Chapter 26.28 RCW.

67.04.010 Penalty for bribery in relation to baseball game. Any person who shall bribe or offer to bribe, any baseball player with intent to influence his play, action or conduct in any baseball game, or any person who shall bribe or offer to bribe any umpire of a baseball game, with intent to influence him to make a wrong decision or to bias his opinion or judgment in relation to any baseball game or any play occurring therein, or any person who shall bribe or offer to bribe any manager, or other official of a baseball club, league or association, by whatsoever name called, conducting said game of baseball to throw or lose a game of baseball, shall be guilty of a gross misdemeanor. [1921 c 181 § 1; RRS § 2321-1.]

67.04.020 Penalty for acceptance of bribe. Any baseball player who shall accept or agree to accept, a bribe offered for the purpose of wrongfully influencing his play, action or conduct in any baseball game, or any umpire of a baseball game who shall accept or agree to accept a bribe offered for the purpose of influencing him to make a wrong decision, or biasing his opinions, rulings or judgment with regard to any play, or any manager of a baseball club, or club or league official, who shall accept, or agree to accept, any bribe offered for the purpose of inducing him to lose or cause to be lost any baseball game, as set forth in RCW 67.04.010, shall be guilty of a gross misdemeanor. [1921 c 181 § 2; RRS § 2321-2.]

67.04.030 Elements of offense outlined. To complete the offenses mentioned in RCW 67.04.010 and 67.04.020, it shall not be necessary that the baseball player, manager, umpire or official, shall, at the time, have been actually employed, selected or appointed to perform their respective duties; it shall be sufficient if the bribe be offered, accepted or agreed to with the view of probable employment, selection or appointment of the person to whom the bribe is offered, or by whom it is accepted. Neither shall it be necessary that such baseball player, umpire or manager actually play or participate in a game or games concerning which said bribe is offered or accepted; it shall be sufficient if the bribe be given, offered or accepted in view of his or their possibly participating therein. [1921 c 181 § 3; RRS § 2321-3.]

67.04.040 "Bribe" defined. By a "bribe" as used in RCW 67.04.010 through 67.04.080, is meant any gift, emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing, directly or indirectly, any baseball player, manager, umpire, club or league official, to see which game an admission fee may be charged, or in which game of baseball any player, manager or umpire is paid any compensation for his services. Said bribe as defined in RCW 67.04.010 through 67.04.080 need not be direct; it may be such as is hidden under the semblance of a sale, bet, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. [1921 c 181 § 4; RRS § 2321-4.]

67.04.050 Corrupt baseball playing—Penalty. Any baseball player, manager or club or league official who shall commit any wilful act of omission or commission in playing, or directing the playing, of a baseball game, with intent to cause the ball club, with which he is affiliated, to lose a baseball game; or any umpire officiating in a baseball game, or any club or league official who shall commit any wilful act connected with his official duties for the purpose and with the intent to cause a baseball club to win or lose a baseball game, which it would not otherwise have won or lost under the rules governing the playing of said game, shall be guilty of a gross misdemeanor. [1921 c 181 § 5; RRS § 2321-5.]

67.04.060 Venue of action. In all prosecutions under RCW 67.04.010 through 67.04.080 the venue may be laid in any county where the bribe herein referred to was given, offered or accepted, or in which the baseball game was played in relation to which the bribe was offered, given or accepted, or the acts referred to in RCW 67.04.050 committed. [1921 c 181 § 6; RRS § 2321-6.]

67.04.070 Bonus or extra compensation. Nothing in RCW 67.04.010 through 67.04.080 shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager or baseball player by any person to encourage such manager or player to a higher degree of skill, ability or diligence in the performance of his duties. [1921 c 181 § 7; RRS § 2321-7.]

67.04.080 Scope of provisions as to bribes. RCW 67.04.010 through 67.04.080 shall apply only to baseball league and club officials, umpires, managers and players who act in such capacity in games where the public is generally invited to attend and a general admission fee is charged. [1921 c 181 § 8; RRS § 2321-8.]

67.04.090 Baseball contracts with minors—Definitions. As used in RCW 67.04.090 through 67.04.150 the following terms shall have the following meanings:

- (1) "Minor" shall mean any person under the age of eighteen years, and who has not graduated from high school: PROVIDED, That should he become eighteen during his senior year he shall be a minor until the end of the school year;
- (2) "Contract" shall mean any contract, agreement, bonus or gratuity arrangement, whether oral or written;
- (3) "Organized professional baseball" shall mean and include all persons, firms, corporations, associations, or teams or clubs, or agents thereof, engaged in professional baseball, or in promoting the interest of professional baseball, or sponsoring or managing other persons, firms, corporations, associations, teams, or clubs who play baseball in any of the major or minor professional baseball leagues, or any such league hereafter organized;
- (4) "Agent" shall, in addition to its generally accepted legal meaning, mean and include those persons commonly known as "baseball scouts";
- (5) "Prosecuting attorney" shall mean the prosecuting attorney, or his regular deputy, of the county in which the minor's parent is domiciled;

(6) "Parent" shall mean parent, parents or guardian. [1951 c 78 § 2.]

Purpose—1951 c 78: "The welfare of the children of this state is of paramount interest to the people of the state. It is the purpose of this act to foster the education of minors and to protect their moral and physical well-being. Organized professional baseball has in numerous cases induced minors to enter into contracts and agreements which have been unfair and injurious to them." [1951 c 78 § 1.]

Severability—1951 c 78: "If any portion, section, or clause of this act, shall be declared or found invalid by any court of competent jurisdiction, such adjudication shall not affect the remainder of this act." [1951 c 78 § 9.]

67.04.100 Contract with minor void unless approved.

Any contract between organized professional baseball and a minor shall be null and void and contrary to the public policy of the state, unless and until such contract be approved as hereinafter provided. [1951 c 78 § 3.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.110 Contract with minor—Approval by prosecuting attorney. No contract within RCW 67.04.090 through 67.04.150 shall be null and void, nor shall any of the prohibitions or penalties provided in RCW 67.04.090 through 67.04.150 be applicable if such contract be first approved in writing by the prosecuting attorney. Such approval may be sought jointly, or at the request of either party seeking a contract. [1951 c 78 § 4.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.120 Contract with minor—Basis of approval.

The prosecuting attorney shall have the authority to examine all the parties to the proposed contract and any other interested person and shall approve such contract if the following facts and circumstances are found to exist:

(1) That the minor has not been signed, approached, or contacted, directly or indirectly, pertaining to a professional baseball contract except as herein permitted by approval of the prosecuting attorney;

(2) That the minor has been apprised of the fact that approval of the contract may deprive him of his amateur status;

(3) That the parent of the minor and the minor have consented to the contract;

(4) That the prosecuting attorney has concluded that the contract conforms to the provisions of RCW 67.04.090 through 67.04.150, and is a valid and binding contract;

(5) That the contract permits the minor to have at least five months available each year to continue his high school education. [1951 c 78 § 5.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

Employment permits: RCW 28A.225.080.

67.04.130 Contract with minor—Effect of disapproval. Should the prosecuting attorney not approve the contract as above provided, then such contract shall be void, and the status of the minor shall remain as if no contract had been made, unless the prosecuting attorney's determination be the result of arbitrary or capricious action. [1951 c 78 § 6.]

(2008 Ed.)

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.140 Negotiations with minor prohibited. No representative of organized professional baseball nor agent, nor person purporting to be able to represent any institution in organized baseball, whether so authorized to represent such institution or not, shall initiate or participate in any negotiations which would induce an evasion of this law in any way, including the removal of any minor to another state, or violate the minor's high school athletic eligibility. [1951 c 78 § 7.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.150 Contract with minor—Penalty for violation. Any person, firm, corporation, association, or agent thereof, who enters into a contract with a minor, or gives a bonus or any gratuity to any minor to secure the minor's promise to enter into a contract in violation of the provisions of RCW 67.04.090 through 67.04.150, or shall otherwise violate any provisions of RCW 67.04.090 through 67.04.150, shall be guilty of a gross misdemeanor. [1951 c 78 § 8.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

Chapter 67.08 RCW

BOXING, MARTIAL ARTS, AND WRESTLING

(Formerly: Boxing, sparring, and wrestling)

Sections

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67.08.015	Duties of department—Exemptions—Rules.
67.08.017	Director—Powers.
67.08.030	Promoters—Bond—Medical insurance.
67.08.040	Issuance of license.
67.08.050	Statement and report of event—Tax on gross receipts—Complimentary tickets.
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67.08.220	Unprofessional conduct—Order upon finding—Penalties—Costs.
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67.08.300	Immunity of director and director's agents.
67.08.310	Uniform regulation of business and professions act.
67.08.900	Severability—1933 c 184.
67.08.901	Severability—1993 c 278.
67.08.902	Effective date—1993 c 278.
67.08.903	Severability—1997 c 205.

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

(1) "Amateur" means a person who has never received nor competed for any purse or other article of value, either for expenses of training or for participating in an event, other than a prize of fifty dollars in value or less.

(2) "Boxing" means the sport of attack and defense which uses the contestants fists and where the contestants compete with the intent not to injure or disable an opponent, but to win by decision, knockout, or technical knockout, but does not include professional wrestling.

(3) "Chiropractor" means a person licensed under chapter 18.25 RCW as a doctor of chiropractic or under the laws of any jurisdiction in which that person resides.

(4) "Department" means the department of licensing.

(5) "Director" means the director of the department of licensing or the director's designee.

(6) "Event" includes, but is not limited to, a boxing, wrestling, or martial arts contest, sparring, fisticuffs, match, show, or exhibition.

(7) "Event physician" means the physician licensed under RCW 67.08.100 and who is responsible for the activities described in RCW 67.08.090.

(8) "Face value" means the dollar value of a ticket or order, which value must reflect the dollar amount that the customer is required to pay or, for a complimentary ticket, would have been required to pay to purchase a ticket with equivalent seating priority, in order to view the event.

(9) "Gross receipts" means the amount received from the face value of all tickets sold and complimentary tickets redeemed.

(10) "Kickboxing" means a type of boxing in which blows are delivered with the fist and any part of the leg below the hip, including the foot and where the contestants compete with the intent not to injure or disable an opponent, but to win by decision, knockout, or technical knockout.

(11) "Martial arts" means a type of boxing including sumo, judo, karate, kung fu, tae kwon do, pankration, muay thai, or other forms of full-contact martial arts or self-defense conducted on a full-contact basis where weapons are not used and the participants utilize kicks, punches, blows, or other techniques with the intent not to injure or disable an opponent, but to defeat an opponent or win by decision, knockout, technical knockout, or submission.

(12) "No holds barred fighting," also known as "frontier fighting" and "extreme fighting," means a contest, exhibition, or match between contestants where any part of the contestant's body may be used as a weapon or any means of fighting may be used with the specific purpose to intentionally injure the other contestant in such a manner that they may not defend themselves and a winner is declared. Rules may or may not be used.

(13) "Combative fighting," also known as "toughman fighting," "toughwoman fighting," "badman fighting," and "so you think you're tough," means a contest, exhibition, or match between contestants who use their fists, with or without gloves, or their feet, or both, and which allows contestants that are not trained in the sport to compete and the object is to defeat an opponent or to win by decision, knockout, or technical knockout.

(14) "Physician" means a person licensed under chapter 18.57, 18.36A, or 18.71 RCW as a physician or a person holding an osteopathic or allopathic physician license under the laws of any jurisdiction in which the person resides.

(15) "Professional" means a person who has received or competed for any purse or other articles of value greater than fifty dollars, either for the expenses of training or for participating in an event.

(16) "Promoter" means a person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, stages, holds, or gives an event in this state involving a professional boxing, martial arts, or wrestling event, or shows or causes to be shown in this state a closed circuit telecast of a match involving a professional participant whether or not the telecast originates in this state.

(17) "Wrestling exhibition" or "wrestling show" means a form of sports entertainment in which the participants display their skills in a physical struggle against each other in the ring and either the outcome may be predetermined or the participants do not necessarily strive to win, or both.

(18) "Amateur event" means an event in which all the participants are "amateurs" and which is registered and sanctioned by:

- (a) United States Amateur Boxing, Inc.;
- (b) Washington Interscholastic Activities Association;
- (c) National Collegiate Athletic Association;
- (d) Amateur Athletic Union;
- (e) Golden Gloves of America;
- (f) United Full Contact Federation;
- (g) Any similar organization recognized by the department as exclusively or primarily dedicated to advancing the sport of amateur boxing, kickboxing, or martial arts, as those sports are defined in this section; or
- (h) Local affiliate of any organization identified in this subsection.

(19) "Elimination tournament" means any contest in which contestants compete in a series of matches until not more than one contestant remains in any weight category. The term does not include any event that complies with the provisions of RCW 67.08.015(2) (a) or (b). [2004 c 149 § 1; 2002 c 147 § 1; 1999 c 282 § 2; 1997 c 205 § 1; 1993 c 278 § 8; 1989 c 127 § 1.]

Effective date—2004 c 149: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 149 § 3.]

Effective date—2002 c 147: "This act takes effect January 1, 2003." [2002 c 147 § 4.]

67.08.007 Officers, employees, inspectors. The department may employ and fix the compensation of such officers, employees, and inspectors as may be necessary to administer the provisions of this chapter as amended. [1993 c 278 § 9; 1959 c 305 § 2; 1933 c 184 § 4; RRS § 8276-4. Formerly RCW 43.48.040.]

67.08.010 Licenses for boxing, martial arts, and wrestling events—Telecasts. The department shall have power to issue and take disciplinary action as provided in RCW 18.235.130 against a license to conduct, hold, or pro-

mote boxing, martial arts, or wrestling events or closed circuit telecasts of these events as provided in this chapter and chapter 18.235 RCW under such terms and conditions and at such times and places as the department may determine. [2002 c 86 § 305; 1997 c 205 § 2; 1993 c 278 § 10; 1989 c 127 § 13; 1975-'76 2nd ex.s. c 48 § 2; 1933 c 184 § 7; RRS § 8276-7. Prior: 1909 c 249 § 304; 1890 p 109 § 1; 1886 p 82 § 1.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.015 Duties of department—Exemptions—Rules. (1) In the interest of ensuring the safety and welfare of the participants, the department shall have power and it shall be its duty to direct, supervise, and control all boxing, martial arts, and wrestling events conducted within this state and an event may not be held in this state except in accordance with the provisions of this chapter. The department may, in its discretion, issue and for cause, which includes concern for the safety and welfare of the participants, take any of the actions specified in RCW 18.235.110 against a license to promote, conduct, or hold boxing, kickboxing, martial arts, or wrestling events where an admission fee is charged by any person, club, corporation, organization, association, or fraternal society.

(2) All boxing, kickboxing, martial arts, or wrestling events that:

(a) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(b) Are entirely amateur events as defined in RCW 67.08.002(18) and promoted on a nonprofit basis or for charitable purposes;

are not subject to the licensing provisions of this chapter. A boxing, martial arts, kickboxing, or wrestling event may not be conducted within the state except under a license issued in accordance with this chapter and the rules of the department except as provided in this section.

(3) The director shall prohibit events unless all of the contestants are licensed or otherwise exempt from licensure as provided under this chapter.

(4) No amateur or professional no holds barred fighting or combative fighting type of contest, exhibition, match, or similar type of event, nor any elimination tournament, may be held in this state. Any person promoting such an event is guilty of a class C felony. Additionally, the director may apply to a superior court for an injunction against any and all promoters of a contest, and may request that the court seize all money and assets relating to the competition. [2004 c 149 § 2; 2002 c 86 § 306; 2000 c 151 § 2; 1999 c 282 § 3; 1997 c 205 § 3; 1993 c 278 § 12; 1989 c 127 § 14; 1977 c 9 § 2. Prior: 1975-'76 2nd ex.s. c 48 § 3; 1975 c 1 § 1; 1973 c 53 § 1; 1951 c 48 § 2.]

Effective date—2004 c 149: See note following RCW 67.08.002.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

(2008 Ed.)

67.08.017 Director—Powers. In addition to the powers described in RCW 18.235.030 and 18.235.040, the director or the director's designee has the following authority in administering this chapter:

(1) Adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) Adopt standards of professional conduct or practice;

(3) Enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action; and

(4) Establish and assess fines for violations of this chapter that may be subject to payment from a contestant's purse. [2002 c 86 § 307; 1997 c 205 § 4; 1993 c 278 § 11.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.030 Promoters—Bond—Medical insurance.

(1) Every promoter, as a condition for receiving a license, shall file with the department a surety bond in an amount to be determined by the department, but not less than ten thousand dollars, to cover all of the event locations applied for within the state during the license period, conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes, officials, and contracts as provided for herein and the observance of all rules of the department.

(2) Boxing promoters must obtain medical insurance in an amount set by the director, but not less than fifty thousand dollars, to cover any injuries incurred by participants at the time of each event held in this state and provide proof of insurance to the department seventy-two hours before each event. The evidence of insurance must specify, at a minimum, the name of the insurance company, the insurance policy number, the effective date of the coverage, and evidence that each participant is covered by the insurance. The promoter must pay any deductible associated with the insurance policy.

(3) In lieu of the insurance requirement of subsection (2) of this section, a promoter of the boxing event who so chooses may, as a condition for receiving a license under this chapter, file proof of medical insurance coverage that is in effect for the entire term of the licensing period.

(4) The department shall cancel a boxing event if the promoter fails to provide proof of medical insurance within the proper time frame. [1997 c 205 § 5; 1993 c 278 § 13; 1989 c 127 § 6; 1933 c 184 § 9; RRS § 8276-9.]

67.08.040 Issuance of license. Upon the approval by the department of any application for a license, as hereinabove provided, and the filing of the bond the department shall forthwith issue such license. [1993 c 278 § 14; 1975-'76 2nd ex.s. c 48 § 4; 1933 c 184 § 10; RRS § 8276-10.]

67.08.050 Statement and report of event—Tax on gross receipts—Complimentary tickets. (1) Any promoter

shall within seven days prior to the holding of any event file with the department a statement setting forth the name of each licensee who is a potential participant, his or her manager or managers, and such other information as the department may require. Participant changes regarding a wrestling event may be allowed after notice to the department, if the new participant holds a valid license under this chapter. The department may stop any wrestling event in which a participant is not licensed under this chapter.

(2) Upon the termination of any event the promoter shall file with the designated department representative a written report, duly verified as the department may require showing the number of tickets sold for the event, the price charged for the tickets and the gross proceeds thereof, and such other and further information as the department may require. The promoter shall pay to the department at the time of filing the report under this section a tax equal to five percent of such gross receipts. However, the tax may not be less than twenty-five dollars. The five percent of such gross receipts shall be immediately paid by the department into the state general fund.

(3) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. The number of untaxed complimentary tickets shall be limited to ten percent of the total tickets sold per event location, not to exceed one thousand tickets. All complimentary tickets exceeding this exemption shall be subject to taxation. [2000 c 151 § 1; 1999 c 282 § 4; 1997 c 205 § 6; 1993 c 278 § 15; 1989 c 127 § 7; 1933 c 184 § 11; RRS § 8276-11. FORMER PART OF SECTION: 1939 c 54 § 1; RRS § 8276-11a, now footnoted below.]

Emergency—Effective date—1939 c 54: "That this act is necessary for the immediate support of the state government and its existing public institutions and shall take effect April 1, 1939." [1939 c 54 § 6; no RRS.]

67.08.055 Simultaneous or closed circuit telecasts—Report—Tax on gross receipts. Every licensee who charges and receives an admission fee for exhibiting a simultaneous telecast of any live, current, or spontaneous boxing or sparring match, or wrestling exhibition or show on a closed circuit telecast viewed within this state shall, within seventy-two hours after such event, furnish to the department a verified written report on a form which is supplied by the department showing the number of tickets issued or sold, and the gross receipts therefor without any deductions whatsoever. Such licensee shall also, at the same time, pay to the department a tax equal to five percent of such gross receipts paid for admission to the showing of the contest, match or exhibition. In no event, however, shall the tax be less than twenty-five dollars. The tax shall apply uniformly at the same rate to all persons subject to the tax. Such receipts shall be immediately paid by the department into the general fund of the state. [1993 c 278 § 16; 1989 c 127 § 15; 1975-'76 2nd ex.s. c 48 § 5.]

67.08.060 Inspectors—Duties—Fee and travel expenses for attending events. The department may appoint official inspectors at least one of which, in the absence of a member of the department, shall be present at any event held under the provisions of this chapter. Such inspectors shall carry a card signed by the director evidencing their authority.

It shall be their duty to see that all rules of the department and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any event, and such inspector is authorized to receive from the licensee conducting the event the statement of receipts herein provided for and to immediately transmit such reports to the department. Each inspector shall receive a fee and travel expenses from the promoter to be set by the director for each event officially attended. [1997 c 205 § 7; 1993 c 278 § 17; 1989 c 127 § 16; 1988 c 19 § 2; 1975-'76 2nd ex.s. c 34 § 154; 1959 c 305 § 4; 1933 c 184 § 12; RRS § 8276-12.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

67.08.080 Rounds and bouts limited—Weight of gloves—Rules. A boxing event held in this state may not be for more than ten rounds and no one round of any bout shall be scheduled for longer than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state, regional, national, or world championships the department may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds. A contestant in any boxing event under this chapter may not be permitted to wear gloves weighing less than eight ounces. The director shall adopt rules to assure clean and sportsmanlike conduct on the part of all contestants and officials, and the orderly and proper conduct of the event in all respects, and to otherwise make rules consistent with this chapter, but such rules shall apply only to events held under the provisions of this chapter. The director may adopt rules with respect to round and bout limitations and clean and sportsmanlike conduct for kickboxing, martial arts, or wrestling events. [1999 c 282 § 5; 1997 c 205 § 8; 1993 c 278 § 18; 1989 c 127 § 8; 1974 ex.s. c 45 § 1; 1959 c 305 § 5; 1933 c 184 § 14; RRS § 8276-14.]

67.08.090 Physician's attendance—Examination of contestants—Urinalysis. (1) Each contestant for boxing, kickboxing, or martial arts events shall be examined within twenty-four hours before the contest by an event physician licensed by the department. The event physician shall report in writing and over his or her signature before the event the physical condition of each and every contestant to the inspector present at such contest. No contestant whose physical condition is not approved by the event physician shall be permitted to participate in any event. Blank forms for event physicians' reports shall be provided by the department and all questions upon such blanks shall be answered in full. The event physician shall be paid a fee and travel expenses by the promoter.

(2) The department may require that an event physician be present at a wrestling event. The promoter shall pay the event physician present at a wrestling event. A boxing, kickboxing, or martial arts event may not be held unless an event physician licensed by the department is present throughout the event. In addition to the event physician, a chiropractor may be included as a licensed official at a boxing, kickboxing, or martial arts event. The promoter shall pay the chiropractor present at a boxing, kickboxing, or martial arts event.

(3) Any physician licensed under RCW 67.08.100 may be selected by the department as the event physician. The

event physician present at any contest shall have authority to stop any event when in the event physician's opinion it would be dangerous to a contestant to continue, and in such event it shall be the event physician's duty to stop the event.

(4) The department may have a participant in a wrestling event examined by an event physician licensed by the department prior to the event. A participant in a wrestling event whose condition is not approved by the event physician shall not be permitted to participate in the event.

(5) Each contestant for boxing, kickboxing, martial arts, or wrestling events may be subject to a random urinalysis or chemical test within twenty-four hours before or after a contest. In addition to the unprofessional conduct specified in RCW 18.235.130, an applicant or licensee who refuses or fails to submit to the urinalysis or chemical test is subject to disciplinary action under RCW 18.235.110. If the urinalysis or chemical test is positive for substances prohibited by rules adopted by the director, the applicant or licensee has engaged in unprofessional conduct and disciplinary action may be taken under RCW 18.235.110. [2002 c 147 § 2; 2002 c 86 § 308; 1999 c 282 § 6; 1997 c 205 § 9; 1993 c 278 § 19; 1989 c 127 § 9; 1933 c 184 § 15; RRS § 8276-15.]

Reviser's note: This section was amended by 2002 c 86 § 308 and by 2002 c 147 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2002 c 147: See note following RCW 67.08.002.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.100 Annual licenses—Fees—Qualifications—

Revocation—Exceptions. (1) The department upon receipt of a properly completed application and payment of a nonrefundable fee, may grant an annual license to an applicant for the following: (a) Promoter; (b) manager; (c) boxer; (d) second; (e) wrestling participant; (f) inspector; (g) judge; (h) timekeeper; (i) announcer; (j) event physician; (k) chiropractor; (l) referee; (m) matchmaker; (n) kickboxer; and (o) martial arts participant.

(2) The application for the following types of licenses shall include a physical performed by a physician, as defined in RCW 67.08.002, which was performed by the physician with a time period preceding the application as specified by rule: (a) Boxer; (b) wrestling participant; (c) kickboxer; (d) martial arts participant; and (e) referee.

(3) An applicant for the following types of licenses for the sports of boxing, kickboxing, and martial arts shall provide annual proof of certification as having adequate experience, skill, and training from an organization approved by the department, including, but not limited to, the association of boxing commissions, the international boxing federation, the international boxing organization, the Washington state association of professional ring officials, the world boxing association, the world boxing council, or the world boxing organization for boxing officials, and the united full contact federation for kickboxing and martial arts officials: (a) Judge; (b) referee; (c) inspector; (d) timekeeper; or (e) other officials deemed necessary by the department.

(4) No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

(5) The referees, judges, timekeepers, event physicians, chiropractors, and inspectors for any boxing, kickboxing, or martial arts event shall be designated by the department from among licensed officials.

(6) The referee for any wrestling event shall be provided by the promoter and shall be licensed as a wrestling participant.

(7) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(8) A person may not be issued a license if the person has an unpaid fine outstanding to the department.

(9) A person may not be issued a license unless they are at least eighteen years of age.

(10) This section shall not apply to contestants or participants in events at which only amateurs are engaged in contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the defense department or any recognized amateur sanctioning body recognized by the department, holding and promoting athletic events and where all funds are used primarily for the benefit of their members. Upon request of the department, a promoter, contestant, or participant shall provide sufficient information to reasonably determine whether this chapter applies. [2002 c 147 § 3; 2002 c 86 § 309; 2001 c 246 § 1; 1999 c 282 § 7. Prior: 1997 c 205 § 10; 1997 c 58 § 864; 1993 c 278 § 20; 1989 c 127 § 10; 1959 c 305 § 6; 1933 c 184 § 16; RRS § 8276-16. FORMER PART OF SECTION: 1933 c 184 § 20, part; RRS § 8276-20, part, now codified in RCW 67.08.025.]

Reviser's note: This section was amended by 2002 c 86 § 309 and by 2002 c 147 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2002 c 147: See note following RCW 67.08.002.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

67.08.105 License and renewal fees. The department shall set license and renewal fees by rule, but the fees collected do not have to offset the cost of the program as required under RCW 43.24.086. [1999 c 282 § 1.]

67.08.110 Unprofessional conduct—Sham or fake event. (1) Any person or any member of any group of persons or corporation promoting boxing events who shall participate directly or indirectly in the purse or fee of any manager of any boxers or any boxer and any licensee who shall conduct or participate in any sham or fake boxing event has

engaged in unprofessional conduct and is subject to the sanctions specified in RCW 18.235.110.

(2) A manager of any boxer, kickboxer, or martial arts participant who allows any person or any group of persons or corporation promoting boxing, kickboxing, or martial arts events to participate directly or indirectly in the purse or fee, or any boxer, kickboxer, or martial arts participant or other licensee who conducts or participates in any sham or fake boxing, kickboxing, or martial arts event has engaged in unprofessional conduct and is subject to the sanctions specified in RCW 18.235.110. [2002 c 86 § 310; 1999 c 282 § 8; 1997 c 205 § 11; 1993 c 278 § 21; 1989 c 127 § 11; 1933 c 184 § 17; RRS § 8276-17.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.130 Failure to make report—Additional tax—Hearing—Disciplinary action. Whenever any licensee shall fail to make a report of any event within the time prescribed by this chapter or when such report is unsatisfactory to the department, the director may examine the books and records of such licensee; he or she may subpoena and examine under oath any officer of such licensee and such other person or persons as he or she may deem necessary to a determination of the total gross receipts from any event and the amount of tax thereon. If, upon the completion of such examination it shall be determined that an additional tax is due, notice thereof shall be served upon the licensee, providing the licensee with an opportunity to request a hearing under chapter 34.05 RCW. The failure to request a hearing within twenty days of service of the notice constitutes a default, whereupon the director will enter a decision on the facts available. Failure to pay such additional tax within twenty days after service of a final order constitutes unprofessional conduct and the licensee may be subject to disciplinary action against its license and shall be disqualified from receiving any new license. [2002 c 86 § 311; 1997 c 205 § 13; 1993 c 278 § 23; 1933 c 184 § 19; RRS § 8276-19.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.140 Penalty for conducting events without license—Penalty. Any person, club, corporation, organization, association, fraternal society, participant, or promoter conducting or participating in boxing or wrestling events within this state without having first obtained a license therefor in the manner provided by this chapter is in violation of this chapter and shall be guilty of a misdemeanor excepting the events excluded from the operation of this chapter by RCW 67.08.015. [2002 c 86 § 312; 1997 c 205 § 14; 1993 c 278 § 24; 1989 c 127 § 17; 1988 c 19 § 3; 1959 c 305 § 7; 1951 c 48 § 1; 1933 c 184 § 22; RRS § 8276-22.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.150 General penalty. Any person, firm or corporation violating any of the provisions of this chapter for

which no penalty is herein provided shall be guilty of a misdemeanor. [1933 c 184 § 24; RRS § 8276-24.]

67.08.160 Ambulance or paramedical unit at location. A promoter shall have an ambulance or paramedical unit present at the event location. [1999 c 282 § 10; 1989 c 127 § 2.]

67.08.170 Security—Promoter's responsibility. A promoter shall ensure that adequate security personnel are in attendance at a wrestling or boxing event to control fans in attendance. The size of the security force shall be determined by mutual agreement of the promoter, the person in charge of operating the arena or other facility, and the department. [1997 c 205 § 15; 1993 c 278 § 25; 1989 c 127 § 3.]

67.08.180 Unprofessional conduct—Prohibited acts. In addition to the unprofessional conduct specified in RCW 18.235.130, the following conduct, acts, or conditions constitute unprofessional conduct for which disciplinary action may be taken:

(1) Destruction of any ticket or ticket stub, whether sold or unsold, within three months after the date of any event, by any promoter or person associated with or employed by any promoter.

(2) The deliberate cutting of himself or herself or other self mutilation by a wrestling participant while participating in a wrestling event.

(3) A conviction under chapter 69.50 RCW.

(4) Testing positive for illegal use of a controlled substance as defined in RCW 69.50.101.

(5) The striking of any person that is not a licensed participant at a wrestling event. [2002 c 86 § 313; 1997 c 205 § 16; 1989 c 127 § 4.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.200 Unprofessional conduct—Written complaint—Investigation—Immunity of complainant. A person, including but not limited to a consumer, licensee, corporation, organization, and state and local governmental agency, may submit a written complaint to the department charging a license holder or applicant with unprofessional conduct and specifying the grounds for the complaint. If the department determines that the complaint merits investigation or if the department has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the department shall investigate to determine whether there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1997 c 205 § 17.]

67.08.220 Unprofessional conduct—Order upon finding—Penalties—Costs. Upon a finding that a license holder or applicant has committed unprofessional conduct the director may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Requiring the satisfactory completion of a specific program of remedial education;
- (4) Compliance with conditions of probation for a designated period of time;
- (5) Payment of a fine not to exceed five hundred dollars for each violation of this chapter;
- (6) Denial of the license request;
- (7) Corrective action, including paying contestants the contracted purse or compensation; or
- (8) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant. [1997 c 205 § 19.]

67.08.240 Unprofessional conduct—What constitutes. The following conduct, acts, or conditions constitute unprofessional conduct for a license holder or applicant under this chapter:

- (1) Conviction of a gross misdemeanor, felony, or the commission of an act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. This section does not abrogate rights guaranteed under chapter 9.96 RCW;
- (2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement of a license;
- (3) Advertising that is false, fraudulent, or misleading;
- (4) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;
- (5) Suspension, revocation, or restriction of a license to act as a professional athletic licensee by competent authority in a state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;
- (6) Violation of a statute or administrative rule regulating professional athletics;
- (7) Failure to cooperate with the department's investigations by:
 - (a) Not furnishing papers or documents;
 - (b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or
 - (c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

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(8) Failure to comply with an order issued by the director or an assurance of discontinuance entered into by the director;

(9) Aiding or abetting an unlicensed person to act in a manner that requires a professional athletics licensee [license];

(10) Misrepresentation or fraud in any aspect of the conduct of a professional athletics event; and

(11) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the department or by the use of threats or harassment against any person to prevent them from providing evidence in a disciplinary proceeding or other legal action. [1997 c 205 § 21.]

67.08.300 Immunity of director and director's agents. The director or individuals acting on the director's behalf are immune from suit in an action, civil or criminal, based on official acts performed in the course of their duties in the administration and enforcement of this chapter. [2002 c 86 § 314; 1997 c 205 § 24.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.310 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 315.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.900 Severability—1933 c 184. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1933 c 184 § 25; RRS § 8276-25.]

67.08.901 Severability—1993 c 278. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 278 § 27.]

67.08.902 Effective date—1993 c 278. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 278 § 28.]

67.08.903 Severability—1997 c 205. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 205 § 26.]

Chapter 67.12 RCW

DANCING, BILLIARDS, POOL, AND BOWLING

Sections

- 67.12.021 Licenses for public dances and public recreational or entertainment activities—Fees.
 67.12.110 License required for rural pool halls, billiard halls, and bowling alleys.

Regulations of places of amusement by cities and towns, see under applicable class of city or town: Title 35 RCW and RCW 35A.11.020.

67.12.021 Licenses for public dances and public recreational or entertainment activities—Fees. Counties are authorized to adopt ordinances to license and regulate public dances and other public recreational or entertainment activities in the unincorporated areas of the county whether or not held inside or outside of a building and whether or not admission charges are imposed.

License fees may be adequate to finance the costs of issuing the license and enforcing the regulations, including related law enforcement activities. [1987 c 250 § 1.]

67.12.110 License required for rural pool halls, billiard halls, and bowling alleys. The county legislative authority of each county in the state of Washington shall have sole and exclusive authority and power to regulate, restrain, license, or prohibit the maintenance or running of pool halls, billiard halls, and bowling alleys outside of the incorporated limits of each incorporated city, town, or village in their respective counties: PROVIDED, That the annual license fee for maintenance or running such pool halls, billiard halls, and bowling alleys shall be fixed in accordance with RCW 36.32.120(3), and which license fee shall be paid annually in advance to the appropriate county official: PROVIDED FURTHER, That nothing herein or elsewhere shall be so construed as to prevent the county legislative authority from revoking any license at any time prior to the expiration thereof for any cause by such county legislative authority deemed proper. And if said county legislative authority revokes said license it shall refund the unearned portion of such license. [1985 c 91 § 10; 1909 c 112 § 1; RRS § 8289.]

Licensing under 1873 act: Chapter 67.14 RCW.

Chapter 67.14 RCW

BILLIARD TABLES, BOWLING ALLEYS, AND MISCELLANEOUS GAMES—1873 ACT

Sections

- 67.14.010 Hawkers and auctioneers must procure license—Exceptions.
 67.14.020 Sale or other disposition of liquor—County license—Penalty.
 67.14.030 Hawkers and auctioneers—Issuance of license.
 67.14.040 Retail liquor license.
 67.14.050 Wholesale liquor license—Billiard table, bowling alley licenses.
 67.14.060 Liquor sales, keeping games, without license—Penalty.
 67.14.070 Purchase of license—Bond.
 67.14.080 Duration of license.
 67.14.090 Issuance of license.
 67.14.100 When contrivance deemed kept for hire.
 67.14.110 Druggists excepted.
 67.14.120 Disposition of fees, fines, and forfeitures.

Reviser's note: The territorial act codified in this chapter, though for the most part obsolete, has never been expressly repealed. "An Act in relation to licenses," it empowers the county commissioners to license hawkers and auctioneers, persons dealing in intoxicating liquors, and persons conducting bowling alleys, billiard tables and other games. The auctioneer sec-

tions have been codified as RCW 36.71.070 and 36.71.080. As to the sections relating to intoxicating liquors, it seems clear that this field has been preempted by the state; see RCW 66.08.120. For a later enactment concerning the licensing of rural pool halls, billiard halls, and bowling alleys, see RCW 67.12.110.

Alcoholic beverage control: Title 66 RCW.

67.14.010 Hawkers and auctioneers must procure license—Exceptions. See RCW 36.71.070.

67.14.020 Sale or other disposition of liquor—County license—Penalty. If any person shall sell or dispose of any spirituous, malt, or fermented liquors or wines, in any quantity less than one gallon, without first obtaining a license therefor as hereinafter provided, such person shall, for each and every such offense, be liable to a fine of not less than five nor more than fifty dollars, with costs of prosecution. [1873 p 437 § 2; Code 1881, Bagley's Supp. p 26 § 2.]

67.14.030 Hawkers and auctioneers—Issuance of license. See RCW 36.71.080.

67.14.040 Retail liquor license. The legislative authorities of each county, in their respective counties, shall have the power to grant license to persons to keep drinking houses or saloons therein, at which spirituous, malt, or fermented liquors and wines may be sold in less quantities than one gallon; and such license shall be called a retail license upon the payment, by the person applying for such license, of the sum of three hundred dollars a year into the county treasury, and the execution of a good and sufficient bond, executed to such county in the sum of one thousand dollars, to be approved by such legislative authority or the county auditor of the county in which such license is granted, conditioned that he will keep such drinking saloon or house in a quiet, peaceable, and orderly manner: PROVIDED, The foregoing shall not be so construed as to prevent the legislative authority of any county from granting licenses to drinking saloons or houses therein, when there is but little business doing, for less than three hundred dollars, but in no case for less than one hundred dollars per annum: AND PROVIDED FURTHER, That such license shall be used only in the precinct to which it shall be granted; PROVIDED FURTHER, that no license shall be used in more than one place at the same time. AND FURTHER PROVIDED, That no license shall be granted to any person to retail spirituous liquors until he shall furnish to the legislative authority satisfactory proof that he is a person of good moral character. [1973 1st ex.s. c 154 § 100; 1875 p 124 § 1; 1873 p 438 § 4; Code 1881, Bagley's Supp. p 26 § 4.]

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

67.14.050 Wholesale liquor license—Billiard table, bowling alley licenses. Said county commissioners in their respective counties shall also have power to grant licenses to sell spirituous liquors and wines therein in greater quantities than one gallon, to be called a wholesale license upon payment of the sum of not to exceed one hundred dollars per annum into the county treasury by such person so desiring such license; also, upon payment of not to exceed a like sum into the county treasury by any person desiring a grocery license to sell lager beer to grant such person such license to

sell for the period of one year. Also, upon the payment of such sum as the county commissioners may establish and fix, by order duly entered in the record of their proceedings, not exceeding twenty-five dollars per annum for each billiard table, pigeon-hole table, or bowling alley, grant a license to any person applying for the same and giving such bond not exceeding two hundred dollars, as such commissioners may require: PROVIDED, No person shall be required to take out any license to sell any wine made from fruit produced by such person's own labor, in this territory. [1873 p 438 § 5; Code 1881, Bagley's Supp. p 27 § 5.]

License required for rural pool halls, billiard halls and bowling alleys: RCW 67.12.110.

67.14.060 Liquor sales, keeping games, without license—Penalty. Any person who shall sell spirituous liquors or wines in greater quantities than one gallon, or shall retail lager beer, or keep a billiard table or tables, or bowling alley or alleys for hire, in any county in this territory, without first taking out a license therefor, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars nor less than five dollars, and shall be committed to the county jail of the county where such offense may be committed, and be placed at hard labor until such fine and cost shall be paid or they may otherwise be discharged by due course of law. [1873 p 439 § 6; Code 1881, Bagley's Supp. p 27 § 6; RRS § 8290. Formerly RCW 67.12.120.]

67.14.070 Purchase of license—Bond. Any person desiring a license to do any business provided by this chapter that a license shall be taken out for doing, shall have the same granted by paying to the county treasurer of the county where he wishes to carry on such business the maximum sum that the county commissioners are by this chapter authorized to fix therefor, and executing such bond, to be approved by the county auditor, as is provided in this chapter, shall be given before license shall issue for carrying on such business. [1873 p 439 § 7; Code 1881, Bagley's Supp. p 27 § 7.]

67.14.080 Duration of license. The licenses authorized to be granted by this chapter shall at the option of the person applying for the same, be granted for six, nine, or twelve months, and the person holding such license may transact the business thereby authorized at any place in the county where such license is granted: PROVIDED, That such business shall not be transacted in but one place in the county at a time. [1873 p 439 § 8; Code 1881, Bagley's Supp. p 27 § 8.]

67.14.090 Issuance of license. Upon presentation to the county auditor of any county of the certificate of the county treasurer that any person has paid into the county treasury the amount provided by this chapter, to be paid for the transaction of any business that a license may be granted to transact, and for the time provided in this chapter, and upon the execution and delivery to such auditor of the bond hereinbefore required, it shall be the duty of such county auditor to issue such license to such person so presenting such certificate, executing and delivering such bond and making application therefor, for the period of time that the money as shown by

the treasurer's certificate would entitle the person so presenting the same to have a license issued for. [1873 p 439 § 9; Code 1881, Bagley's Supp. p 27 § 9.]

67.14.100 When contrivance deemed kept for hire. Any person who shall keep a billiard table or tables, pigeon-hole, Jenny Lind, and all other gaming tables, or bowling alley or bowling alleys in a drinking saloon or house or in a room or building adjoining or attached thereto, and shall allow the same to be used by two or more persons to determine by play thereon which of the persons so playing shall pay for drinks, cigars, or other articles for sale in such saloon or drinking house, shall, within the meaning of this chapter, be deemed to be keeping the same for hire. [1873 p 440 § 10; Code 1881, Bagley's Supp. p 28 § 10; RRS § 8291. Formerly RCW 67.12.130.]

67.14.110 Druggists excepted. None of the provisions of this chapter shall be held to apply to the sale by apothecaries or druggists of spirituous, malt, or fermented liquors or wines for medicinal purposes, upon the prescription of a practicing physician. [1873 p 440 § 11; Code 1881, Bagley's Supp. p 28 § 11.]

67.14.120 Disposition of fees, fines, and forfeitures. All fines and forfeitures collected under this chapter, and all moneys paid into the treasury of any county for licenses as aforesaid, shall be applied to school or county purposes as the local laws of such county may direct: PROVIDED, That this chapter shall not affect or apply to any private or local laws upon the subject of license in any county in this territory except King county, and no license shall be construed to mean more than the house or saloon kept by the same party or parties: PROVIDED, FURTHER, That no part of this chapter shall in any way apply to the county of Island: AND PROVIDED, FURTHER, That all moneys for licenses within the corporate limits of the town of Olympia shall be paid directly into the town treasury of said town as a municipal fund for the use of said town: AND PROVIDED FURTHER, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 226; 1969 ex.s. c 199 § 29; 1873 p 440 § 12; Code 1881, Bagley's Supp. p 28 § 12.]

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

Collection and disposition of fines and costs: Chapter 10.82 RCW.

Chapter 67.16 RCW HORSE RACING

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

(1) "Commission" shall mean the Washington horse racing commission, hereinafter created.

(2) "Parimutuel machine" shall mean and include both machines at the track and machines at the satellite locations, that record parimutuel bets and compute the payoff.

(3) "Person" shall mean and include individuals, firms, corporations and associations.

(4) "Race meet" shall mean and include any exhibition of thoroughbred, quarter horse, paint horse, appaloosa horse racing, arabian horse racing, or standard bred harness horse racing, where the parimutuel system is used. [2004 c 246 § 5; 1991 c 270 § 1; 1985 c 146 § 1; 1982 c 132 § 1; 1969 c 22 § 1; 1949 c 236 § 1; 1933 c 55 § 1; Rem. Supp. 1949 § 8312-1.]

Effective date—2004 c 246: See note following RCW 67.16.270.

Severability—1985 c 146: "If any provisions or application of any provisions of this chapter are invalidated by a court of law, the remainder of the chapter shall not be affected." [1985 c 146 § 15.]

Severability—1982 c 132: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 132 § 6.]

67.16.012 Washington horse racing commission—Creation—Terms—Vacancies—Bonds—Oaths. There is hereby created the Washington horse racing commission, to consist of five commissioners, appointed by the governor and confirmed by the senate. The commissioners shall be citizens, residents, and qualified electors of the state of Washington, one of whom shall be a breeder of race horses and shall be of at least one year's standing. The terms of the members shall be six years. Each member shall hold office until his or her successor is appointed and qualified. Vacancies in the office of commissioner shall be filled by appointment to be made by the governor for the unexpired term. Any commissioner may be removed at any time at the pleasure of the governor. Before entering upon the duties of his or her office, each commissioner shall enter into a surety company bond, to be approved by the governor and attorney general, payable to the state of Washington, in the penal sum of five thousand dollars, conditioned upon the faithful performance of his or her duties and the correct accounting and payment of all sums received and coming within his or her control under this chapter, and in addition thereto each commissioner shall take and subscribe to an oath of office of the same form as that prescribed by law for elective state officers. [1998 c 345 § 4; 1987 c 453 § 2; 1973 1st ex.s. c 216 § 1; 1969 ex.s. c 233 § 1; 1933 c 55 § 2; RRS § 8312-2. Formerly RCW 43.50.010.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Severability—1933 c 55: "In case any part or portion of this act shall be held unconstitutional, such holding shall not affect the validity of this act as a whole or any other part or portion of this act not adjudged unconstitutional. All acts in conflict herewith are hereby repealed." [1933 c 55 § 10.]

67.16.014 Washington horse racing commission—Ex officio nonvoting members. In addition to the commission members appointed under RCW 67.16.012, there shall be four ex officio nonvoting members consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; and (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives. The appointments shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first. Members may be reappointed, and vacancies shall be filled in the same manner as original appointments are made. The ex officio members shall assist in the policy making, rather than administrative, functions of the commission, and shall collect data deemed essential to future legislative proposals and exchange information with the commission. The ex officio members shall be deemed engaged in legislative business while in attendance upon the business of the commission and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the horse racing commission fund as being expenses relative to commission business. [1991 c 270 § 2; 1987 c 453 § 3.]

67.16.015 Washington horse racing commission—Organization—Secretary—Records—Annual reports. The commission shall organize by electing one of its mem-

bers chairman, and shall appoint and employ a secretary, and such other clerical, office, and other help as is necessary in the performance of the duties imposed upon it by this chapter. The commission shall keep detailed records of all meetings and of the business transacted therein, and of all the collections and disbursements. The commission shall prepare and submit an annual report to the governor. All records of the commission shall be public records and as such, subject to public inspection. [1977 c 75 § 80; 1933 c 55 § 3; RRS § 8312-3. Formerly RCW 43.50.020.]

67.16.017 Washington horse racing commission—Compensation and travel expenses. Each member of the Washington horse racing commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 in going to, attending, and returning from meetings of the commission, and travel expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the commission, but in no event shall a commissioner be paid in any one fiscal year in excess of one hundred twenty days, except the chairman of the commission who may be paid for not more than one hundred fifty days. [1984 c 287 § 100; 1975-'76 2nd ex.s. c 34 § 155; 1969 ex.s. c 233 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

67.16.020 Duties of commission—Race meet license—Suspension. (1) It shall be the duty of the commission, as soon as it is possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern the race meets in this state. It shall determine and announce the place, time and duration of race meets for which license fees are exacted; and it shall be the duty of each person holding a license under the authority of this chapter, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with all rules and regulations promulgated and all orders issued by the commission. It shall be unlawful for any person to hold any race meet without having first obtained and having in force and effect a license issued by the commission as in this chapter provided; and it shall be unlawful for any owner, trainer or jockey to participate in race meets in this state without first securing a license therefor from the state racing commission, the fee for which shall be set by the commission which shall offset the cost of administration and shall not be for a period exceeding one year.

(2) The commission shall immediately suspend the license of a person who has been certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for a license under this chapter during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the support order. The procedure in RCW 74.20A.320 is the exclusive administrative remedy for contesting the establish-

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ment of noncompliance with a child support order, and suspension of a license under this subsection, and satisfies the requirements of RCW 34.05.422. [2000 c 86 § 5; 1989 c 385 § 5; 1985 c 146 § 2; 1982 c 32 § 1; 1933 c 55 § 4; RRS § 8312-4. Formerly RCW 67.16.020 and 67.16.030.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 32 § 6.]

67.16.040 Commission to regulate and license meets—Inspection. The commission created by this chapter is hereby authorized, and it shall be its duty, to license, regulate and supervise all race meets held in this state under the terms of this chapter, and to cause the various race courses of the state to be visited and inspected at least once a year. [1933 c 55 § 5; RRS § 8312-5.]

67.16.045 Criminal history records—Dissemination. The commission is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation for suitability for involvement in horse racing activities authorized under this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. [2000 c 204 § 1.]

67.16.050 Application for meet—Issuance of license—Fee—Cancellation, grounds, procedure. Every person making application for license to hold a race meet, under the provisions of this chapter shall file an application with the commission which shall set forth the time, the place, the number of days such meet will continue, and such other information as the commission may require. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue. No person who has been convicted of any crime involving moral turpitude shall be issued a license, nor shall any license be issued to any person who has violated the terms or provisions of this chapter, or any of the rules and regulations of the commission made pursuant thereto, or who has failed to pay to the commission any or all sums required under the provisions of this chapter. The license shall specify the number of days the race meet shall continue and the number of races per day, which shall include not less than six nor more than eleven live races per day, and for which a fee shall be paid daily in advance of five hundred dollars for each live race day for those licensees which had gross receipts from parimutuel machines in excess of fifty million dollars in the previous year and two hundred dollars for each day for meets which had gross receipts from parimutuel machines at or below fifty million dollars in the previous year; in addition any newly authorized live race meets shall pay two hundred dollars per day for the first year: PROVIDED, That if unforeseen obstacles arise, which prevent the holding, or completion of any race meet, the license fee for the meet, or for a portion which cannot be held may be refunded the licensee, if the commission deems the reasons for failure to hold or complete the race meet sufficient. Any unexpired license held by any person who violates any of the provisions of this chapter, or any

of the rules or regulations of the commission made pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this chapter, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three days' notice, in writing, shall be given to the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation. [1997 c 87 § 2; 1985 c 146 § 3; 1982 c 32 § 2; 1973 1st ex.s. c 39 § 1; 1933 c 55 § 6; RRS § 8312-6.]

Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87: See notes following RCW 67.16.200.

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

67.16.060 Prohibited practices—Parimutuel system permitted—Race meet as public nuisance. (1) It shall be unlawful:

(a) To conduct pool selling, bookmaking, or to circulate hand books; or

(b) To bet or wager on any horse race other than by the parimutuel method; or

(c) For any licensee to take more than the percentage provided in RCW 67.16.170 and 67.16.175; or

(d) For any licensee to compute breaks in the parimutuel system at more than ten cents.

(2) Any willful violation of the terms of this chapter, or of any rule, regulation, or order of the commission shall constitute a gross misdemeanor and when such violation is by a person holding a license under this chapter, the commission may cancel the license held by the offender, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the commission by the offender; and the action of the commission in that respect shall be final.

(3) The commission shall have power to exclude from any and all race courses of the state of Washington any person whom the commission deems detrimental to the best interests of racing or any person who willfully violates any of the provisions of this chapter or of any rule, regulation, or order issued by the commission.

(4) Every race meet held in this state contrary to the provisions of this chapter is hereby declared to be a public nuisance. [2008 c 24 § 1; 1991 c 270 § 3; 1985 c 146 § 4; 1979 c 31 § 1; 1933 c 55 § 7; RRS § 8312-7.]

Severability—1985 c 146: See note following RCW 67.16.010.

Gambling: Chapters 9.46 and 9.47 RCW.

67.16.065 Use of public assistance electronic benefit cards prohibited—Licensee to report violations. (1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards for the purpose of parimutuel wagering authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of RCW 74.08.580. [2002 c 252 § 4.]

67.16.070 Races for local breeders. For the purpose of encouraging the breeding, within this state, of valuable thoroughbred, quarter and/or standard bred race horses, at least one race of each day's meet shall consist exclusively of Washington bred horses. [1949 c 236 § 2; 1933 c 55 § 8; Rem. Supp. 1949 § 8312-8.]

67.16.075 Breeder's awards and owner's bonuses—Eligibility—Certification. Only breeders or owners of Washington-bred horses are eligible to demand and receive a breeder's award, an owner's bonus or both. The commission shall promulgate rules and regulations to certify Washington-bred horses. In setting standards to certify horses as Washington-bred, the commission shall seek the advice of and consult with industry, including (1) the Washington Horse Breeders' Association, for thoroughbreds; (2) the Washington State Standardbred Association, for standardbred harness horses; (3) the Northern Racing Quarter Horse Association, for quarter horses; (4) the Washington State Appaloosa Racing Association, for appaloosas; and (5) the Washington State Arabian Horse Racing Association, for arabian horses. [1985 c 146 § 13.]

Severability—1985 c 146: See note following RCW 67.16.010.

67.16.080 Horses to be registered. A quarter horse to be eligible for a race meet herein shall be duly registered with the American Quarter Horse Association. An appaloosa horse to be eligible for a race meet herein shall be duly registered with the National Appaloosa Horse Club or any successor thereto. An arabian horse to be eligible for a race meet herein shall be duly registered with the Arabian Horse Registry of America, or any successor thereto. [1982 c 132 § 2; 1969 c 22 § 2; 1949 c 236 § 3; Rem. Supp. 1949 § 8312-13.]

Severability—1982 c 132: See note following RCW 67.16.010.

67.16.090 Races not limited to horses of same breed. In any race meet in which quarter horses, thoroughbred horses, appaloosa horses, standard bred harness horses, paint horses, or arabian horses participate horses of different breeds may be allowed to compete in the same race if such mixed races are so designated in the racing conditions. [1985 c 146 § 5; 1982 c 132 § 3; 1969 c 22 § 3; 1949 c 236 § 4; Rem. Supp. 1949 § 8312-14.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 132: See note following RCW 67.16.010.

67.16.100 Disposition of fees—"Fair fund." (1) All sums paid to the commission under this chapter, including those sums collected for license fees and excluding those sums collected under RCW 67.16.102 and 67.16.105(3), shall be disposed of by the commission as follows: One hundred percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission.

(2) Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and

be placed in the fair fund created in RCW 15.76.115. The commission may, with the approval of the office of financial management, retain any sum required for working capital. [1998 c 345 § 5; 1995 c 399 § 166; 1991 c 270 § 4. Prior: 1985 c 466 § 67; 1985 c 146 § 6; 1980 c 16 § 1; prior: 1979 c 151 § 169; 1979 c 31 § 2; 1977 c 75 § 81; 1965 c 148 § 7; 1955 c 106 § 5; 1947 c 34 § 2; 1941 c 48 § 4; 1935 c 182 § 30; 1933 c 55 § 9; Rem. Supp. 1947 § 8312-9.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

Severability—1985 c 146: See note following RCW 67.16.010.

State international trade fairs: RCW 43.31.800 through 43.31.850.

Transfer of surplus funds in state trade fair fund to general fund: RCW 43.31.832 through 43.31.834.

67.16.101 Legislative finding—Responsibilities of horse racing commission—Availability of interest on one percent of gross receipts to support nonprofit race meets. The legislature finds that:

(1) A primary responsibility of the horse racing commission is the encouragement of the training and development of the equine industry in the state of Washington whether the result of this training and development results in legalized horse racing or in the recreational use of horses;

(2) The horse racing commission has a further major responsibility to assure that any facility used as a race course should be maintained and upgraded to insure the continued safety of both the public and the horse at any time the facility is used for the training or contesting of these animals;

(3) Nonprofit race meets within the state have difficulty in obtaining sufficient funds to provide the maintenance and upgrading necessary to assure this safety at these facilities, or to permit frequent use of these facilities by 4-H children or other horse owners involved in training; and

(4) The one percent of the parimutuel machine gross receipts used to pay a special purse to the licensed owners of Washington bred horses is available for the purpose of drawing interest, thereby obtaining funds to be disbursed to achieve the necessary support to these nonprofit race meets. [2006 c 174 § 2; 1977 ex.s. c 372 § 1.]

Severability—1977 ex.s. c 372: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 372 § 3.]

67.16.102 Withholding of additional one percent of gross receipts—Payment to owners—Interest payment on one percent and amount retained by commission—Reimbursement for new racetracks. (1) Notwithstanding any other provision of chapter 67.16 RCW to the contrary the licensee shall withhold and shall pay daily to the commission, in addition to the percentages authorized by RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those horses finishing first, second, third and fourth Washington bred only at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the com-

mencement of each race meet: PROVIDED, That nothing in this section shall apply to race meets which are nonprofit in nature, are of ten days or less, and have an average daily handle of less than one hundred twenty thousand dollars.

(2) The additional one percent specified in subsection (1) of this section shall be deposited by the commission in the Washington horse racing commission Washington bred owners' bonus fund account created in RCW 67.16.275. The interest derived from this account shall be distributed annually on an equal basis to those race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less. Prior to receiving a payment under this subsection any new race course shall meet the qualifications set forth in this section for a period of two years. All funds distributed under this subsection shall be used for the purpose of maintaining and upgrading the respective racing courses and equine quartering areas of said nonprofit meets.

(3) The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses.

(4) The commission is authorized to pay at the end of the calendar year one-half of the one percent collected from a new licensee under subsection (1) of this section for reimbursement of capital construction of that new licensee's new race track for a period of fifteen years. This reimbursement does not include interest earned on that one-half of one percent and such interest shall continue to be collected and disbursed as provided in RCW 67.16.101 and subsection (1) of this section. [2004 c 246 § 6; 2001 c 53 § 1; 1991 c 270 § 5; 1982 c 132 § 5; 1979 c 31 § 3; 1977 ex.s. c 372 § 2; 1969 ex.s. c 233 § 3.]

Effective date—2004 c 246: See note following RCW 67.16.270.

Severability—1982 c 132: See note following RCW 67.16.010.

Severability—1977 ex.s. c 372: See note following RCW 67.16.101.

67.16.105 Gross receipts—Commission's percentage—Distributions. (1) Licensees of race meets that are nonprofit in nature and are of ten days or less shall be exempt from payment of a parimutuel tax.

(2) Licensees that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of parimutuel wagering the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.30 percent of the daily gross receipts; and

(b) If the gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.803 percent of the daily gross receipts.

(3) In addition to those amounts in subsection (2) of this section, a licensee shall forward one-tenth of one percent of the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensee. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and

used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment. The commission shall transfer funds generated under subsection (2) of this section equal to the difference between:

- (a)(i) Funds collected under this subsection (3);
 - (ii) Interest earned from the Washington horse racing commission operating account created in RCW 67.16.280; and
 - (iii) Fines imposed by the board of stewards in a calendar year; and
- (b) Three hundred thousand dollars;
- and distribute that amount under this subsection (3).

(4) Beginning July 1, 1999, at the conclusion of each authorized race meet, the commission shall calculate the mathematical average daily gross receipts of parimutuel wagering that is conducted only at the physical location of the live race meet at those race meets of licensees with gross receipts of all their in-state parimutuel machines of more than fifty million dollars. Such calculation shall include only the gross parimutuel receipts from wagering occurring on live racing dates, including live racing receipts and receipts derived from one simulcast race card that is conducted only at the physical location of the live racing meet, which, for the purposes of this subsection, is "the handle." If the calculation exceeds eight hundred eighty-six thousand dollars, the licensee shall within ten days of receipt of written notification by the commission forward to the commission a sum equal to the product obtained by multiplying 0.6 percent by the handle. Sums collected by the commission under this subsection shall be forwarded on the next business day following receipt thereof to the state treasurer to be deposited in the fair fund created in RCW 15.76.115. [2004 c 246 § 7; 2003 1st sp.s. c 27 § 1; 1998 c 345 § 6; 1997 c 87 § 3; 1995 c 173 § 2; 1994 c 159 § 2; 1993 c 170 § 2; 1991 c 270 § 6; 1987 c 347 § 4; 1985 c 146 § 7; 1982 c 32 § 3; 1979 c 31 § 6.]

Effective date—2004 c 246: See note following RCW 67.16.270.

Effective date—2003 1st sp.s. c 27: "This act takes effect January 1, 2004." [2003 1st sp.s. c 27 § 2.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87: See notes following RCW 67.16.200.

Intent—1995 c 173: "It is the intent of the legislature that one-half of the money being paid into the Washington thoroughbred racing fund continue to be directed to enhanced purses, and that one-half of the money being paid into the fund continue to be deposited into an escrow or trust account and used for the construction of a new thoroughbred racing facility in western Washington." [1995 c 173 § 1.]

Effective date—1995 c 173: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 173 § 3.]

Intent—1994 c 159: "It is the intent of the legislature to terminate payments into the Washington thoroughbred racing fund from licensees of non-profit race meets from March 30, 1994, until June 1, 1995, and to provide that one-half of moneys that otherwise would have been paid into the fund be directed to enhanced purses and one-half of moneys be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington." [1994 c 159 § 1.]

Effective date—1994 c 159: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 159 § 4.]

Intent—1993 c 170: "It is the intent of the legislature that one-half of those moneys that would otherwise have been paid into the Washington thoroughbred racing fund be retained for the purpose of enhancing purses, excluding stakes purses, until that time as a permanent thoroughbred racing facility is built and operating in western Washington. It is recognized by the Washington legislature that the enhancement in purses provided in this legislation will not directly benefit all race tracks in Washington. It is the legislature's intent that the horse racing commission work with the horse racing community to ensure that this opportunity for increased purses will not inadvertently injure horse racing at tracks not directly benefiting from this legislation." [1993 c 170 § 1.]

Effective date—1993 c 170: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 170 § 3.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

67.16.110 Broadcasting and motion picture rights reserved. All radio broadcasting rights, and motion picture rights in connection with meets licensed hereunder are reserved to the state and the commission shall lease or license same only to the highest bidder. The exercise of such rights shall at all times be under the supervision of the commission. [1980 c 32 § 10; 1933 c 55 § 11; RRS § 8312-11.]

67.16.130 Nonprofit race meets—Licensing—Fees.

(1) Notwithstanding any other provision of law or of chapter 67.16 RCW, the commission may license race meets which are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty thousand dollars or less, at a daily licensing fee of ten dollars, and the sponsoring nonprofit association shall be exempt from any other fees as provided for in chapter 67.16 RCW or by rule or regulation of the commission: PROVIDED, That the commission may deny the application for a license to conduct a racing meet by a nonprofit association, if same shall be determined not to be a nonprofit association by the Washington state racing commission.

(2) Notwithstanding any other provision of law or of chapter 67.16 RCW or any rule promulgated by the commission, no license for a race meet which is nonprofit in nature, of ten days or less, and which has an average daily handle of one hundred twenty thousand dollars or less, shall be denied for the reason that the applicant has not installed an electric parimutuel tote board.

(3) As a condition to the reduction in fees as provided for in subsection (1) of this section, all fees charged to horse owners, trainers, or jockeys, or any other fee charged for a permit incident to the running of such race meet shall be retained by the commission as reimbursement for its expenses incurred in connection with the particular race meet. [1991 c 270 § 7; 1985 c 146 § 8; 1982 c 32 § 4; 1979 c 31 § 4; 1969 ex.s. c 94 § 2.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

Effective date—1969 ex.s. c 94: "This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1969." [1969 ex.s. c 94 § 3.]

67.16.140 Employees of commission—Employment restriction. No employee of the horse racing commission shall serve as an employee of any track at which that individual will also serve as an employee of the commission. [1973 1st ex.s. c 216 § 3.]

67.16.150 Employees of commission—Commissioners—Financial interest restrictions. No employee nor any commissioner of the horse racing commission shall have any financial interest whatsoever, other than an ownership interest in a community venture, in any track at which said employee serves as an agent or employee of the commission or at any track with respect to a commissioner. [1973 1st ex.s. c 216 § 4.]

67.16.160 Rules implementing conflict of interest laws—Wagers by commissioner. No later than ninety days after July 16, 1973, the horse racing commission shall adopt, pursuant to chapter 34.05 RCW, reasonable rules implementing to the extent applicable to the circumstances of the horse racing commission the conflict of interest laws of the state of Washington as set forth in chapter 42.52 RCW. In no case may a commissioner make any wager on the outcome of a horse race at a race meet conducted under the authority of the commission. [2004 c 274 § 3; 1994 c 154 § 314; 1973 1st ex.s. c 216 § 5.]

Effective date—2004 c 274: See note following RCW 67.16.160.

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

67.16.170 Gross receipts—Retention of percentage by licensees. (1) Licensees of race meets that are nonprofit in nature and are of ten days or less may retain daily for each authorized day of racing fifteen percent of daily gross receipts of all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section may retain daily for each authorized day of parimutuel wagering the following percentages from the daily gross receipts of all its in-state parimutuel machines:

(a) If the daily gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee may retain daily 13.70 percent of the daily gross receipts; and

(b) If the daily gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee may retain daily 14.48 percent of the daily gross receipts. [1998 c 345 § 7; 1991 c 270 § 8; 1987 c 347 § 2; 1985 c 146 § 9; 1983 c 228 § 1; 1979 c 31 § 5.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Severability—1985 c 146: See note following RCW 67.16.010.

67.16.175 Exotic wagers—Retention of percentage by race meets. (1) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain daily for each authorized day of racing an additional six percent of the daily gross receipts of all parimutuel machines from exotic wagers at each race meet.

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(2) Of the amounts retained in subsection (1) of this section, one-sixth shall be used for Washington-bred breeder awards.

(3) Of the amounts retained for breeder awards under subsection (2) of this section, twenty-five percent shall be retained by a new licensee for reimbursement of capital construction of the new licensee's new race track for a period of fifteen years.

(4) As used in this section, "exotic wagers" means any multiple wager. Exotic wagers are subject to approval of the commission. [2001 c 53 § 2; 1991 c 270 § 9. Prior: 1987 c 453 § 1; 1987 c 347 § 3; 1986 c 43 § 1; 1985 c 146 § 10; 1981 c 135 § 1.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1981 c 135: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 135 § 2.]

67.16.200 Parimutuel wagering at satellite locations—Simulcasts. (1) A class 1 racing association licensed by the commission to conduct a race meet may seek approval from the commission to conduct parimutuel wagering at a satellite location or locations within the state of Washington. In order to participate in parimutuel wagering at a satellite location or locations within the state of Washington, the holder of a class 1 racing association license must have conducted at least one full live racing season. All class 1 racing associations must hold a live race meet within each succeeding twelve-month period to maintain eligibility to continue to participate in parimutuel wagering at a satellite location or locations. The sale of parimutuel pools at satellite locations shall be conducted simultaneous to all parimutuel wagering activity conducted at the licensee's live racing facility in the state of Washington. The commission's authority to approve satellite wagering at a particular location is subject to the following limitations:

(a) The commission may approve only one satellite location in each county in the state; however, the commission may grant approval for more than one licensee to conduct wagering at each satellite location. A satellite location shall not be operated within twenty driving miles of any class 1 racing facility. For the purposes of this section, "driving miles" means miles measured by the most direct route as determined by the commission; and

(b) A licensee shall not conduct satellite wagering at any satellite location within sixty driving miles of any other racing facility conducting a live race meet.

(2) Subject to local zoning and other land use ordinances, the commission shall be the sole judge of whether approval to conduct wagering at a satellite location shall be granted.

(3) The licensee shall combine the parimutuel pools of the satellite location with those of the racing facility for the purpose of determining odds and computing payoffs. The amount wagered at the satellite location shall be combined with the amount wagered at the racing facility for the application of take out formulas and distribution as provided in RCW 67.16.102, 67.16.105, 67.16.170, and 67.16.175. A satellite extension of the licensee's racing facility shall be subject to the same application of the rules of racing as the licensee's racing facility.

(4) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to locations outside of the state of Washington approved by the commission and in accordance with the interstate horse racing act of 1978 (15 U.S.C. Sec. 3001 to 3007) or any other applicable laws. The commission may permit parimutuel pools on the simulcast races to be combined in a common pool. A racing association that transmits simulcasts of its races to locations outside this state shall pay at least fifty percent of the fee that it receives for sale of the simulcast signal to the horsemen's purse account for its live races after first deducting the actual cost of sending the signal out of state.

(5) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to licensed racing associations located within the state of Washington and approved by the commission for the receipt of the simulcasts. The commission shall permit parimutuel pools on the simulcast races to be combined in a common pool. The fee for in-state, track-to-track simulcasts shall be five and one-half percent of the gross parimutuel receipts generated at the receiving location and payable to the sending racing association. A racing association that transmits simulcasts of its races to other licensed racing associations shall pay at least fifty percent of the fee that it receives for the simulcast signal to the horsemen's purse account for its live race meet after first deducting the actual cost of sending the simulcast signal. A racing association that receives races simulcast from class 1 racing associations within the state shall pay at least fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price and the actual direct costs of importing the race.

(6) A class 1 racing association may be allowed to import simulcasts of horse races from out-of-state racing facilities. With the prior approval of the commission, the class 1 racing association may participate in a multijurisdictional common pool and may change its commission and breakage rates to achieve a common rate with other participants in the common pool.

(a) The class 1 racing association shall make written application with the commission for permission to import simulcast horse races for the purpose of parimutuel wagering. Subject to the terms of this section, the commission is the sole authority in determining whether to grant approval for an imported simulcast race.

(b) When open for parimutuel wagering, a class 1 racing association which imports simulcast races shall also conduct simulcast parimutuel wagering within its licensed racing enclosure on all races simulcast from other class 1 racing associations within the state of Washington.

(c) On any imported simulcast race, the class 1 racing association shall pay fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price of the imported race and the actual costs of importing and offering the race.

(7) A licensed nonprofit racing association may be approved to import one simulcast race of regional or national interest on each live race day.

(8) For purposes of this section, a class 1 racing association is defined as a licensee approved by the commission to conduct during each twelve-month period at least forty days of live racing. If a live race day is canceled due to reasons directly attributable to acts of God, labor disruptions affecting live race days but not directly involving the licensee or its employees, or other circumstances that the commission decides are beyond the control of the class 1 racing association, then the canceled day counts toward the forty-day requirement. The commission may by rule increase the number of live racing days required to maintain class 1 racing association status or make other rules necessary to implement this section.

(9) This section does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this section does not allow gaming of any nature or scope that was prohibited before April 19, 1997. This section is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of this section is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. Therefore, a licensed class 1 racing association may be approved to disseminate imported simulcast race card programs to satellite locations approved under this section, provided that the class 1 racing association has conducted at least forty live racing days with an average on-track handle on the live racing product of a minimum of one hundred fifty thousand dollars per day during the twelve months immediately preceding the application date. However, to promote the development of a new class 1 racing association facility and to meet the best interests of the Washington equine breeding and racing industries, the commission may by rule reduce the required minimum average on-track handle on the live racing product from one hundred fifty thousand dollars per day to thirty thousand dollars per day.

(10) A licensee conducting simulcasting under this section shall place signs in the licensee's gambling establishment under RCW 9.46.071. The informational signs concerning problem and compulsive gambling must include a toll-free telephone number for problem and pathological gamblers and be developed under RCW 9.46.071.

(11) Chapter 10, Laws of 2001 1st sp. sess. does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before August 23, 2001. Therefore, this section does not allow gaming of any nature or scope that was prohibited before August 23, 2001. Chapter 10, Laws of 2001 1st sp. sess. is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of chapter 10, Laws of 2001 1st sp. sess. is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. [2007 c 100 § 1; 2004 c 274 § 2; 2001 1st sp.s. c 10 § 2; 2000 c 223 § 1; 1997 c 87 § 4; 1991 c 270 § 10; 1987 c 347 § 1.]

Effective date—2007 c 100: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [April 18, 2007]." [2007 c 100 § 2.]

Effective date—2004 c 274: See note following RCW 67.16.260.

Finding—Purpose—2001 1st sp.s. c 10: "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before August 23, 2001. Therefore, this act does not allow gaming of any nature or scope that was prohibited before August 23, 2001." [2001 1st sp.s. c 10 § 1.]

Findings—Purpose—1997 c 87: "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this act does not allow gaming of any nature or scope that was prohibited before April 19, 1997." [1997 c 87 § 1.]

Report by joint legislative audit and review committee—1997 c 87: "(1) The joint legislative audit and review committee shall conduct an evaluation to determine the extent to which this act has achieved the following outcomes:

- (a) The extent to which purses at Emerald Downs, Playfair, and Yakima Meadows have increased as a result of the provisions of this act;
 - (b) The extent to which attendance at Emerald Downs, Playfair, and Yakima Meadows has increased specifically as a result of the provisions of this act;
 - (c) The extent to which the breeding of horses in this state has increased specifically related to the provisions of this act;
 - (d) The extent to which the number of horses running at Emerald Downs, Playfair, and Yakima Meadows has increased specifically as a result of the provisions of this act;
 - (e) The extent to which nonprofit racetracks in this state have benefited from this act including the removal of the cap on the nonprofit race meet purse fund; and
 - (f) The extent to which Emerald Downs, Playfair, and Yakima Meadows are capable of remaining economically viable given the provisions of this act and the increase in competition for gambling or entertainment dollars.
- (2) The joint legislative audit and review committee may provide recommendations to the legislature concerning modifications that could be made to existing state laws to improve the ability of this act to meet the above intended goals.

(3) The joint legislative audit and review committee shall complete a report on its finding by June 30, 2000. The report shall be provided to the appropriate committees of the legislature by December 1, 2000." [1997 c 87 § 5.]

Severability—1997 c 87: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the (2008 Ed.)

application of the provision to other persons or circumstances is not affected." [1997 c 87 § 7.]

Effective date—1997 c 87: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 87 § 8.]

67.16.230 Satellite locations—Fees. The commission is authorized to establish and collect an annual fee for each separate satellite location. The fee to be collected from the licensee shall be set to reflect the commission's expected costs of approving, regulating, and monitoring each satellite location, provided commission revenues generated under RCW 67.16.105 from the licensee shall be credited annually towards the licensee's fee assessment under this section. [1991 c 270 § 11; 1987 c 347 § 7.]

67.16.251 Handicapping contests. Class 1 racing associations may conduct horse race handicapping contests. The commission shall establish rules for the conduct of handicapping contests involving the outcome of multiple horse races. [2005 c 351 § 2.]

67.16.260 Advance deposit wagering. (1) The horse racing commission may authorize advance deposit wagering to be conducted by:

- (a) A licensed class 1 racing association operating a live horse racing facility; or
- (b) The operator of an advance deposit wagering system accepting wagers pursuant to an agreement with a licensed class 1 racing association. The agreement between the operator and the class 1 racing association must be approved by the commission.

(2) An entity authorized to conduct advance deposit wagering under subsection (1) of this section:

- (a) May accept advance deposit wagering for races conducted in this state under a class 1 license or races not conducted within this state on a schedule approved by the class 1 licensee. A system of advance deposit wagering located outside or within this state may not accept wagers from residents or other individuals located within this state, and residents or other individuals located within this state are prohibited from placing wagers through advance deposit wagering systems, except with an entity authorized to conduct advance deposit wagering under subsection (1) of this section;
- (b) May not accept an account wager in an amount in excess of the funds on deposit in the advance deposit wagering account of the individual placing the wager;
- (c) May not allow individuals under the age of twenty-one to open, own, or have access to an advance deposit wagering account;
- (d) Must include a statement in all forms of advertising for advance deposit wagering that individuals under the age of twenty-one are not allowed to open, own, or have access to an advance deposit wagering account; and
- (e) Must verify the identification, residence, and age of the advance deposit wagering account holder using methods and technologies approved by the commission.

(3) As used in this section, "advance deposit wagering" means a form of parimutuel wagering in which an individual deposits money in an account with an entity authorized by the

commission to conduct advance deposit wagering and then the account funds are used to pay for parimutuel wagers made in person, by telephone, or through communication by other electronic means.

(4) In order to participate in advance deposit wagering, the holder of a class 1 racing association license must have conducted at least one full live racing season. All class 1 racing associations must complete a live race meet within each succeeding twelve-month period to maintain eligibility to continue participating in advance deposit wagering.

(5) When more than one class 1 racing association is participating in advance deposit wagering the moneys paid to the racing associations shall be allocated proportionate to the gross amount of all sources of parimutuel wagering during each twelve-month period derived from the associations' live race meets. This percentage must be calculated annually. Revenue derived from advance deposit wagers placed on races conducted by the class 1 racing association shall all be allocated to that association.

(6) The commission shall adopt rules regulating advance deposit wagering. [2007 c 209 § 1; 2004 c 274 § 1.]

Effective date—2004 c 274: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2004]." [2004 c 274 § 4.]

67.16.270 Violation of commission rules—Penalties.

Upon making a determination that an individual or licensee has violated a commission rule, the board of stewards may assess a fine, suspend or revoke a person's license, or any combination of these penalties. The commission must adopt by rule standard penalties for a rules violation. All fines collected must be deposited in the Washington horse racing commission class C purse fund account, created in RCW 67.16.285, and used as authorized in RCW 67.16.105(3). [2004 c 246 § 1.]

Effective date—2004 c 246: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 246 § 9.]

67.16.275 Washington horse racing commission Washington bred owners' bonus fund account. The Washington horse racing commission Washington bred owners' bonus fund account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.102(1) must be deposited into the account. Expenditures from the account may be used only as authorized in RCW 67.16.102. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2004 c 246 § 2.]

Effective date—2004 c 246: See note following RCW 67.16.270.

67.16.280 Washington horse racing commission operating account. (1) The Washington horse racing commission operating account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.105(2) must be deposited into the account. Moneys in the account may be spent only after appropriation.

Except as provided in subsection (2) of this section, expenditures from the account may be used only for operating expenses of the commission. Investment earnings from the account must be distributed to the Washington horse racing commission class C purse fund account, created in RCW 67.16.285, pursuant to RCW 43.79A.040.

(2) In order to provide funding in support of the legislative findings in RCW 67.16.101 (1) through (3), and to provide additional necessary support to the nonprofit race meets beyond the funding provided by RCW 67.16.101(4) and 67.16.102(2), the commission is authorized to spend up to three hundred thousand dollars per fiscal year from its operating account for the purpose of developing the equine industry, maintaining and upgrading racing facilities, and assisting equine health research. When determining how to allocate the funds available for these purposes, the commission shall give first consideration to uses that assist the nonprofit race meets and equine health research. These expenditures may occur only when sufficient funds remain for the continued operations of the horse racing commission. [2006 c 174 § 1; 2004 c 246 § 3.]

Effective date—2004 c 246: See note following RCW 67.16.270.

67.16.285 Washington horse racing commission class C purse fund account. The Washington horse racing commission class C purse fund account is created in the custody of the state treasurer. All receipts from RCW 67.16.105(3) must be deposited into the account. Expenditures from the account may be used only for the purposes provided in RCW 67.16.105(3). Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2004 c 246 § 4.]

Effective date—2004 c 246: See note following RCW 67.16.270.

67.16.300 Industrial insurance premium assessments. In addition to the license fees authorized by this chapter, the commission shall collect the industrial insurance premium assessments required under RCW 51.16.210 from trainers, grooms, and owners. The industrial insurance premium assessments required under RCW 51.16.210 shall be retroactive to January 1, 1989, and shall be collected from all licensees whose licenses were issued after that date. The commission shall deposit the industrial insurance premium assessments in the industrial insurance trust fund as required by rules adopted by the department of labor and industries. [1989 c 385 § 2.]

67.16.900 Severability—General repealer—1933 c 55. In case any part or portion of this chapter shall be held unconstitutional, such holding shall not affect the validity of this chapter as a whole or any other part or portion of this chapter not adjudged unconstitutional. All acts in conflict herewith are hereby repealed. [1933 c 55 § 10; RRS § 8312-10.]

Chapter 67.17 RCW

LIVE HORSE RACING COMPACT

Sections

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67.17.005 Purpose. The purposes of the live horse racing compact are to:

(1) Establish uniform requirements among the party states for the licensing of participants in live horse racing with pari-mutuel wagering, and ensure that all such participants who are licensed pursuant to the compact meet a uniform minimum standard of honesty and integrity;

(2) Facilitate the growth of the horse racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live horse racing with pari-mutuel wagering;

(3) Authorize the Washington horse racing commission to participate in the live horse racing compact;

(4) Provide for participation in the live horse racing compact by officials of the party states, and permit those officials, through the compact committee established by this chapter, to enter into contracts with governmental agencies and non-governmental persons to carry out the purposes of the live horse racing compact; and

(5) Establish the compact committee created by this chapter as an interstate governmental entity duly authorized to request and receive criminal history record information from the federal bureau of investigation and other state and local law enforcement agencies. [2001 c 18 § 1.]

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

(1) "Compact committee" means the organization of officials from the party states that is authorized and empowered by the live horse racing compact to carry out the purposes of the compact.

(2) "Official" means the appointed, elected, designated, or otherwise duly selected member of a racing commission or the equivalent thereof in a party state who represents that party state as a member of the compact committee.

(3) "Participants in live racing" means participants in live horse racing with pari-mutuel wagering in the party states.

(4) "Party state" means each state that has enacted the live horse racing compact.

(5) "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States. [2001 c 18 § 2.]

67.17.020 Compact effective date. The live horse racing compact shall come into force when enacted by any four states. Thereafter, the compact shall become effective as to any other state upon: (1) That state's enactment of the compact; and (2) the affirmative vote of a majority of the officials on the compact committee as provided in RCW 67.17.070. [2001 c 18 § 3.]

67.17.030 Eligibility to enter compact. Any state that has adopted or authorized horse racing with pari-mutuel wagering is eligible to become party to the live horse racing compact. [2001 c 18 § 4.]

67.17.040 Withdrawal from compact. Any party state may withdraw from the live horse racing compact by enacting a statute repealing the compact, but no such withdrawal is effective until the head of the executive branch of the withdrawing state has given notice in writing of such withdrawal to the head of the executive branch of all other party states. If, as a result of withdrawals, participation in the compact decreases to less than three party states, the compact no longer shall be in force and effect unless and until there are at least three or more party states again participating in the compact. [2001 c 18 § 5.]

67.17.050 Creation of compact committee. (1) There is created an interstate governmental entity to be known as the "compact committee" which shall be comprised of one official from the racing commission or its equivalent in each party state who shall be appointed, serve, and be subject to removal in accordance with the laws of the party state he or she represents. Under the laws of his or her party state, each official shall have the assistance of his or her state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his or her responsibilities as the representative from his or her state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent thereof from his or her state shall designate another of its members as an alternate who shall serve in his or her place and represent the party state as its official on the compact committee until that racing commission or equivalent thereof determines that the original representative official is able once again to perform his or her duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the affected state's racing commission or equivalent thereof to the compact committee as the committee's bylaws may provide.

(2) The governor shall appoint the official to represent the state of Washington on the compact committee for a term of four years. No official may serve more than three consecutive terms. A vacancy shall be filled by the governor for the unexpired term. [2001 c 18 § 6.]

67.17.060 Compact committee powers and duties. In order to carry out the live horse racing compact, the compact committee is granted the power and duty to:

(1) Determine which categories of participants in live racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, should be licensed by the compact committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category. However, with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements;

(2) Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the federal bureau of investigation and relevant state and local law enforcement agencies, and, where appropriate, from the royal Canadian mounted police and law enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the compact committee under subsection (1) of this section. Only officials on, and employees of, the compact committee may receive and review such criminal history record information, and those officials and employees may use that information only for the purposes of the compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official on or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees, or its designee and shall be forwarded to a state identification bureau, or to an association of state officials regulating pari-mutuel wagering designated by the attorney general of the United States, for submission to the federal bureau of investigation for a criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the federal bureau of investigation or other receiving law enforcement agency;

(3) Issue licenses to, and renew the licenses of, participants in live racing listed in subsection (1) of this section who are found by the compact committee to have met the licensure and renewal requirements established by the compact committee. The compact committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the compact committee shall notify the applicant that it will not be able to process his or her application further. Such notification does not constitute and shall not be considered to be the denial of a license. Any such applicant has the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the

compact committee using the requirements established under subsection (1) of this section;

(4) Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to carry out the compact;

(5) Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of the compact, prescribe their powers, duties, and qualifications, hire persons to fill those offices, employments, and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits, and other conditions of employment of its officers, employees, and other positions;

(6) Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation, or other entity;

(7) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the compact;

(8) Charge a fee to each applicant for an initial license or renewal of a license; and

(9) Receive other funds through gifts, grants, and appropriations. [2001 c 18 § 7.]

67.17.070 Compact committee voting requirements.

(1) Each official is entitled to one vote on the compact committee.

(2) All action taken by the compact committee with regard to the addition of party states as provided in RCW 67.17.020, the licensure of participants in live racing, and the receipt and disbursement of funds require a majority vote of the total number of officials, or their alternates, on the compact committee. All other action by the compact committee requires a majority vote of those officials, or their alternates, present and voting.

(3) No action of the compact committee may be taken unless a quorum is present. A majority of the officials, or their alternates, on the compact committee constitutes a quorum. [2001 c 18 § 8.]

67.17.080 Compact committee governance. (1) The compact committee shall elect annually from among its members a chair, a vice-chair, and a secretary/treasurer.

(2) The compact committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials, or their alternates, on the compact committee at that time and shall have the power by the same vote to amend and rescind such bylaws. The compact committee shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the secretary of state or equivalent agency of each of the party states.

(3) The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and the executive director's support staff.

(4) Employees of the compact committee are considered governmental employees. [2001 c 18 § 9.]

67.17.090 Liability of compact committee employees or officials. No official of a party state or employee of the compact committee shall be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his or her responsibilities and duties under the live horse racing compact. [2001 c 18 § 10.]

67.17.100 Conditions and terms for participating states. (1) By enacting the compact, each party state:

(a) Agrees: (i) To accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing under the compact committee's licensure requirements; and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his or her alternate;

(b) Agrees not to treat a notification to an applicant by the compact committee under RCW 67.17.060(3) that the compact committee will not be able to process the application further as the denial of a license, or to penalize such an applicant in any other way based solely on such a decision by the compact committee; and

(c) Reserves the right: (i) To charge a fee for the use of a compact committee license in that state; (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked; (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee; and (iv) to establish its own licensure standards for the licensure of nonracing employees at horse racetracks and employees at separate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.

(2) No party state shall be held liable for the debts or other financial obligations incurred by the compact committee. [2001 c 18 § 11.]

67.17.110 Cooperation by governmental entities with compact committee. All departments, agencies, and officers of the state of Washington and its political subdivisions are authorized to cooperate with the compact committee in furtherance of any of its activities of the live horse racing compact. [2001 c 18 § 12.]

67.17.120 Impact on horse racing commission. Nothing in this chapter shall be construed to diminish or limit the powers and responsibilities of the Washington horse racing commission established in chapter 67.16 RCW or to invalidate any action of the Washington horse racing commission previously taken, including without limitation any regulation issued by the commission. [2001 c 18 § 13.]

67.17.130 Construction and severability of language. This chapter shall be liberally construed so as to effectuate its purposes. The provisions of this chapter are severable, and, if any phrase, clause, sentence, or provision of the compact is (2008 Ed.)

declared to be contrary to the Constitution of the United States or of any party state, or the applicability of the live horse racing compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If all or some portion of the live horse racing compact is held to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [2001 c 18 § 14.]

67.17.900 Short title—2001 c 18. This act may be known and cited as the live horse racing compact. [2001 c 18 § 15.]

Chapter 67.20 RCW

PARKS, BATHING BEACHES, PUBLIC CAMPS

Sections

67.20.010	Authority to acquire and operate certain recreational facilities—Charges—Eminent domain.
67.20.015	Authority to establish and operate public camps—Charges.
67.20.020	Contracts for cooperation.
67.20.030	Scope of chapter.

County parks and recreational facilities: Chapter 36.68 RCW.

Eminent domain: Title 8 RCW.

Metropolitan park districts: Chapter 35.61 RCW.

Recreation districts act for counties: Chapter 36.69 RCW.

State parks and recreation commission: Chapter 79A.05 RCW.

67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain. Any city in this state acting through its city council, or its board of park commissioners when authorized by charter or ordinance, any separately organized park district acting through its board of park commissioners or other governing officers, any school district acting through its board of school directors, any county acting through its board of county commissioners, any park and recreation service area acting through its governing body, and any town acting through its town council shall have power, acting independently or in conjunction with the United States, the state of Washington, any county, city, park district, school district or town or any number of such public organizations to acquire any land within this state for park, playground, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beach or public camp purposes and roads leading from said parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, or public camps to nearby highways by donation, purchase or condemnation, and to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, roads and public camps upon any such land, including the power to enact and enforce such police regulations not inconsistent with the constitution and laws of the state of Washington, as are deemed necessary for the government and control of the same. The power of eminent domain herein granted shall not extend to any land outside the territorial limits of the governmental unit or units

exercising said power. [1988 c 82 § 7; 1949 c 97 § 1; 1921 c 107 § 1; Rem. Supp. 1949 § 9319. FORMER PART OF SECTION: 1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321 now codified as RCW 67.20.015.]

67.20.015 Authority to establish and operate public camps—Charges. Any city, town, county, separately organized park district, or school district shall have power to establish, care for, control, supervise, improve, operate and maintain a public camp, or camps anywhere within the state, and to that end may make, promulgate and enforce any reasonable rules and regulations in reference to such camps and make such charges for the use thereof as may be deemed expedient. [1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321. Formerly RCW 67.20.010, part.]

67.20.020 Contracts for cooperation. Any city, park district, school district, county or town shall have power to enter into any contract in writing with any organization or organizations referred to in this chapter for the purpose of conducting a recreation program or exercising any other power granted by this chapter. In the conduct of such recreation program property or facilities owned by any individual, group or organization, whether public or private, may be utilized by consent of the owner. [1949 c 97 § 2; 1921 c 107 § 2; Rem. Supp. 1949 § 9320.]

67.20.030 Scope of chapter. This chapter shall not be construed to repeal or limit any existing power of any city or park district, but to grant powers in addition thereto. [1949 c 97 § 4; 1921 c 107 § 4; Rem. Supp. 1949 § 9319 note.]

Chapter 67.24 RCW

FRAUD IN SPORTING CONTEST

Sections

- 67.24.010 Commission of—Felony.
67.24.020 Scope of 1945 c 107.

67.24.010 Commission of—Felony. Every person who shall give, offer, receive, or promise, directly or indirectly, any compensation, gratuity, or reward, or make any promise thereof, or who shall fraudulently commit any act by trick, device, or bunco, or any means whatsoever with intent to influence or change the outcome of any sporting contest between people or between animals, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not less than five years. [2003 c 53 § 302; 1992 c 7 § 43; 1945 c 107 § 1; 1941 c 181 § 1; Rem. Supp. 1945 § 2499-1.]

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

67.24.020 Scope of 1945 c 107. All of the acts and statutes in conflict herewith are hereby repealed except chapter 55, Laws of 1933 [chapters *43.50 and 67.16 RCW] and amendments thereto. [1945 c 107 § 2; Rem. Supp. 1945 § 2499-1 note.]

***Reviser's note:** Chapter 43.50 RCW is now codified as RCW 67.16.012 and 67.16.015.

Chapter 67.28 RCW

PUBLIC STADIUM, CONVENTION, ARTS, AND TOURISM FACILITIES

Sections

- 67.28.080 Definitions.
67.28.120 Authorization to acquire and operate tourism-related facilities.
67.28.125 Selling convention center facilities—Smaller counties within national scenic areas.
67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.
67.28.140 Declaration of public purpose—Right of eminent domain.
67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment.
67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.
67.28.170 Power to lease all or part of facilities—Disposition of proceeds.
67.28.180 Lodging tax authorized—Conditions.
67.28.1801 Credit against sales tax due on same lodging.
67.28.181 Special excise taxes authorized—Rates—Credits for city or town tax by county—Limits.
67.28.1815 Revenue—Special fund—Uses for tourism promotion and tourism facility acquisition and operation.
67.28.1816 Lodging tax—Tourism promotion.
67.28.1817 Lodging tax advisory committee in large municipalities—Submission of proposal for imposition of or change in tax or use—Comments.
67.28.183 Exemption from tax—Emergency lodging for homeless persons—Conditions.
67.28.184 Use of hotel-motel tax revenues by cities for professional sports franchise facilities limited.
67.28.186 Exemption from tax—Temporary medical housing.
67.28.200 Special excise tax authorized—Exemptions may be established—Collection.
67.28.220 Powers additional and supplemental to other laws.
67.28.225 Compliance with prevailing wages on public works provisions.
67.28.8001 Reports by municipalities—Summary and analysis by department of community, trade, and economic development.
67.28.900 Severability—1965 c 15.
67.28.910 Severability—1967 c 236.
67.28.911 Severability—1973 2nd ex.s. c 34.
67.28.912 Severability—1975 1st ex.s. c 225.
67.28.913 Severability—1988 ex.s. c 1.

Multipurpose community centers: Chapter 35.59 RCW.

Stadiums, coliseums, powers of counties to build and operate: RCW 36.68.090.

Tax changes: RCW 82.14.055.

Tax rate calculation errors: RCW 82.32.430.

67.28.080 Definitions. (Expires June 30, 2013.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.

(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor that is: (a)(i) Owned by a public entity; (ii) owned by a nonprofit organization described under section 501(c)(3) of the federal internal revenue code of 1986, as amended; or (iii) owned by a nonprofit organization described under section 501(c)(6) of the federal internal revenue code of 1986, as amended, a business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce and (b) used to support tourism, performing arts, or to accommodate tourist activities.

(8) "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.

(9) Amendments made in section 1, chapter 497, Laws of 2007 expire June 30, 2013. [2007 c 497 § 1; 1997 c 452 § 2; 1991 c 357 § 1; 1967 c 236 § 1.]

Intent—1997 c 452: "The intent of this act is to provide uniform standards for local option excise taxation of lodging." [1997 c 452 § 1.]

Severability—1997 c 452: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 452 § 24.]

Savings—1997 c 452: See note following RCW 67.28.181.

Effective date, application—1991 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect after immediately [effect immediately (May 21, 1991)]. This act applies retroactively to all actions taken under chapter 67.28 RCW on or after January 1, 1990." [1991 c 357 § 5.]

Clarification of permitted use or purpose: 2000 c 256.

67.28.080 Definitions. (Effective June 30, 2013.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.

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(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.

(8) "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture. [1997 c 452 § 2; 1991 c 357 § 1; 1967 c 236 § 1.]

Intent—1997 c 452: "The intent of this act is to provide uniform standards for local option excise taxation of lodging." [1997 c 452 § 1.]

Severability—1997 c 452: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 452 § 24.]

Savings—1997 c 452: See note following RCW 67.28.181.

Effective date, application—1991 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect after immediately [effect immediately (May 21, 1991)]. This act applies retroactively to all actions taken under chapter 67.28 RCW on or after January 1, 1990." [1991 c 357 § 5.]

Clarification of permitted use or purpose: 2000 c 256.

67.28.120 Authorization to acquire and operate tourism-related facilities. Any municipality is authorized either individually or jointly with any other municipality, or person, or any combination thereof, to acquire and to operate tourism-related facilities, whether located within or without such municipality. [1997 c 452 § 7; 1979 ex.s. c 222 § 1; 1973 2nd ex.s. c 34 § 1; 1967 c 236 § 5.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.125 Selling convention center facilities—Smaller counties within national scenic areas. The provisions of this section shall apply to any municipality in any county located in whole or in part in a national scenic area when the population of the county is less than 20,000. The provisions of this section shall also apply to the county when the county contains in whole or in part a national scenic area and the population of the county is less than 20,000.

(1) The legislative body of any municipality or the county legislative authority is authorized to sell to any public or private person, including a corporation, partnership, joint venture, or any other business entity, any convention center facility it owns in whole or in part.

(2) The price and other terms and conditions shall be as the legislative body or authority shall determine. [1991 c 357 § 2.]

Effective date, application—1991 c 357: See note following RCW 67.28.080.

67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.

Any municipality, taxing district, or municipal corporation is authorized to convey or lease any lands, properties or facilities to any other municipality for the development by such other municipality of tourism-related facilities or to provide for the joint use of such lands, properties or facilities, or to participate in the financing of all or any part of the public facilities on such terms as may be fixed by agreement between the respective legislative bodies without submitting the matter to the voters of such municipalities, unless the provisions of general law applicable to the incurring of municipal indebtedness shall require such submission. [1997 c 452 § 8; 1979 ex.s. c 222 § 2; 1973 2nd ex.s. c 34 § 2; 1967 c 236 § 6.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.140 Declaration of public purpose—Right of eminent domain. The acts authorized herein are declared to be strictly for the public purposes of the municipalities authorized to perform same. Any municipality as defined in RCW 67.28.080 shall have the power to acquire by condemnation and purchase any lands and property rights, both within and without its boundaries, which are necessary to carry out the purposes of this chapter. Such right of eminent domain shall be exercised by the legislative body of each such municipality in the manner provided by applicable general law or under chapter 8.12 RCW. [1967 c 236 § 7.]

67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment. To carry out the purposes of this chapter any municipality shall have the power to issue general obligation bonds within the limitations now or hereafter prescribed by the laws of this state. Such general obligation bonds shall be authorized, executed, issued and made payable as other general obligation bonds of such municipality: PROVIDED, That the governing body of such municipality may provide that such bonds mature in not to exceed forty years from the date of their issue, may provide that such bonds also be made payable from any special taxes provided for in this chapter, and may provide that such bonds also be made payable from any otherwise unpledged revenue which may be derived from the ownership or operation of any properties. [1997 c 452 § 9; 1984 c 186 § 56; 1967 c 236 § 8.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Purpose—1984 c 186: See note following RCW 39.46.110.

67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions. (1) To carry out the purposes of this chapter the legislative body of any municipality shall have the power to issue revenue bonds without submitting the matter to the voters of the municipality: PROVIDED, That the legislative body shall create a special fund or funds for the sole purpose of paying the principal of and

interest on the bonds of each such issue, into which fund or funds the legislative body may obligate the municipality to pay all or part of amounts collected from the special taxes provided for in this chapter, and/or to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, added to, repaired or replaced pursuant to this chapter, as the legislative body shall determine: PROVIDED, FURTHER, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue pledged to such fund.

Such revenue bonds and the interest thereon issued against such fund or funds shall constitute a claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030, or may be bearer bonds; shall be in such denominations as the legislative body shall deem proper; shall be payable at such time or times and at such places as shall be determined by the legislative body; shall be executed in such manner and bear interest at such rate or rates as shall be determined by the legislative body.

Such revenue bonds shall be sold in such manner as the legislative body shall deem to be for the best interests of the municipality, either at public or private sale.

The legislative body may at the time of the issuance of such revenue bonds make such covenants with the owners of said bonds as it may deem necessary to secure and guaranty the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guaranty the payment of such principal and interest, to pledge and apply thereto part or all of any lawfully authorized special taxes provided for in this chapter, to maintain rates, charges or rentals sufficient with other available moneys to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bond owners, to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the legislative body may deem necessary to accomplish the most advantageous sale of such bonds. The legislative body may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The legislative body may include in the principal amount of any such revenue bond issue an amount for engineering, architectural, planning, financial, legal, and other services and charges incident to the acquisition or construction of public stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities, an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any facilities to be financed from the proceeds of such issue plus six months. The legisla-

tive body may, if it deems it in the best interest of the municipality, provide in any contract for the construction or acquisition of any facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds.

If the municipality shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the owner of any such bond may bring action against the municipality and compel the performance of any or all of such covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1997 c 452 § 10; 1983 c 167 § 168; 1979 ex.s. c 222 § 3; 1973 2nd ex.s. c 34 § 3; 1967 c 236 § 9.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

67.28.170 Power to lease all or part of facilities—Disposition of proceeds. The legislative body of any municipality owning or operating tourism-related facilities acquired under this chapter shall have power to lease to any municipality or person, or to contract for the use or operation by any municipality or person, of all or any part of the facilities authorized by this chapter, including but not limited to parking facilities, concession facilities of all kinds and any property or property rights appurtenant to such tourism-related facilities, for such period and under such terms and conditions and upon such rentals, fees and charges as such legislative body may determine, and may pledge all or any portion of such rentals, fees and charges and all other revenue derived from the ownership and/or operation of such facilities to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for authorized tourism-related facilities purposes. [1997 c 452 § 11; 1979 ex.s. c 222 § 4; 1973 2nd ex.s. c 34 § 4; 1967 c 236 § 10.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.180 Lodging tax authorized—Conditions. (Expires July 1, 2009.) (1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and inter-

est on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; (ii) in any county with a population of one million or more, for repayment or refinancing of bonded indebtedness incurred prior to January 1, 1997, for any purpose authorized by this section or relating to stadium repairs or rehabilitation, including but not limited to the cost of settling legal claims, reimbursing operating funds, interest payments on short-term loans, and any other purpose for which such debt has been incurred if the county has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.030; or (iii) in other counties, for county-owned facilities for agricultural promotion until January 1, 2009, and thereafter for any purpose authorized in this chapter.

A county is exempt under this subsection with respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013. If any county located east of the crest of the Cascade mountains has levied the tax authorized by this section and has, prior to June 26, 1975, pledged the tax revenue for payment of principal and interest on city revenue or general obligation bonds, the county is exempt under this subsection with respect to revenue or general obligation bonds issued after January 1, 2007, only if the bonds mature before January 1, 2021. Such a county may only use funds under this subsection (2)(b) for constructing or improving facilities authorized under this chapter, including county-owned facilities for agricultural promotion, and must perform an annual financial audit of organizations receiving funding on the use of the funds.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c)(i) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt.

(ii) No city within a county with a population of one million or more may levy the tax authorized by this section.

(iii) However, in the event that any city in a county described in (c)(i) or (ii) of this subsection (2) has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year before 2013 in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, heritage and preservation programs, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium purposes as authorized under subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion. If all or part of the debt on the stadium is refinanced, all revenues under this subsection (3)(a)(ii) shall be used to retire the debt.

(b) From January 1, 2013, through December 31, 2015, in a county with a population of one million or more, all revenues under this section shall be used to retire the debt on the stadium, until the debt on the stadium is retired. On and after the date the debt on the stadium is retired, and through December 31, 2015, all revenues under this section in a county of a [one] million or more shall be deposited in the special account under (f) of this subsection.

(c) From January 1, 2016, through December 31, 2020, in a county with a population of one million or more, all revenues under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(d) On and after January 1, 2021, at least thirty-seven and one-half percent of revenues under this section in a county of a [one] million or more shall be deposited in the special account under (f) of this subsection.

(e) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cul-

tural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)(e) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)(e) must be financially stable and have at least the following:

(i) A legally constituted and working board of directors;

(ii) A record of artistic, heritage, or cultural accomplishments;

(iii) Been in existence and operating for at least two years;

(iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;

(v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and

(vi) Evidence that there has been independent financial review of the organization.

(f) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through July 1, 2008, shall be deposited in a special account. The account may only be used for the purposes of (a)(i) of this subsection.

(g) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

(h) Moneys distributed to art museums, cultural museums, heritage museums, heritage and preservation programs, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(i) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a class AA county shall be allocated to nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the class AA county.

(j) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(k) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(l) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)(l) does not apply in respect to a public stadium under

chapter 36.102 RCW transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW or a stadium and exhibition center.

(m) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(m) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. Section 2, chapter 264, Laws of 2008 expires July 1, 2009. [2008 c 264 § 2; 2007 c 189 § 1; 2002 c 178 § 2; 1997 c 220 § 501 (Referendum Bill No. 48, approved June 17, 1997); 1995 1st sp.s. c 14 § 10; 1995 c 386 § 8. Prior: 1991 c 363 § 139; 1991 c 336 § 1; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

Findings—Intent—2008 c 264: "The legislature finds that locally funded heritage and arts programs build vital communities and preserve community history and culture. It further finds that within existing revenue sources, local jurisdictions should have the capability to preserve these programs in the future.

The locally funded heritage and arts program in the state's most populated county was established in 1989 using a portion of hotel-motel tax revenues. This program was structured to provide for inflation and an expanding population of the county.

In 1997, the legislature acted to assure the future of the heritage and arts program by creating an endowment fund using these same local funds. This funding mechanism has proved to be inadequate and unless immediately modified will result in a seventy-five percent reduction of funds for the program.

This act will provide a stable and predictable flow of funds to the program, provide for inflation and an expanding population, and assure the future viability of the program within existing revenue flows." [2008 c 264 § 1.]

Effective date—2008 c 264: "This act takes effect July 1, 2008." [2008 c 264 § 5.]

Retroactive application—2002 c 178: "This act applies retroactively to events occurring on and after September 1, 2001." [2002 c 178 § 6.]

Effective date—2002 c 178: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 178 § 7.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Effective date—1991 c 336: "This act shall take effect January 1, 1992." [1991 c 336 § 3.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—1986 c 104: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1986." [1986 c 104 § 2.]

Severability—1985 c 272: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or (2008 Ed.)

the application of the provision to other persons or circumstances is not affected." [1985 c 272 § 2.]

Contracts for marketing facility and services: RCW 67.40.120.

Lodging tax imposed in King county for state convention and trade center: RCW 67.40.090.

67.28.180 Lodging tax authorized—Conditions. (Effective July 1, 2009.) (1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; (ii) in any county with a population of one million or more, for repayment or refinancing of bonded indebtedness incurred prior to January 1, 1997, for any purpose authorized by this section or relating to stadium repairs or rehabilitation, including but not limited to the cost of settling legal claims, reimbursing operating funds, interest payments on short-term loans, and any other purpose for which such debt has been incurred if the county has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.030; or (iii) in other counties, for county-owned facilities for agricultural promotion until January 1, 2009, and thereafter for any purpose authorized in this chapter.

A county is exempt under this subsection with respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013. If

any county located east of the crest of the Cascade mountains has levied the tax authorized by this section and has, prior to June 26, 1975, pledged the tax revenue for payment of principal and interest on city revenue or general obligation bonds, the county is exempt under this subsection with respect to revenue or general obligation bonds issued after January 1, 2007, only if the bonds mature before January 1, 2021. Such a county may only use funds under this subsection (2)(b) for constructing or improving facilities authorized under this chapter, including county-owned facilities for agricultural promotion, and must perform an annual financial audit of organizations receiving funding on the use of the funds.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c)(i) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt.

(ii) If bonds have been issued under RCW 43.99N.020 and any necessary property transfers have been made under RCW 36.102.100, no city within a county with a population of one million or more may levy the tax authorized by this section before January 1, 2021.

(iii) However, in the event that any city in a county described in (i) or (ii) of this subsection (2)(c) has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year before 2013 in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Sta-

dium purposes as authorized under subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion. If all or part of the debt on the stadium is refinanced, all revenues under this subsection (3)(a)(ii) shall be used to retire the debt.

(b) From January 1, 2013, through December 31, 2015, in a county with a population of one million or more, all revenues under this section shall be used to retire the debt on the stadium, or deposited in the stadium and exhibition center account under RCW 43.99N.060 after the debt on the stadium is retired.

(c) From January 1, 2016, through December 31, 2020, in a county with a population of one million or more, all revenues under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(d) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)(d) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)(d) must be financially stable and have at least the following:

(i) A legally constituted and working board of directors;

(ii) A record of artistic, heritage, or cultural accomplishments;

(iii) Been in existence and operating for at least two years;

(iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;

(v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and

(vi) Evidence that there has been independent financial review of the organization.

(e) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through December 31, 2012, shall be deposited in an account and shall be used to establish an endowment. Principal in the account shall remain permanent and irreducible. The earnings from investments of balances in the account may only be used for the purposes of (a)(i) of this subsection.

(f) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

(g) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(h) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a class AA county shall be allocated to nonprofit organizations formed for the express purpose of tourism pro-

motion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the class AA county.

(i) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(j) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(k) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)(k) does not apply in respect to a public stadium under chapter 36.102 RCW transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW or a stadium and exhibition center.

(l) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(l) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. [2007 c 189 § 1; 2002 c 178 § 2; 1997 c 220 § 501 (Referendum Bill No. 48, approved June 17, 1997); 1995 1st sp.s. c 14 § 10; 1995 c 386 § 8. Prior: 1991 c 363 § 139; 1991 c 336 § 1; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

Retroactive application—2002 c 178: "This act applies retroactively to events occurring on and after September 1, 2001." [2002 c 178 § 6.]

Effective date—2002 c 178: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 178 § 7.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Effective date—1991 c 336: "This act shall take effect January 1, 1992." [1991 c 336 § 3.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

(2008 Ed.)

Effective date—1986 c 104: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1986." [1986 c 104 § 2.]

Severability—1985 c 272: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 272 § 2.]

Contracts for marketing facility and services: RCW 67.40.120.

Lodging tax imposed in King county for state convention and trade center: RCW 67.40.090.

67.28.1801 Credit against sales tax due on same lodging. Tax collected under RCW 67.28.180 on a sale of lodging shall be credited against the amount of sales tax due to the state under chapter 82.08 RCW on the same sale of lodging. [1998 c 35 § 2.]

Validation of taxes imposed and collected and actions taken—Effective date—1998 c 35: See notes following RCW 67.28.181.

67.28.181 Special excise taxes authorized—Rates—Credits for city or town tax by county—Limits. (1) The legislative body of any municipality may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW. The rate of tax shall not exceed the lesser of two percent or a rate that, when combined with all other taxes imposed upon sales of lodging within the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals twelve percent. A tax under this chapter shall not be imposed in increments smaller than tenths of a percent.

(2) Notwithstanding subsection (1) of this section:

(a) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100 or both with a total rate exceeding four percent before July 27, 1997, such total authorization shall continue through January 31, 1999, and thereafter the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 31, 1999.

(b) If a city or town, other than a municipality imposing a tax under (a) of this subsection, is located in a county that imposed taxes under this chapter with a total rate of four percent or more on January 1, 1997, the city or town may not impose a tax under this section.

(c) If a city has a population of four hundred thousand or more and is located in a county with a population of one million or more, the rate of tax imposed under this chapter by the city shall not exceed the lesser of four percent or a rate that, when combined with all other taxes imposed upon sales of lodging in the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals fifteen and two-tenths percent.

(d) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100, or both, at a rate equal to six percent before January 1, 1998, the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 1, 1998.

(3) Any county ordinance or resolution adopted under this section shall contain a provision allowing a credit against the county tax for the full amount of any city or town tax imposed under this section upon the same taxable event. [2004 c 79 § 8; 1998 c 35 § 1; 1997 c 452 § 3.]

Validation of taxes imposed and collected and actions taken—1998 c 35: "If a municipality was authorized to impose taxes under chapter 67.28 RCW or RCW 67.40.100 or both with a total rate exceeding four percent before July 27, 1997, any taxes imposed and collected by the municipality on or after July 27, 1997, are validated by this act to the extent the taxes were imposed at rates that would be permitted under chapter 67.28 RCW as amended by this act. All actions taken in connection with the collection and administration of taxes validated under this section, including crediting the taxes against the amount of sales taxes due to the state under chapter 82.08 RCW, are also validated by this act to the extent the actions taken would be permitted under chapter 67.28 RCW as amended by this act." [1998 c 35 § 4.]

Effective date—1998 c 35: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 1998]." [1998 c 35 § 5.]

Savings—1997 c 452: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections. As provided in RCW 1.12.020, the sections amended or repealed in this act are continued by section 3 of this act for purposes such as redemption payments on bonds issued in reliance on taxes imposed under those sections. Any moneys held in a fund created under a section repealed in this act shall be deposited in a fund created under section 4 of this act." [1997 c 452 § 23.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

67.28.1815 Revenue—Special fund—Uses for tourism promotion and tourism facility acquisition and operation. Except as provided in RCW 67.28.180, all revenue from taxes imposed under this chapter shall be credited to a special fund in the treasury of the municipality imposing such tax and used solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities. Municipalities may, under chapter 39.34 RCW, agree to the utilization of revenue from taxes imposed under this chapter for the purposes of funding a multijurisdictional tourism-related facility. [2008 c 264 § 3; 1997 c 452 § 4.]

Findings—Intent—Effective date—2008 c 264: See notes following RCW 67.28.180.

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.1816 Lodging tax—Tourism promotion. (Expires June 30, 2013.) (1) Lodging tax revenues under this chapter may be used, directly by local jurisdictions or indirectly through a convention and visitors bureau or destination marketing organization, for the marketing and operations of special events and festivals and to support the operations and capital expenditures of tourism-related facilities owned by nonprofit organizations described under section 501(c)(3) and section 501(c)(6) of the internal revenue code of 1986, as amended.

(2) Local jurisdictions that use the lodging tax revenues under this section must submit an annual economic impact report to the department of community, trade, and economic development for expenditures made beginning January 1, 2008. These reports must include the expenditures by the local jurisdiction for tourism promotion purposes and what is used by a nonprofit organization exempt from taxation under 26 U.S.C. Sec. 501(c)(3) or 501(c)(6). This economic impact report, at a minimum, must include: (a) The total revenue

received under this chapter for each year; (b) the list of festivals, special events, or nonprofit 501(c)(3) or 501(c)(6) organizations that received funds under this chapter; (c) the list of festivals, special events, or tourism facilities sponsored or owned by the local jurisdiction that received funds under this chapter; (d) the amount of revenue expended on each festival, special event, or tourism-related facility owned or sponsored by a nonprofit 501(c)(3) or 501(c)(6) organization or local jurisdiction; (e) the estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event, or tourism-related facility owned or sponsored by a nonprofit 501(c)(3) or 501(c)(6) organization or local jurisdiction; and (f) any other measurements the local government finds that demonstrate the impact of the increased tourism attributable to the festival, special event, or tourism-related facility owned or sponsored by a nonprofit 501(c)(3) or 501(c)(6) organization or local jurisdiction.

(3) The joint legislative audit and review committee must report to the legislature and the governor on the use and economic impact of lodging tax revenues by local jurisdictions since January 1, 2008, to support festivals, special events, and tourism-related facilities owned or sponsored by a nonprofit organization under section 501(c)(3) or 501(c)(6) of the internal revenue code of 1986, as amended, or a local jurisdiction, and the economic impact generated by these festivals, events, and facilities. This report shall be due September 1, 2012.

(4) Reporting under this section must begin with calendar year 2008.

(5) This section expires June 30, 2013. [2008 c 28 § 1; 2007 c 497 § 2.]

67.28.1817 Lodging tax advisory committee in large municipalities—Submission of proposal for imposition of or change in tax or use—Comments. (1) Before proposing imposition of a new tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter, a municipality with a population of five thousand or more shall establish a lodging tax advisory committee under this section. A lodging tax advisory committee shall consist of at least five members, appointed by the legislative body of the municipality, unless the municipality has a charter providing for a different appointment authority. The committee membership shall include: (a) At least two members who are representatives of businesses required to collect tax under this chapter; and (b) at least two members who are persons involved in activities authorized to be funded by revenue received under this chapter. Persons who are eligible for appointment under (a) of this subsection are not eligible for appointment under (b) of this subsection. Persons who are eligible for appointment under (b) of this subsection are not eligible for appointment under (a) of this subsection. Organizations representing businesses required to collect tax under this chapter, organizations involved in activities authorized to be funded by revenue received under this chapter, and local agencies involved in tourism promotion may submit recommendations for membership on the committee. The number of members who are representatives of businesses required to collect tax under

this chapter shall equal the number of members who are involved in activities authorized to be funded by revenue received under this chapter. One member shall be an elected official of the municipality who shall serve as chair of the committee. An advisory committee for a county may include one nonvoting member who is an elected official of a city or town in the county. An advisory committee for a city or town may include one nonvoting member who is an elected official of the county in which the city or town is located. The appointing authority shall review the membership of the advisory committee annually and make changes as appropriate.

(2) Any municipality that proposes imposition of a tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter shall submit the proposal to the lodging tax advisory committee for review and comment. The submission shall occur at least forty-five days before final action on or passage of the proposal by the municipality. The advisory committee shall submit comments on the proposal in a timely manner through generally applicable public comment procedures. The comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and the extent to which the proposal will affect the long-term stability of the fund created under RCW 67.28.1815. Failure of the advisory committee to submit comments before final action on or passage of the proposal shall not prevent the municipality from acting on the proposal. A municipality is not required to submit an amended proposal to an advisory committee under this section. [1998 c 35 § 3; 1997 c 452 § 5.]

Validation of taxes imposed and collected and actions taken—Effective date—1998 c 35: See notes following RCW 67.28.181.

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.183 Exemption from tax—Emergency lodging for homeless persons—Conditions. (1) The taxes levied under this chapter shall not apply to emergency lodging provided for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1992 c 206 § 5; 1988 c 61 § 2.]

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective date—1988 c 61: See note following RCW 82.08.0299.

67.28.184 Use of hotel-motel tax revenues by cities for professional sports franchise facilities limited. No city imposing the tax authorized under this chapter may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under this chapter to directly or indirectly acquire, construct, operate, or maintain a facility used by a professional sports franchise. [1997 c 452 § 13; 1987 1st ex.s. c 8 § 7.]

(2008 Ed.)

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.28.186 Exemption from tax—Temporary medical housing. The taxes on lodging authorized under this chapter do not apply to sales of temporary medical housing exempt under RCW 82.08.997. [2008 c 137 § 3.]

Effective date—2008 c 137: See note following RCW 82.08.997.

67.28.200 Special excise tax authorized—Exemptions may be established—Collection. The legislative body of any municipality may establish reasonable exemptions for taxes authorized under this chapter. The department of revenue shall perform the collection of such taxes on behalf of such municipality at no cost to such municipality. Except as expressly provided in this chapter, all of the provisions contained in RCW 82.08.050 and 82.08.060 and chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [2004 c 79 § 9; 1997 c 452 § 14; 1993 c 389 § 2; 1991 c 331 § 2; 1988 ex.s. c 1 § 23; 1987 c 483 § 3; 1970 ex.s. c 89 § 2; 1967 c 236 § 13.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.220 Powers additional and supplemental to other laws. The powers and authority conferred upon municipalities under the provisions of this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1967 c 236 § 15.]

67.28.225 Compliance with prevailing wages on public works provisions. A port district and any municipality or other entity involved in a joint venture or project with a port district under this chapter shall comply with the provisions of chapter 39.12 RCW. However, nothing in this section should be interpreted as a legislative intent to expand the application of chapter 39.12 RCW. [2007 c 476 § 2.]

67.28.8001 Reports by municipalities—Summary and analysis by department of community, trade, and economic development. (1) Each municipality imposing a tax under chapter 67.28 RCW shall submit a report to the department of community, trade, and economic development on October 1, 1998, and October 1, 2000. Each report shall include the following information:

- (a) The rate of tax imposed under chapter 67.28 RCW;
- (b) The total revenue received under chapter 67.28 RCW for each of the preceding six years;
- (c) A list of projects and activities funded with revenue received under chapter 67.28 RCW; and
- (d) The amount of revenue under chapter 67.28 RCW expended for each project and activity.

(2) The department of community, trade, and economic development shall summarize and analyze the data received

under subsection (1) of this section in a report submitted to the legislature on January 1, 1999, and January 1, 2001. The report shall include, but not be limited to, analysis of factors contributing to growth in revenue received under chapter 67.28 RCW and the effects of projects and activities funded with revenue received under chapter 67.28 RCW on tourism growth. [1997 c 452 § 6.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.900 Severability—1965 c 15. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 15 § 8.]

67.28.910 Severability—1967 c 236. If any provision of this act, or its application to any municipality, person or circumstance is held invalid, the remainder of this act or the application of the provision to other municipalities, persons or circumstances is not affected. [1967 c 236 § 19.]

67.28.911 Severability—1973 2nd ex.s. c 34. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 34 § 7.]

67.28.912 Severability—1975 1st ex.s. c 225. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 225 § 3.]

67.28.913 Severability—1988 ex.s. c 1. See RCW 36.100.900.

Chapter 67.30 RCW

MULTIPURPOSE SPORTS STADIA

Sections

67.30.010	Declaration of public purpose and necessity.
67.30.020	Participation by cities and counties—Powers—Costs, how paid.
67.30.030	Issuance of revenue bonds—Limitations—Retirement.
67.30.040	Power to appropriate and raise moneys.
67.30.050	Powers additional and supplemental to other laws.
67.30.900	Severability—1967 c 166.

Multipurpose community centers: Chapter 35.59 RCW.

Professional sports franchise, cities authorized to own and operate: RCW 35.21.695.

Stadia, coliseums, powers of counties to build and operate: RCW 36.68.090.

67.30.010 Declaration of public purpose and necessity. The participation of counties and cities in multipurpose sports stadia which may be used for football, baseball, soccer, conventions, home shows or any and all similar activities; the purchase, lease, condemnation, or other acquisition of necessary real property therefor; the acquisition by condemnation or otherwise, lease, construction, improvement, maintenance,

and equipping of buildings or other structures upon such real property or other real property; the operation and maintenance necessary for such participation, and the exercise of any other powers herein granted to counties and cities, are hereby declared to be public, governmental, and municipal functions, exercised for a public purpose, and matters of public necessity, and such real property and other property acquired, constructed, improved, maintained, equipped, and used by counties and cities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired, constructed, improved, maintained, equipped and used for public, governmental, and municipal purposes and as a matter of public necessity. [1967 c 166 § 2.]

67.30.020 Participation by cities and counties—Powers—Costs, how paid. The counties and cities are authorized, upon passage of an ordinance in the prescribed manner, to participate in the financing, construction, acquisition, operation, and maintenance of multipurpose sports stadia within their boundaries. Counties and cities are also authorized, through their governing authorities, to purchase, lease, condemn, or otherwise acquire property, real or personal; to construct, improve, maintain and equip buildings or other structures; and expend moneys for investigations, planning, operations, and maintenance necessary for such participation.

The cost of any such acquisition, condemnation, construction, improvement, maintenance, equipping, investigations, planning, operation, or maintenance necessary for such participation may be paid for by appropriation of moneys available therefor, gifts, or wholly or partly from the proceeds of revenue bonds as the governing authority may determine. [1967 c 166 § 3.]

67.30.030 Issuance of revenue bonds—Limitations—Retirement. Any revenue bonds to be issued by any county or city pursuant to the provisions of this chapter, shall be authorized and issued in the manner prescribed by the laws of this state for the issuance and authorization of bonds thereof for public purposes generally: PROVIDED, That the bonds shall not be issued for a period beyond the life of the improvement to be acquired by the use of the bonds.

The bonding authority authorized for the purposes of this chapter shall be limited to the issuance of revenue bonds payable from a special fund or funds created solely from revenues derived from the facility. The owners and holders of such bonds shall have a lien and charge against the gross revenue of the facility. Such revenue bonds and the interest thereon against such fund or funds shall be a valid claim of the holders thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality. The governing authority of any county or city may by ordinance take such action as may be necessary and incidental to the issuance of such bonds and the retirement thereof. The provisions of chapter 36.67 RCW not inconsistent with this chapter shall apply to the issuance and retirement of any such revenue bonds. [1967 c 166 § 4.]

67.30.040 Power to appropriate and raise moneys. The governing body having power to appropriate moneys within any county or city for the purpose of purchasing, con-

demning, leasing or otherwise acquiring property, constructing, improving, maintaining, and equipping buildings or other structures, and the investigations, planning, operation or maintenance necessary to participation in any such all-purpose or multipurpose sports stadium, is hereby authorized to appropriate and cause to be raised by taxation or otherwise moneys sufficient to carry out such purpose. [1967 c 166 § 5.]

67.30.050 Powers additional and supplemental to other laws. The powers and authority conferred upon counties and cities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other such powers or authority. [1967 c 166 § 6.]

67.30.900 Severability—1967 c 166. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 166 § 7.]

Chapter 67.38 RCW

CULTURAL ARTS, STADIUM AND CONVENTION DISTRICTS

Sections

67.38.010	Purpose.
67.38.020	Definitions.
67.38.030	Cultural arts, stadium and convention district—Creation.
67.38.040	Multicounty district—Creation.
67.38.050	Governing body.
67.38.060	Comprehensive plan—Development—Elements.
67.38.070	Comprehensive plan—Review—Approval or disapproval—Resubmission.
67.38.080	Annexation election.
67.38.090	District as quasi municipal corporation—General powers.
67.38.100	Additional powers.
67.38.110	Issuance of general obligation bonds—Maturity—Excess levies.
67.38.115	Community revitalization financing—Public improvements.
67.38.120	Revenue bonds—Issuance, sale, term, payment.
67.38.130	Cultural arts, stadium and convention district tax levies.
67.38.140	Contribution of sums for limited purposes.
67.38.150	Treasurer and auditor—Bond—Duties—Funds—Depositaries.
67.38.160	Dissolution and liquidation.
67.38.900	Captions not law—1982 1st ex.s. c 22.
67.38.905	Severability—1982 1st ex.s. c 22.

67.38.010 Purpose. The legislature finds that expansion of a cultural tourism would attract new visitors to our state and aid the development of a nonpolluting industry. The creation or renovation, and operation of cultural arts, stadium and convention facilities benefiting all the citizens of this state would enhance the recreational industry's ability to attract such new visitors. The additional income and employment resulting therefrom would strengthen the economic base of the state.

It is declared that the construction, modification, renovation, and operation of facilities for cultural arts, stadium and convention uses will enhance the progress and economic growth of this state. The continued growth and development of this recreational industry provides for the general welfare

and is an appropriate matter of concern to the people of the state of Washington. [1982 1st ex.s. c 22 § 1.]

67.38.020 Definitions. Unless the context clearly indicates otherwise, for the purposes of this chapter the following definitions shall apply:

(1) "Cultural arts, stadium and convention district," or "district," means a quasi municipal corporation of the state of Washington created pursuant to this chapter.

(2) "Component city" means an incorporated city within a public cultural arts, stadium and convention benefit area.

(3) "City" means any city or town.

(4) "City council" means the legislative body of any city.

(5) "Municipality" means a port district, public school district or community college district. [1982 1st ex.s. c 22 § 2.]

67.38.030 Cultural arts, stadium and convention district—Creation. (1) The process to create a cultural arts, stadium and convention district may be initiated by:

(a) The adoption of a resolution by the county legislative authority calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of the district; or

(b) The governing bodies of two or more cities located within the same county adopting resolutions calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of such a district: PROVIDED, That this method may not be used more frequently than once in any twelve month period in the same county; or

(c) The filing of a petition with the county legislative authority, calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of the district, that is signed by at least ten percent of the registered voters residing in the proposed district at the last general election. Such signatures will be certified by the county auditor or the county elections department.

(2) Within sixty days of the adoption of such resolutions, or presentation of such a petition, the county legislative authority shall hold a public hearing on the proposed creation of such a district. Notice of the hearing shall be published at least once a week for three consecutive weeks in one or more newspapers of general circulation within the proposed boundaries of the district. The notice shall include a general description and map of the proposed boundaries. Additional notice shall also be mailed to the governing body of each city and municipality located all or partially within the proposed district. At such hearing, or any continuation thereof, any interested party may appear and be heard on the formation of the proposed district.

The county legislative authority shall delete the area included within the boundaries of a city from the proposed district if prior to the public hearing the city submits to the county legislative authority a copy of an adopted resolution requesting its deletion from the proposed district. The county legislative authority may delete any other areas from the proposed boundaries. Additional territory may be included within the proposed boundaries, but only if such inclusion is subject to a subsequent hearing, with notice provided in the same manner as for the original hearing.

(3) A proposition to create a cultural arts, stadium and convention district shall be submitted to the voters of the proposed district within two years of the adoption of a resolution providing for such submittal by the county legislative authority at the conclusion of such hearings. The resolution shall establish the boundaries of the district and include a finding that the creation of the district is in the public interest and that the area included within the district can reasonably be expected to benefit from its creation. No portion of a city may be included in such a district unless the entire city is included. The boundaries of such a district shall follow school district or community college boundaries in as far as practicable.

(4) The proposition to create a cultural arts, stadium and convention district shall be submitted to the voters of the proposed district at the next general election held sixty or more days after the adoption of the resolution. The district shall be created upon approval of the proposition by simple majority vote. The ballot proposition submitted to the voters shall be in substantially the following form:

FORMATION OF CULTURAL ARTS,
STADIUM AND CONVENTION
DISTRICT

Shall a cultural arts, stadium and convention district be established for the area described in a resolution of the legislative authority of county, adopted on the day of, 19. . . ?

[1982 1st ex.s. c 22 § 3.]

67.38.040 Multicounty district—Creation. A joint hearing by the legislative authorities of two or more counties on the proposed creation of a cultural arts, stadium and convention district including areas within such counties may be held as provided herein:

(1) The process to initiate such a hearing shall be identical with the process provided in RCW 67.38.030(1), except a resolution of all the legislative authorities of each county with territory proposed to be included shall be necessary.

(2) No territory may be added to or deleted from such a proposed district, except by action of the county legislative authority of the county within whose boundaries the territory lies pursuant to the process provided in RCW 67.38.030.

(3) The resolutions shall each contain identical provisions concerning the governing body, as delineated in RCW 67.38.050. [1982 1st ex.s. c 22 § 4.]

67.38.050 Governing body. The number of persons on the governing body of the district and how such persons shall be selected and replaced shall be included in the resolution of the county legislative authority providing for the submittal of the proposition to create the district to the voters. Members of the governing body may only consist of a combination of city council members or mayors of the city or cities included within the district, members of the county legislative authority, the county executive of a county operating under a home rule charter, elected members of the governing bodies of municipalities located within the district, and members of the board of regents of a community college district. No governing body may consist of more than nine members. The reso-

lution may also provide for additional, ex officio, nonvoting members consisting of elected officials or appointed officials from the counties, cities, or municipalities which are located all or partially within the boundaries of such a district and who [which] do not have elected or appointed officials sitting on the governing body.

Any member of the governing body, or any ex officio member, who is not an elective official whose office is a full-time position may be reimbursed for reasonable expenses actually incurred in attending meetings or engaging in other district business as provided in RCW 42.24.090. [1982 1st ex.s. c 22 § 5.]

67.38.060 Comprehensive plan—Development—Elements. The cultural arts, stadium and convention district, as authorized in this chapter, shall develop a comprehensive cultural arts, stadium and convention plan for the district. Such plan shall include, but not be limited to the following elements:

(1) The levels of cultural arts, stadium and convention services that can be reasonably provided for various portions of the district.

(2) The funding requirements, including local tax sources or federal funds, necessary to provide various levels of service within the district.

(3) The impact of such a service on other cultural arts, stadium and convention systems operating within that county or adjacent counties. [1982 1st ex.s. c 22 § 6.]

67.38.070 Comprehensive plan—Review—Approval or disapproval—Resubmission. The comprehensive cultural arts, stadium and convention plan adopted by the district shall be reviewed by the department of community, trade, and economic development to determine:

(1) Whether the plan will enhance the progress of the state and provide for the general welfare of the population; and

(2) Whether such plan is eligible for matching federal funds.

After reviewing the comprehensive cultural arts, stadium and convention plan, the department of community, trade, and economic development shall have sixty days in which to approve such plan and to certify to the state treasurer that such district shall be eligible to receive funds. To be approved a plan shall provide for coordinated cultural arts, stadium and convention planning, and be consistent with the public cultural arts, stadium and convention coordination criteria in a manner prescribed by chapter 35.60 RCW. In the event such comprehensive plan is disapproved and ruled ineligible to receive funds, the department of community, trade, and economic development shall provide written notice to the district within thirty days as to the reasons for such plan’s disapproval and such ineligibility. The district may resubmit such plan upon reconsideration and correction of such deficiencies cited in such notice of disapproval. [1995 c 399 § 167; 1985 c 6 § 22; 1982 1st ex.s. c 22 § 7.]

67.38.080 Annexation election. An election to authorize the annexation of contiguous territory to a cultural arts, stadium and convention district may be submitted to the vot-

ers of the area proposed to be annexed upon the passage of a resolution of the governing body of the district. Approval by simple majority vote shall authorize such annexation. [1982 1st ex.s. c 22 § 8.]

67.38.090 District as quasi municipal corporation—

General powers. A cultural arts, stadium and convention district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1, of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2, of the state Constitution. A district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purpose. In addition to the powers specifically granted by this chapter, a district shall have all powers which are necessary to carry out the purposes of this chapter. A cultural arts, stadium and convention district may contract with the United States or any agency thereof, any state or agency thereof, any other cultural arts, stadium and convention district, any county, city, metropolitan municipal corporation, special district, or governmental agency, within or without the state, and any private person, firm or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction or renovation or operation of cultural arts, stadium and convention facilities. In addition, a district may contract with any governmental agency or with any private person, firm or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights-of-way of all kinds which are owned, leased or held by the other party and for the purpose of planning, constructing or operating any facility or performing any service which the cultural arts, stadium and convention district may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties. Before any contract for the lease or operation of any cultural arts, stadium and convention district facilities shall be let to any private person, firm or corporation, competitive bids shall be called upon such notice, bidder qualifications and bid conditions as the district shall determine.

A district may sue and be sued in its corporate capacity in all courts and in all proceedings. [1982 1st ex.s. c 22 § 9.]

67.38.100 Additional powers. The governing body of a cultural arts, stadium and convention district shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare, adopt and carry out a general comprehensive plan for cultural arts, stadium and convention service which will best serve the residents of the district and to amend said plan from time to time to meet changed conditions and requirements.

(2) To acquire by purchase, gift or grant and to lease, convey, construct, add to, improve, replace, repair, maintain, and operate cultural arts, stadium and convention facilities and properties within the district, including portable and mobile facilities and parking facilities and properties and such other facilities and properties as may be necessary for passenger and vehicular access to and from such facilities and properties, together with all lands, rights-of-way, property,

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equipment and accessories necessary for such systems and facilities. Cultural arts, stadium and convention facilities and properties which are presently owned by any component city, county or municipality may be acquired or used by the district only with the consent of the legislative authority, council or governing body of the component city, county or municipality owning such facilities. A component city, county or municipality is hereby authorized to convey or lease such facilities to a district or to contract for their joint use on such terms as may be fixed by agreement between the component city, county or municipality and the district, without submitting the matter to the voters of such component city, county or municipality.

(3) To fix rates and charges for the use of such facilities. [1982 1st ex.s. c 22 § 10.]

67.38.110 Issuance of general obligation bonds—Maturity—Excess levies.

To carry out the purpose of this chapter, any cultural arts, stadium and convention district shall have the power to issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness equal to three-eighths of one percent of the value of taxable property within such district, as the term "value of taxable property" is defined in RCW 39.36.015. A cultural arts, stadium and convention district is additionally authorized to issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to three-fourths of one percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, and to provide for the retirement thereof by excess levies when the voters approve a ballot proposition providing for both the bond issuance and imposition of such levies at a special election called for that purpose in the manner prescribed by section 6, Article VIII and section 2, Article VII of the Constitution and by RCW 84.52.056. Elections shall be held as provided in RCW 39.36.050. General obligation bonds may not be issued with maturities in excess of forty years. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 57; 1983 c 167 § 169; 1982 1st ex.s. c 22 § 11.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

67.38.115 Community revitalization financing—

Public improvements. In addition to other authority that a cultural arts, stadium, and convention center district possesses, a cultural arts, stadium, and convention center district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a cultural arts, stadium, and convention center district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 20.]

Severability—2001 c 212: See RCW 39.89.902.

67.38.120 Revenue bonds—Issuance, sale, term, payment. (1) To carry out the purposes of this chapter, the cultural arts, stadium and convention district shall have the power to issue revenue bonds: PROVIDED, That the district governing body shall create or have created a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the governing body may obligate the district to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, repaired or replaced pursuant to this chapter, as the governing body shall determine: PROVIDED FURTHER, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue pledged to such fund. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The governing body of a district shall have such further powers and duties in carrying out the purposes of this chapter as provided in RCW 67.28.160.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 170; 1982 1st ex.s. c 22 § 12.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

67.38.130 Cultural arts, stadium and convention district tax levies. The governing body of a cultural arts, stadium and convention district may levy or cause to levy the following ad valorem taxes:

(1) Regular ad valorem property tax levies in an amount equal to twenty-five cents or less per thousand dollars of the assessed value of property in the district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the electors thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percentum of the total votes cast in such taxing district at the last preceding general election; or by a majority of at least three-fifths of the electors thereof voting on the proposition when the number of electors voting yes on the proposition exceeds forty percentum of the total votes cast in such taxing district in the last preceding general election. Ballot propositions shall conform with *RCW 29.30.111.

In the event a cultural arts, stadium and convention district is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the one percent limitation provided for in Article VII, section 2, of our state Constitution result in taxes in excess of the limitation provided for in RCW 84.52.043, the cultural arts, stadium and convention district property tax levy shall be reduced or eliminated before the property tax levies of other taxing districts are reduced: PROVIDED, That no cultural arts, stadium, and convention district may pledge anticipated revenues derived from the property tax herein authorized as security for payments of bonds issued pursuant to subsection (1) of this section: PROVIDED, FURTHER, That such limitation shall not apply to property taxes approved pursuant to subsections (2) and (3) of this section.

The limitation in RCW 84.55.010 shall apply to levies after the first levy authorized under this section following the approval of such levy by voters pursuant to this section.

(2) An annual excess ad valorem property tax for general district purposes when authorized by the district voters in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.052.

(3) Multi-year excess ad valorem property tax levies used to retire general obligation bond issues when authorized by the district voters in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.056.

The district shall include in its regular property tax levy for each year a sum sufficient to pay the interest and principal on all outstanding general obligation bonds issued without voter approval pursuant to RCW 67.38.110 and may include a sum sufficient to create a sinking fund for the redemption of all outstanding bonds. [1984 c 131 § 4; 1982 1st ex.s. c 22 § 13.]

*Reviser's note: RCW 29.30.111 was recodified as RCW 29A.36.210 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Purpose—1984 c 131 §§ 3-9: See note following RCW 29A.36.210.

67.38.140 Contribution of sums for limited purposes. The county or counties and each component city included in the district collecting or planning to collect the hotel/motel tax under chapter 67.28 RCW may contribute such revenue in such manner as shall be agreed upon between them, consistent with this chapter and chapter 67.28 RCW. [1997 c 452 § 18; 1982 1st ex.s. c 22 § 14.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.38.150 Treasurer and auditor—Bond—Duties—Funds—Depositaries. Unless the cultural arts, stadium and convention district governing body, by resolution, designates some other person having experience in financial or fiscal matters as treasurer of the district, the treasurer of the county in which a cultural arts, stadium and convention district is located shall be ex officio treasurer of the district: PROVIDED, That in the case of a multicounty cultural arts, stadium and convention district, the county treasurer of the county with the greatest amount of area within the district shall be the ex officio treasurer of the district. The district may, and if the treasurer is not a county treasurer shall, require a bond for such treasurer with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions as agreed to by the district, by resolution, in such amount from time to time which will protect the authority against loss. The premium on any such bond shall be paid by the authority.

All district funds shall be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by an auditor appointed by the district, upon orders or vouchers approved by the governing body. The treasurer shall establish a "cultural arts, stadium and convention fund," into which shall be paid district funds as provided in RCW 67.38.140 and the treasurer shall maintain such special funds as may be created by the governing body into which said treasurer shall place all moneys as the governing body may, by resolution, direct.

If the treasurer of the district is a treasurer of the county, all district funds shall be deposited with the county depository under the same restrictions, contracts, and security as provided for county depositories; the county auditor of such county shall keep the records of the receipts and disbursements, and shall draw, and such county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the district. [1982 1st ex.s. c 22 § 15.]

67.38.160 Dissolution and liquidation. A cultural arts, stadium and convention district established in accordance with this chapter shall be dissolved and its affairs liquidated by either of the following methods:

(1) When so directed by a majority of persons in the district voting on such question. An election placing such question before the voters may be called in the following manner:

(a) By resolution of the cultural arts, stadium and convention district governing authority;

(b) By resolution of the county legislative body or bodies with the concurrence therein by resolution of the city council of a component city; or

(c) By petition calling for such election signed by at least ten percent of the qualified voters residing within the district filed with the auditor of the county wherein the largest portion of the district is located. The auditor shall examine the same and certify to the sufficiency of the signatures thereon: PROVIDED, That to be validated, signatures must have been collected within a ninety-day period as designated by the petition sponsors.

With dissolution of the district, any outstanding obligations and bonded indebtedness of the district shall be satisfied or allocated by mutual agreement to the county or counties and component cities of the cultural arts, stadium and convention district.

(2) By submission of a petition signed by at least two-thirds of the legislative bodies who have representatives on the district governing body for an order of dissolution to the superior court of a county of the district. All of the signatures must have been collected within one hundred twenty days of the date of submission to the court. The procedures for dissolution provided in RCW 53.48.030 through 53.48.120 shall apply, except that the balance of any assets, after payment of all costs and expenses, shall be divided among the county or counties and component cities of the district on a per capita basis. Any duties to be performed by a county official pursuant to RCW 53.48.030 through 53.48.120 shall be performed by the relevant official of the county in which the petition for dissolution is filed. [1999 c 254 § 1; 1982 1st ex.s. c 22 § 16.]

67.38.900 Captions not law—1982 1st ex.s. c 22. Section captions as used in this amendatory act shall not be construed as and do not constitute any part of the law. [1982 1st ex.s. c 22 § 19.]

67.38.905 Severability—1982 1st ex.s. c 22. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 22 § 21.]

(2008 Ed.)

Chapter 67.40 RCW

CONVENTION AND TRADE FACILITIES

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Tax changes: RCW 82.14.055.

Tax rate calculation errors: RCW 82.32.430.

67.40.010 Legislative finding. The legislature finds and declares as the express purpose of this chapter:

(1) The convention and trade show business will provide both direct and indirect civic and economic benefits to the people of the state of Washington.

(2) The location of a state convention and trade center in the city of Seattle will particularly benefit and increase the occupancy of larger hotels and other lodging facilities in the city of Seattle and to a lesser extent in King county.

(3) Imposing a special excise tax on the price of lodging in Seattle, and at a lower rate elsewhere in King county, is an appropriate method of paying for a substantial part of the cost of constructing, maintaining, and operating a state convention and trade center. [1983 2nd ex.s. c 1 § 1; 1982 c 34 § 1.]

67.40.020 State convention and trade center—Public nonprofit corporation authorized—Board of directors—Powers and duties. (1) The governor is authorized to form a public nonprofit corporation in the same manner as a private

nonprofit corporation is formed under chapter 24.03 RCW. The public corporation shall be an instrumentality of the state and have all the powers and be subject to the same restrictions as are permitted or prescribed to private nonprofit corporations, but shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The governor shall appoint a board of nine directors for the corporation who shall serve terms of six years, except that two of the original directors shall serve for two years and two of the original directors shall serve for four years. After January 1, 1991, at least one position on the board shall be filled by a member representing management in the hotel or motel industry subject to taxation under RCW 67.40.090. The directors may provide for the payment of their expenses. The corporation may acquire, construct, expand, and improve the state convention and trade center within the city of Seattle. Notwithstanding the provisions of subsection (2) of this section, the corporation may acquire, lease, sell, or otherwise encumber property rights, including but not limited to development or condominium rights, deemed by the corporation as necessary for facility expansion.

(2) The corporation may acquire and transfer real and personal property by lease, sublease, purchase, or sale, and further acquire property by condemnation of privately owned property or rights to and interests in such property pursuant to the procedure in chapter 8.04 RCW. However, acquisitions and transfers of real property, other than by lease, may be made only if the acquisition or transfer is approved by the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the senate and house of representatives. The corporation may accept gifts or grants, request the financing provided for in RCW 67.40.030, cause the state convention and trade center facilities to be constructed, and do whatever is necessary or appropriate to carry out those purposes. Upon approval by the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the house of representatives and the senate, the corporation may enter into lease and sublease contracts for a term exceeding the fiscal period in which these lease and sublease contracts are made. The terms of sale or lease of properties acquired by the corporation on February 9, 1987, pursuant to the property purchase and settlement agreement entered into by the corporation on June 12, 1986, including the McKay parcel which the corporation is contractually obligated to sell under that agreement, shall also be subject to the approval of the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the house of representatives and the senate. No approval by the director of financial management is required for leases of individual retail space, meeting rooms, or convention-related facilities. In order to allow the corporation flexibility to secure appropriate insurance by negotiation, the corporation is exempt from RCW 48.30.270. The corporation shall maintain, operate, promote, and manage the state convention and trade center.

(3) In order to allow the corporation flexibility in its personnel policies, the corporation is exempt from chapter 41.06 RCW, chapter 41.05 RCW, RCW 43.01.040 through 43.01.044, chapter 41.04 RCW and chapter 41.40 RCW.

[1995 c 386 § 12; 1993 c 500 § 9; 1988 ex.s. c 1 § 1; 1987 1st ex.s. c 8 § 2; 1984 c 210 § 1; 1983 2nd ex.s. c 1 § 2; 1982 c 34 § 2.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Severability—1987 1st ex.s. c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 8 § 17.]

Savings—1984 c 210: "This act shall not terminate or modify any right acquired under a contract of employment in existence prior to March 27, 1984." [1984 c 210 § 7.]

Severability—1984 c 210: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 210 § 8.]

67.40.025 State convention and trade center operations account—Operating revenues—Expenditures. All operating revenues received by the corporation formed under RCW 67.40.020 shall be deposited in the state convention and trade center operations account, hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation by statute, and may be used only for operation and promotion of the center. During the 2007-2009 fiscal biennium, moneys in the account may also be transferred to the state general fund.

Subject to approval by the office of financial management under RCW 43.88.260, the corporation may expend moneys for operational purposes in excess of the balance in the account, to the extent the corporation receives or will receive additional operating revenues.

As used in this section, "operating revenues" does not include any moneys required to be deposited in the state convention and trade center account. [2008 c 329 § 916; 1988 ex.s. c 1 § 2; 1987 1st ex.s. c 8 § 3; 1985 c 233 § 2.]

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.027 Compensation and travel expenses of board members. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [1985 c 233 § 3.]

Reimbursement for out-of-state travel expenses incurred by employees of state convention and trade center: RCW 43.03.062.

67.40.030 General obligation bonds—Authorized—Appropriation required. For the purpose of providing funds for the state convention and trade center, the state finance committee is authorized to issue, upon request of the corporation formed under RCW 67.40.020 and in one or more offerings, general obligation bonds of the state of Washington in the sum of one hundred sixty million, seven hundred sixty-five thousand dollars, or so much thereof as may be required, to finance this project and all costs incidental thereto, to capitalize all or a portion of interest during construction, to provide for expansion, renovation, exterior

cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, and contingency costs of the center, purchase of the McKay Parcel as defined in the property and purchase agreement entered into by the corporation on June 12, 1986, development of low-income housing and to reimburse the general fund for expenditures in support of the project. The state finance committee may make such bond covenants as it deems necessary to carry out the purposes of this section and this chapter. No bonds authorized in this section may be offered for sale without prior legislative appropriation. [1990 c 181 § 1; 1988 ex.s. c 1 § 3; 1987 1st ex.s. c 3 § 12; 1985 c 233 § 1; 1983 2nd ex.s. c 1 § 3; 1982 c 34 § 3.]

Severability—1987 1st ex.s. c 3: See RCW 43.99G.901.

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—

Credit against future borrowings—Use. (1) The proceeds from the sale of the bonds authorized in RCW 67.40.030, proceeds of the taxes imposed under RCW 67.40.090 and 67.40.130, and all other moneys received by the state convention and trade center from any public or private source which are intended to fund the acquisition, design, construction, expansion, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, purchase of the land and building known as the McKay Parcel, development of low-income housing, or renovation of the center, and those expenditures authorized under RCW 67.40.170 shall be deposited in the state convention and trade center account hereby created in the state treasury and in such subaccounts as are deemed appropriate by the directors of the corporation.

(2) Moneys in the account, including unanticipated revenues under RCW 43.79.270, shall be used exclusively for the following purposes in the following priority:

(a) For reimbursement of the state general fund under RCW 67.40.060;

(b) After appropriation by statute:

(i) For payment of expenses incurred in the issuance and sale of the bonds issued under RCW 67.40.030;

(ii) For expenditures authorized in RCW 67.40.170, and during the 2007-2009 biennium, the legislature may transfer from the state convention and trade center account to the Washington housing trust account such amounts as reflect the excess fund balance in the account; and during the 2007-2009 biennium, the legislature may transfer from the state convention and trade center account to the general fund such amounts as reflect the excess fund balance in the account;

(iii) For acquisition, design, and construction of the state convention and trade center;

(iv) For debt service for the acquisition, design, and construction and retrofit of the museum of history and industry museum property or other future expansions of the convention center as approved by the legislature; and

(v) For reimbursement of any expenditures from the state general fund in support of the state convention and trade center; and

(c) For transfer to the state convention and trade center operations account.

(2008 Ed.)

(3) The corporation shall identify with specificity those facilities of the state convention and trade center that are to be financed with proceeds of general obligation bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes. The corporation shall not permit the extent or manner of private business use of those bond-financed facilities to be inconsistent with treatment of such bonds as governmental bonds under applicable provisions of the Internal Revenue Code of 1986, as amended.

(4) In order to ensure consistent treatment of bonds authorized under RCW 67.40.030 with applicable provisions of the Internal Revenue Code of 1986, as amended, and notwithstanding RCW 43.84.092, investment earnings on bond proceeds deposited in the state convention and trade center account in the state treasury shall be retained in the account, and shall be expended by the corporation for the purposes authorized under chapter 386, Laws of 1995 and in a manner consistent with applicable provisions of the Internal Revenue Code of 1986, as amended.

(5) Subject to the conditions in subsection (6) of this section, starting in fiscal year 2008, the state treasurer shall transfer:

(a) The sum of four million dollars, or as much as may be available pursuant to conditions set forth in this section, from the state convention and trade center account to the tourism enterprise account, with the maximum transfer being four million dollars per fiscal year; and

(b) The sum of five hundred thousand dollars, or as much as may be available pursuant to conditions set forth in this section, from the state convention and trade center account to the tourism development and promotion account, with the maximum transfer being five hundred thousand dollars per fiscal year.

(6)(a) Funds required for debt service payments and reserves for bonds issued under RCW 67.40.030; for debt service authorized under RCW 67.40.170; and for the issuance and sale of financial instruments associated with the acquisition, design, construction, and retrofit of the museum of history and industry museum property or for other future expansions of the center, as approved by the legislature, shall be maintained within the state convention and trade center account.

(b) No less than six million one hundred fifty thousand dollars per year shall be retained in the state convention and trade center account for funding capital maintenance as required by the center's long-term capital plan, facility enhancements, unanticipated replacements, and operating reserves for the convention center operation. This amount shall be escalated annually as follows:

(i) Four percent for annual inflation for capital maintenance, repairs, and replacement;

(ii) An additional two percent for enhancement to the facility; and

(iii) An additional three percent for growth in expenditure due to aging of the facility and the need to maintain an operating reserve.

(c) Sufficient funds shall be reserved within the state convention and trade center account to fund operating appropriations for the annual operation of the convention center. [2008 c 329 § 917; 2008 c 328 § 6011; 2007 c 228 § 106; 2005 c 518 § 936; 2003 1st sp.s. c 25 § 929; 1995 c 386 § 13;

1991 sp.s. c 13 § 11; 1990 c 181 § 2; 1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.]

Reviser's note: This section was amended by 2008 c 328 § 6011 and by 2008 c 329 § 917, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Part headings not law—2007 c 228: See RCW 43.336.900.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

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

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

Effective date—1985 c 57: See note following RCW 18.04.105.

67.40.045 Authorization to borrow from state treasury for project completion costs—Limits—"Project completion" defined—Legislative intent—Application.

(1) The director of financial management, in consultation with the chairpersons of the appropriate fiscal committees of the senate and house of representatives, may authorize temporary borrowing from the state treasury for the purpose of covering cash deficiencies in the state convention and trade center account resulting from project completion costs. Subject to the conditions and limitations provided in this section, lines of credit may be authorized at times and in amounts as the director of financial management determines are advisable to meet current and/or anticipated cash deficiencies. Each authorization shall distinctly specify the maximum amount of cash deficiency which may be incurred and the maximum time period during which the cash deficiency may continue. The total amount of borrowing outstanding at any time shall never exceed the lesser of:

(a) \$58,275,000; or

(b) An amount, as determined by the director of financial management from time to time, which is necessary to provide for payment of project completion costs.

(2) Unless the due date under this subsection is extended by statute, all amounts borrowed under the authority of this section shall be repaid to the state treasury by June 30, 1999, together with interest at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. Borrowing may be authorized from any excess balances in the state treasury, except the agricultural permanent fund, the Millersylvania park permanent fund, the state university permanent fund, the normal school permanent fund, the permanent common school fund, and the scientific permanent fund.

(3) As used in this section, "project completion" means:

(a) All remaining development, construction, and administrative costs related to completion of the convention center; and

(b) Costs of the McKay building demolition, Eagles building rehabilitation, development of low-income housing,

and construction of rentable retail space and an operable parking garage.

(4) It is the intent of the legislature that project completion costs be paid ultimately from the following sources:

(a) \$29,250,000 to be received by the corporation under an agreement and settlement with Industrial Indemnity Co.;

(b) \$1,070,000 to be received by the corporation as a contribution from the city of Seattle;

(c) \$20,000,000 from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(d) \$4,765,000 for contingencies and project reserves from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(e) \$13,000,000 for conversion of various retail and other space to meeting rooms, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(f) \$13,300,000 for expansion at the 900 level of the facility, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(g) \$10,400,000 for purchase of the land and building known as the McKay Parcel, for development of low-income housing, for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction litigation, and for partially refunding obligations under the parking garage revenue note issued by the corporation to Industrial Indemnity Company in connection with the agreement and settlement identified in (a) of this subsection, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090. All proceeds from any sale of the McKay parcel shall be deposited in the state convention and trade center account and shall not be expended without appropriation by law;

(h) \$300,000 for Eagles building exterior cleanup and repair, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090; and

(i) The proceeds of the sale of any properties owned by the state convention and trade center that are not planned for use for state convention and trade center operations, with the proceeds to be used for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction litigation.

(5) The borrowing authority provided in this section is in addition to the authority to borrow from the general fund to meet the bond retirement and interest requirements set forth in RCW 67.40.060. To the extent the specific conditions and limitations provided in this section conflict with the general conditions and limitations provided for temporary cash deficiencies in RCW 43.88.260 (section 7, chapter 502, Laws of 1987), the specific conditions and limitations in this section shall govern.

(6) For expenditures authorized under RCW 67.40.170, the corporation may use the proceeds of the special excise tax authorized under RCW 67.40.090, the sales tax authorized under RCW 67.40.130, contributions to the corporation from public or private participants, and investment earnings on any of the funds listed in this subsection. [1995 c 386 § 14; 1993

sp.s. c 12 § 9; 1992 c 4 § 1; 1991 c 2 § 1; 1990 c 181 § 3; 1988 ex.s. c 1 § 9; 1987 1st ex.s. c 8 § 1.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Severability—1993 sp.s. c 12: See RCW 43.99J.900.

Severability—1991 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 2 § 5.]

67.40.050 Administration of proceeds. The moneys deposited pursuant to RCW 67.40.040 in the state convention and trade center account of the general fund shall be administered by the corporation formed under RCW 67.40.020, subject to legislative appropriation. [1982 c 34 § 5.]

67.40.055 Transfer of funds to account—Repayment of borrowed funds with interest. The state treasurer shall from time to time transfer from the state general fund, or such other funds as the state treasurer deems appropriate, to the state convention and trade center operations account such amounts as are necessary to fund appropriations from the account, other than, after August 31, 1988, for appropriations for the purpose of marketing the facilities or services of the state convention and trade center. All amounts borrowed under the authority of this section shall be repaid to the appropriate fund, together with interest at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. [1988 ex.s. c 1 § 5; 1987 1st ex.s. c 8 § 11.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.060 Retirement of bonds from nondebt-limit proprietary appropriated bond retirement account—Transfer from accounts—Pledge and promise—Remedies of bondholders. The nondebt-limit proprietary appropriated bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. On each date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the nondebt-limit proprietary appropriated bond retirement account an amount equal to the amount certified by the state finance committee to be due on that payment date. On each date on which any interest or principal and interest is due, the state treasurer shall cause an identical amount to be paid out of the state convention and trade center account, or state convention and trade center operations account, from the proceeds of the special excise tax imposed under RCW 67.40.090, operating revenues of the state convention and trade center, and bond proceeds and earnings on the investment of bond proceeds, for deposit in the general fund of the state treasury. Any deficiency in such transfer shall be made up as soon as special excise taxes are available for transfer and shall constitute a continuing obligation of the state convention and trade center account until all deficiencies are fully paid.

(2008 Ed.)

Bonds issued under RCW 67.40.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2005 c 487 § 9; 1997 c 456 § 25; 1987 1st ex.s. c 8 § 5; 1983 2nd ex.s. c 1 § 5; 1982 c 34 § 6.]

Severability—Effective date—2005 c 487: See RCW 43.99S.900 and 43.99S.901.

Severability—1997 c 456: See RCW 43.99L.900.

Effective date—1997 c 456 §§ 9-43: See RCW 43.99M.901.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.070 Legislature may provide additional means for payment of bonds. The legislature may increase the rate of tax imposed in RCW 67.40.090 (1) and (2) or may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030, and RCW 67.40.060 shall not be deemed to provide an exclusive method for the payment. [1982 c 34 § 7.]

67.40.080 Bonds legal investment for public funds. The bonds authorized in RCW 67.40.030 shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1982 c 34 § 8.]

67.40.090 Lodging tax imposed in King county—Rates—Proceeds. (1) Commencing April 1, 1982, there is imposed, and the department of revenue shall collect, in King county a special excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than sixty lodging units. The legislature on behalf of the state pledges to maintain and continue this tax until the bonds authorized by this chapter are fully redeemed, both principal and interest.

(2) The rate of the tax imposed under this section shall be as provided in this subsection.

(a) From April 1, 1982, through December 31, 1982, inclusive, the rate shall be three percent in the city of Seattle and two percent in King county outside the city of Seattle.

(b) From January 1, 1983, through June 30, 1988, inclusive, the rate shall be five percent in the city of Seattle and two percent in King county outside the city of Seattle.

(c) From July 1, 1988, through December 31, 1992, inclusive, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(d) From January 1, 1993, and until bonds and all other borrowings authorized under RCW 67.40.030 are retired, the rate shall be seven percent in the city of Seattle and two and eight-tenths percent in King county outside the city of Seattle.

(e) Except as otherwise provided in (d) of this subsection, on and after the change date, the rate shall be six percent

in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(f) As used in this section, "change date" means the October 1st next occurring after certification occurs under (g) of this subsection.

(g) On August 1st of 1998 and of each year thereafter until certification occurs under this subsection, the state treasurer shall determine whether seventy-one and forty-three one-hundredths percent of the revenues actually collected and deposited with the state treasurer for the tax imposed under this section during the twelve months ending June 30th of that year, excluding penalties and interest, exceeds the amount actually paid in debt service during the same period for bonds issued under RCW 67.40.030 by at least two million dollars. If so, the state treasurer shall so certify to the department of revenue.

(3) The proceeds of the special excise tax shall be deposited as provided in this subsection.

(a) Through June 30, 1988, inclusive, all proceeds shall be deposited in the state convention and trade center account.

(b) From July 1, 1988, through December 31, 1992, inclusive, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(c) From January 1, 1993, until the change date, eighty-five and seventy-one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(d) On and after the change date, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(4) Chapter 82.32 RCW applies to the tax imposed under this section. [2002 c 178 § 4; 1995 c 386 § 15; 1991 c 2 § 3; 1988 ex.s. c 1 § 6; 1987 1st ex.s. c 8 § 6; 1982 c 34 § 9.]

Retroactive application—Effective date—2002 c 178: See notes following RCW 67.28.180.

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Severability—1991 c 2: See note following RCW 67.40.045.

Intent—1988 ex.s. c 1 § 6: "The legislature intends that the additional revenue generated by the increase in the special excise tax from five to six percent in the city of Seattle and from two percent to two and four-tenths percent in King county outside the city of Seattle be used for marketing the facilities and services of the convention center, for promoting the locale as a convention and visitor destination, and for related activities. Actual use of these funds shall be determined through biennial appropriation by the legislature." [1988 ex.s. c 1 § 7.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

Special excise taxes authorized for public stadium, convention, performing arts, visual arts, and tourism facilities: Chapter 67.28 RCW.

67.40.100 Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc. Except as provided in chapters 67.28 and 82.14 RCW and RCW 67.28.181, after January 1, 1983, no city, town, or county in which the tax under RCW 67.40.090 is imposed may impose a license fee or tax on the act or privilege of engaging in business to furnish lodging by a hotel, rooming house, tourist

court, motel, trailer camp, or similar facilities in excess of the rate imposed upon other persons engaged in the business of making sales at retail as that term is defined in chapter 82.04 RCW. [1997 c 452 § 15; 1990 c 242 § 1; 1988 ex.s. c 1 § 25; 1982 c 34 § 10.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Application—1990 c 242: "This 1990 amendment applies to all proceeds of the tax authorized under RCW 67.40.100(2), regardless of when levied or collected." [1990 c 242 § 2.]

67.40.105 Exemption from tax—Emergency lodging for homeless persons—Conditions. (1) The tax levied by RCW 67.40.090 and the tax authorized under *RCW 67.40.100(2) shall not apply to emergency lodging provided for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1988 c 61 § 3.]

***Reviser's note:** RCW 67.40.100 was amended by 1997 c 452 § 15, which deleted subsection (2).

Effective date—1988 c 61: See note following RCW 82.08.0299.

67.40.107 Exemption from tax—Temporary medical housing. The tax imposed in RCW 67.40.090 and the tax authorized under RCW 67.40.130 do not apply to sales of temporary medical housing exempt under RCW 82.08.997. [2008 c 137 § 4.]

Effective date—2008 c 137: See note following RCW 82.08.997.

67.40.110 Use of revenues from convention and trade center facilities excise tax by cities for professional sports franchise facilities limited. No city imposing the tax authorized under chapter 67.28 RCW may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under chapter 67.28 RCW to directly or indirectly acquire, construct, operate, or maintain a facility used by a professional sports franchise. [1997 c 452 § 19; 1987 1st ex.s. c 8 § 8.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.120 Contracts for marketing facility and services. The state convention and trade center corporation may contract with the Seattle-King county convention and visitors bureau for marketing the convention and trade center facility and services. [2002 c 182 § 1; 1997 c 452 § 20; 1991 c 336 § 2; 1988 ex.s. c 1 § 8.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Effective date—1991 c 336: See note following RCW 67.28.180.

67.40.130 Convention and trade facilities—Tax on transient lodging authorized—Rates. (1) The governing body of a city, while not required by legislative mandate to do so, may, after July 1, 1995, by resolution or ordinance for the purposes authorized under RCW 67.40.170 and 67.40.190, fix and impose a sales tax on the charge for rooms to be used for lodging by transients in accordance with the terms of chapter 386, Laws of 1995. Such tax shall be collected from those persons who are taxable by the state under RCW 67.40.090, but only those taxable persons located within the boundaries of the city imposing the tax. The rate of such tax imposed by a city shall be two percent of the charge for rooms to be used for lodging by transients. Any such tax imposed under this section shall not be collected prior to January 1, 2000. The tax authorized under this section shall be levied and collected in the same manner as those taxes authorized under chapter 82.14 RCW. Penalties, receipts, abatements, refunds, and all other similar matters relating to the tax shall be as provided in chapter 82.08 RCW.

(2) The tax levied under this section shall remain in effect and not be modified for that period for which the principal and interest obligations of state bonds issued to finance the expansion of the state convention and trade center under RCW 67.40.030 remain outstanding.

(3) As used in this section, the term "city" means a municipality that has within its boundaries a convention and trade facility as defined in RCW 67.40.020. [1995 c 386 § 1.]

Severability—1995 c 386: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 386 § 17.]

Effective date—1995 c 386: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 386 § 18.]

67.40.140 Convention and trade facilities—Remittance of tax—Credit. When remitting sales tax receipts to the state under RCW 82.14.050, the city treasurer, or its designee, shall at the same time remit the sales taxes collected under RCW 67.40.130 for the municipality. The sum so collected and paid over on behalf of the municipality shall be credited against the amount of the tax otherwise due to the state from those same taxpayers under RCW 82.08.020(1). [1995 c 386 § 2.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.150 Convention and trade facilities—Contract of administration and collection to department of revenue—Disposition of tax—Procedure. (1) The cities shall contract, prior to the effective date of a resolution or ordinance imposing a sales tax under RCW 67.40.130, the administration and collection of the local option sales tax to the state department of revenue at no cost to the municipality. The tax authorized by chapter 386, Laws of 1995 which is collected by the department of revenue shall be deposited by the state into the account created under RCW 67.40.040 in the state treasury.

(2) The sales tax authorized under RCW 67.40.130 shall be due and payable in the same manner as those taxes authorized under RCW 82.14.030. [1995 c 386 § 3.]

(2008 Ed.)

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.160 Convention and trade facilities—Tax on construction—Disposition. The state sales tax on construction performed under RCW 67.40.170 collected by the department of revenue under chapter 82.08 RCW shall be deposited by the state into the account created under RCW 67.40.040 in the state treasury. [1995 c 386 § 4.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.170 Convention and trade facilities—Use of collected taxes. All taxes levied and collected under RCW 67.40.130 shall be credited to the state convention and trade center account in the state treasury and used solely by the corporation formed under RCW 67.40.020 for the purpose of paying all or any part of the cost associated with: The financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of convention center facilities related to the expansion recommended by the convention center expansion and city facilities task force created under section 148, chapter 6, Laws of 1994 sp. sess.; the acquisition, construction, and relocation costs of replacement housing; and the repayment of loans and advances from the state, including loans authorized previously under this chapter, or to pay or secure the payment of all or part of the principal of or interest on any state bonds issued for purposes authorized under this chapter. [1995 c 386 § 5.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.180 Convention and trade facilities—Use of funds—Acceptance by board of directors of funding commitment. Upon May 16, 1995, the corporation may proceed with preliminary design and planning activities, environmental studies, and real estate appraisals for convention center improvements. No other expenditures may be made in support of the expansion project recommended by the convention center expansion and city facilities task force created under section 148, chapter 6, Laws of 1994 sp. sess. prior to acceptance by the board of directors of the corporation of an irrevocable commitment for funding from public or private participants consistent with the expansion development study task force recommendations report dated December 1994. [1995 c 386 § 6.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.190 Convention and trade facilities—Use of funds—Encumbered revenue. (1) Moneys received from any tax imposed under RCW 67.40.130 shall be used for the purpose of providing funds to the corporation for the costs associated with paying all or any part of the cost associated with: The financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of convention center facilities; the acquisition, construction, and relocation costs of replacement housing; and repayment of loans and advances from the state, including loans authorized previously under this chapter, or to pay or secure the payment of

all or part of the principal of or interest on any state bonds issued for purposes authorized under this chapter.

(2) If any of the revenue from any local sales tax authorized under RCW 67.40.130 shall have been encumbered or pledged by the state to secure the payment of any state bonds as authorized under RCW 67.40.030, then as long as that agreement or pledge shall be in effect, the legislature shall not withdraw from the municipality the authority to levy and collect the tax or the tax credit authorized under RCW 67.40.130 and 67.40.140. [1995 c 386 § 7.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.900 Severability—1982 c 34. If any provision of this act or its application to any municipality, person, or circumstance is held invalid, the remainder of the act or the application of the provision to other municipalities, persons, or circumstances is not affected. [1982 c 34 § 13.]

67.40.901 Severability—1988 ex.s. c 1. See RCW 36.100.900.

Chapter 67.42 RCW AMUSEMENT RIDES

Sections

67.42.010	Definitions.
67.42.020	Requirements—Operation of amusement ride or structure—Bungee jumping device inspection.
67.42.025	Inspections and inspectors—Comparable regulation and comparable qualification.
67.42.030	Permit—Application—Decal.
67.42.040	Permit—Duration—Material modification of ride or structure—Bungee jumping device replacement, movement, purchase.
67.42.050	Rules—Orders to cease operation—Administrative proceedings.
67.42.060	Fees.
67.42.070	Penalty.
67.42.080	Counties and municipalities—Supplemental ordinances.
67.42.090	Bungee jumping—Permission.
67.42.900	Severability—1985 c 262.
67.42.901	Effective date—1985 c 262.

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

(1) "Amusement structure" means electrical or mechanical devices or combinations of devices operated for revenue and to provide amusement or entertainment to viewers or audiences at carnivals, fairs, or amusement parks. "Amusement structure" also means a bungee jumping device regardless of where located. "Amusement structure" does not include games in which a member of the public must perform an act, nor concessions at which customers may make purchases.

(2) "Amusement ride" means any vehicle, boat, bungee jumping device, or other mechanical device moving upon or within a structure, along cables or rails, through the air by centrifugal force or otherwise, or across water, that is used to convey one or more individuals for amusement, entertainment, diversion, or recreation. "Amusement ride" includes, but is not limited to, devices commonly known as skyrides, ferris wheels, carousels, parachute towers, tunnels of love, bungee jumping devices, and roller coasters. "Amusement

ride" does not include: (a) Conveyances for persons in recreational winter sports activities such as ski lifts, ski tows, j-bars, t-bars, and similar devices subject to regulation under *chapter 70.88 RCW; (b) any single-passenger coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator; (c) nonmechanized playground equipment, including but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, and physical fitness devices; or (d) water slides.

(3) "Department" means the department of labor and industries.

(4) "Insurance policy" means an insurance policy written by an insurer authorized to do business in this state under Title 48 RCW. [1993 c 203 § 2; 1985 c 262 § 1.]

***Reviser's note:** Chapter 70.88 RCW was recodified as chapter 79A.40 RCW pursuant to 1999 c 249 § 1601.

Findings—Intent—1993 c 203: "(1) The legislature finds that: Bungee jumping is growing in popularity as a new source of entertainment for the citizens of this state;

Individuals have suffered serious injuries in states where the regulation of this activity was minimal or nonexistent; and

The potential for harm to individuals participating in this activity likely increases in the absence of state regulation of these activities.

(2) It is the intent of the legislature to require bungee jumping operations to be regulated by the state to the extent necessary to protect the health and safety of individuals participating in this activity." [1993 c 203 § 1.]

67.42.020 Requirements—Operation of amusement ride or structure—Bungee jumping device inspection. Before operating any amusement ride or structure, the owner or operator shall:

(1) Obtain a permit pursuant to RCW 67.42.030;

(2) Have the amusement ride or structure inspected for safety at least once annually by an insurer, a person with whom the insurer has contracted, or a person who meets the qualifications set by the department and obtain from the insurer or person a written certificate that the inspection has been made and that the amusement ride or structure meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section. A bungee jumping device, including, but not limited to, the crane, tower, balloon or bridge, person lift basket, platforms, bungee cords, end attachments, anchors, carabiners or locking devices, harnesses, landing devices, and additional ride operation hardware shall be inspected for safety prior to beginning operation and annually by an insurer, a person with whom the insurer has contracted, or a person authorized by the department to inspect bungee jumping devices. The operator of the bungee jumping device shall obtain a written certificate which states that the required inspection has been made and the bungee jumping device meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section;

(3) Have and keep in effect an insurance policy in an amount not less than one million dollars per occurrence insuring: (a) The owner or operator; and (b) any municipality or county on whose property the amusement ride or structure stands, or any municipality or county which has contracted

with the owner or operator against liability for injury to persons arising out of the use of the amusement ride or structure;

(4) File with the department the inspection certificate and insurance policy required by this section; and

(5) File with each sponsor, lessor, landowner, or other person responsible for an amusement structure or ride being offered for use by the public a certificate stating that the insurance required by subsection (3) of this section is in effect. [1993 c 203 § 3; 1986 c 86 § 1; 1985 c 262 § 2.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.025 Inspections and inspectors—Comparable regulation and comparable qualification. (1) An amusement ride that has been inspected in any state, territory, or possession of the United States that, in the discretion of the department, has a level of regulation comparable to this chapter, shall be deemed to meet the inspection requirement of this chapter.

(2) An amusement ride inspector who is authorized to inspect amusement rides in any state, territory, or possession of the United States, who, in the discretion of the department, has a level of qualifications comparable to those required under this chapter, shall be deemed qualified to inspect amusement rides under this chapter. [1986 c 86 § 2.]

67.42.030 Permit—Application—Decal. (1) Application for an operating permit to operate an amusement ride or structure shall be made on an annual basis by the owner or operator of the amusement ride or structure. The application shall be made on forms prescribed by the department and shall include the certificate required by RCW 67.42.020(2).

(2) The department shall issue a decal with each permit. The decal shall be affixed on or adjacent to the control panel of the amusement ride or structure in a location visible to the patrons of the ride or structure. [1985 c 262 § 3.]

67.42.040 Permit—Duration—Material modification of ride or structure—Bungee jumping device replacement, movement, purchase. (1) Except as provided in subsection (2) of this section or unless a shorter period is specified by the department, permits issued under RCW 67.42.030 are valid for a one-year period.

(2) If an amusement ride or structure is materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, the amusement ride or structure shall be subject to a new inspection under RCW 67.42.020 and the owner or operator shall apply for a new permit under RCW 67.42.030.

(3) If an amusement ride or structure for which a permit has been issued pursuant to RCW 67.42.030 is moved and installed in another place but is not materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, no new permit is required prior to the expiration of the permit.

(4) A bungee jumping device or a part of a device, including, but not limited to, the crane, person lift basket, mobile crane, balloon or balloon basket, anchor or anchor attachment structure, or landing device, that is replaced shall be reinspected by an insurer, a person with whom the insurer has contracted, or by a person authorized by the department

to inspect bungee jumping devices, and the owner or operator of the device shall apply for a new permit under RCW 67.42.030.

(5) A bungee jumping operator shall have any bungee jumping device or structure that is moved and installed in another location reinspected by an insurer, a person with whom the insurer has contracted, or a person authorized by the department to inspect bungee jumping devices before beginning operation.

(6) Any new operator who purchases an existing bungee jumping device or structure must have the bungee jumping device inspected and permitted as required under RCW 67.42.020 before beginning operation. [1993 c 203 § 4; 1985 c 262 § 4.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.050 Rules—Orders to cease operation—Administrative proceedings. (1) The department shall adopt rules under chapter 34.05 RCW to administer this chapter. Such rules may exempt amusement rides or structures otherwise subject to this chapter if the amusement rides or structures are located on lands owned by [the] United States government or its agencies and are required to comply with federal safety standards at least equal to those under this chapter.

(2) The department may order in writing the cessation of the operation of an amusement ride or structure for which no valid permit is in effect or for which the owner or operator does not have an insurance policy as required by RCW 67.42.020.

(3) All proceedings relating to permits or orders to cease operation under this chapter shall be conducted pursuant to chapter 34.05 RCW. [1985 c 262 § 5.]

67.42.060 Fees. (1) The department may charge a reasonable fee not to exceed ten dollars for each permit issued under RCW 67.42.030. All fees collected by the department under this chapter shall be deposited in the state general fund. This subsection does not apply to permits issued under RCW 67.42.030 to operate a bungee jumping device.

(2) The department may charge a reasonable fee not to exceed one hundred dollars for each permit issued under RCW 67.42.030 to operate a bungee jumping device. Fees collected under this subsection shall be deposited in the state general fund for appropriation for the permitting and inspection of bungee jumping devices under this chapter. [1993 c 203 § 5; 1985 c 262 § 6.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.070 Penalty. Any person who operates an amusement ride or structure without complying with the requirements of this chapter is guilty of a gross misdemeanor. [1985 c 262 § 7.]

67.42.080 Counties and municipalities—Supplemental ordinances. Nothing contained in this chapter prevents a county or municipality from adopting and enforcing ordinances which relate to the operation of amusement rides or structures and supplement the provisions of this chapter. [1985 c 262 § 8.]

67.42.090 Bungee jumping—Permission. (1) Bungee jumping from a publicly owned bridge or publicly owned land is allowed only if permission has been granted by the government body that has jurisdiction over the bridge or land.

(2) Bungee jumping into publicly owned waters is allowed only if permission has been granted by the government body that has jurisdiction over the body of water.

(3) Bungee jumping from a privately owned bridge is allowed only if permission has been granted by the owner of the bridge. [1993 c 203 § 6.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.900 Severability—1985 c 262. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 262 § 10.]

67.42.901 Effective date—1985 c 262. This act shall take effect on January 1, 1986. [1985 c 262 § 11.]

Chapter 67.70 RCW STATE LOTTERY

Sections

67.70.010	Definitions.
67.70.030	State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum.
67.70.040	Powers and duties of commission—When legislative approval required.
67.70.042	Scratch games—Baseball stadium construction.
67.70.043	New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities.
67.70.044	Shared game lottery.
67.70.050	Office of director created—Appointment—Salary—Duties.
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67.70.060	Powers of director.
67.70.070	Licenses for lottery sales agents—Factors—"Person" defined.
67.70.080	License as authority to act.
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67.70.100	Assignment of rights prohibited—Exceptions—Notices—Assignment of payment of remainder of an annuity—Intervention—Limitation on payment by director—Rules—Recovery of costs of commission—Federal ruling required—Discharge of liability.
67.70.110	Maximum price of ticket or share limited—Sale by other than licensed agent prohibited.
67.70.120	Sale to minor prohibited—Exception—Penalties.
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67.70.150	Penalty for false or misleading statement or entry or failure to produce documents.
67.70.160	Penalty for violation of chapter—Exceptions.
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67.70.180	Persons prohibited from purchasing tickets or shares or receiving prizes—Penalty.
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67.70.200	Deposit of moneys received by agents from sales—Power of director—Reports.
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67.70.220	Payment of prizes to minor.
67.70.230	State lottery account created.
67.70.240	Use of moneys in state lottery account limited.
67.70.241	Promotion of lottery by person or entity responsible for operating stadium and exhibition center—Commission approval—Cessation of obligation.
67.70.250	Methods for payment of prizes by installments.
67.70.255	Debts owed to state agency or political subdivision—Debt information to lottery commission—Prize set off against debts.
67.70.260	Lottery administrative account created.
67.70.270	Members of commission—Compensation—Travel expenses.

67.70.280	Application of administrative procedure act.
67.70.290	Post-audits by state auditor.
67.70.300	Investigations by attorney general authorized.
67.70.310	Management review by director of financial management.
67.70.320	Verification by certified public accountant.
67.70.330	Enforcement powers of director—Office of the director designated law enforcement agency.
67.70.340	Transfer of shared game lottery proceeds.
67.70.902	Construction—1982 2nd ex.s. c 7.
67.70.903	Severability—1982 2nd ex.s. c 7.
67.70.904	Severability—1985 c 375.
67.70.905	Effective date—1985 c 375.

Pathological gamblers, information for: RCW 9.46.071.

Problem and pathological gambling treatment: RCW 43.20A.890.

67.70.010 Definitions. For the purposes of this chapter:

(1) "Commission" means the state lottery commission established by this chapter;

(2) "Director" means the director of the state lottery established by this chapter;

(3) "Lottery" or "state lottery" means the lottery established and operated pursuant to this chapter;

(4) "Online game" means a lottery game in which a player pays a fee to a lottery retailer and selects a combination of digits, numbers, or symbols, type and amount of play, and receives a computer-generated ticket with those selections, and the lottery separately draws or selects the winning combination or combinations;

(5) "Shared game lottery" means any lottery activity in which the commission participates under written agreement between the commission, on behalf of the state, and any other state or states. [2002 c 349 § 1; 1994 c 218 § 3; 1987 c 511 § 1; 1982 2nd ex.s. c 7 § 1.]

Effective date—1994 c 218: See note following RCW 9.46.010.

67.70.030 State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum. There is created the state lottery commission to consist of five members appointed by the governor with the consent of the senate. Of the initial members, one shall serve a term of two years, one shall serve a term of three years, one shall serve a term of four years, one shall serve a term of five years, and one shall serve a term of six years. Their successors, all of whom shall be citizen members appointed by the governor with the consent of the senate, upon being appointed and qualified, shall serve six-year terms. No member of the commission who has served a full six-year term is eligible for reappointment. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs.

The governor shall designate one member of the commission to serve as chairman at the governor's pleasure.

A majority of the members shall constitute a quorum for the transaction of business. [1982 2nd ex.s. c 7 § 3.]

67.70.040 Powers and duties of commission—When legislative approval required. The commission shall have the power, and it shall be its duty:

(1) To adopt rules governing the establishment and operation of a state lottery as it deems necessary and desirable in order that such a lottery be initiated at the earliest feasible and practicable time, and in order that such lottery produce the maximum amount of net revenues for the state consonant

with the dignity of the state and the general welfare of the people. Such rules shall include, but shall not be limited to, the following:

(a) The type of lottery to be conducted which may include the selling of tickets or shares, but such tickets or shares may not be sold over the internet. The use of electronic or mechanical devices or video terminals which allow for individual play against such devices or terminals shall be prohibited. An affirmative vote of sixty percent of both houses of the legislature is required before offering any game allowing or requiring a player to become eligible for a prize or to otherwise play any portion of the game by interacting with any device or terminal involving digital, video, or other electronic representations of any game of chance, including scratch tickets, pull-tabs, bingo, poker or other cards, dice, roulette, keno, or slot machines. Approval of the legislature shall be required before entering any agreement with other state lotteries to conduct shared games;

(b) The price, or prices, of tickets or shares in the lottery;

(c) The numbers and sizes of the prizes on the winning tickets or shares;

(d) The manner of selecting the winning tickets or shares, except as limited by (a) of this subsection;

(e) The manner and time of payment of prizes to the holder of winning tickets or shares which, at the director's option, may be paid in lump sum amounts or installments over a period of years;

(f) The frequency of the drawings or selections of winning tickets or shares. Approval of the legislature is required before conducting any online game in which the drawing or selection of winning tickets occurs more frequently than once every twenty-four hours;

(g) Without limit as to number, the type or types of locations at which tickets or shares may be sold;

(h) The method to be used in selling tickets or shares, except as limited by (a) of this subsection;

(i) The licensing of agents to sell or distribute tickets or shares, except that a person under the age of eighteen shall not be licensed as an agent;

(j) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;

(k) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among: (i) The payment of prizes to the holders of winning tickets or shares, which shall not be less than forty-five percent of the gross annual revenue from such lottery, (ii) transfers to the lottery administrative account created by RCW 67.70.260, and (iii) transfer to the state's general fund. Transfers to the state general fund shall be made in compliance with RCW 43.01.050;

(l) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

(2) To ensure that in each place authorized to sell lottery tickets or shares, on the back of the ticket or share, and in any advertising or promotion there shall be conspicuously displayed an estimate of the probability of purchasing a winning ticket.

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(3) To amend, repeal, or supplement any such rules from time to time as it deems necessary or desirable.

(4) To advise and make recommendations to the director for the operation and administration of the lottery. [2006 c 290 § 3; 1994 c 218 § 4; 1991 c 359 § 1; 1988 c 289 § 801; 1987 c 511 § 2; 1985 c 375 § 1; 1982 2nd ex.s. c 7 § 4.]

State policy—2006 c 290: See note following RCW 9.46.240.

Effective date—1994 c 218: See note following RCW 9.46.010.

Severability—1988 c 289: See note following RCW 50.16.070.

67.70.042 Scratch games—Baseball stadium construction. The lottery commission shall conduct at least two but not more than four scratch games with sports themes per year. These games are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(4). [1997 c 220 § 207 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 104.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

State contribution for baseball stadium limited: RCW 82.14.0486.

67.70.043 New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities. The lottery commission shall conduct new games that are in addition to any games conducted under RCW 67.70.042 and are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(5). No game may be conducted under this section before January 1, 1998. No game may be conducted under this section after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met, and no game is required to be conducted after the distributions cease under RCW 67.70.240(5).

For the purposes of this section, the lottery may accept and market prize promotions provided in conjunction with private-sector marketing efforts. [1997 c 220 § 205 (Referendum Bill No. 48, approved June 17, 1997).]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

67.70.044 Shared game lottery. (1) Pursuant to RCW 67.70.040(1)(a), the commission may enter into the multi-state agreement establishing a shared game lottery known as "The Big Game," that was entered into by party state lotteries in August 1996 and subsequently amended.

(2) The shared game lottery account is created as a separate account outside the state treasury. The account is managed, maintained, and controlled by the commission and consists of all revenues received from the sale of shared game lottery tickets or shares, and all other moneys credited or transferred to it from any other fund or source under law. The

account is allotted according to chapter 43.88 RCW. [2002 c 349 § 2.]

67.70.050 Office of director created—Appointment—Salary—Duties. There is created the office of director of the state lottery. The director shall be appointed by the governor with the consent of the senate. The director shall serve at the pleasure of the governor and shall receive such salary as is determined by the governor, but in no case may the director's salary be more than ninety percent of the salary of the governor. The director shall:

(1) Supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules of the commission.

(2) Appoint such deputy and assistant directors as may be required to carry out the functions and duties of his office: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such deputy and assistant directors.

(3) Appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed by this chapter: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such employees as are engaged in undercover audit or investigative work or security operations but shall apply to other employees appointed by the director, except as provided for in subsection (2) of this section.

(4) In accordance with the provisions of this chapter and the rules of the commission, license as agents to sell or distribute lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares. The director may require a bond from any licensed agent, in such amount as provided in the rules of the commission. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the rules of the commission. License fees may be established by the commission, and, if established, shall be deposited in the state lottery account created by RCW 67.70.230.

(5) Confer regularly as necessary or desirable with the commission on the operation and administration of the lottery; make available for inspection by the commission, upon request, all books, records, files, and other information and documents of the lottery; and advise the commission and recommend such matters as the director deems necessary and advisable to improve the operation and administration of the lottery.

(6) Subject to the applicable laws relating to public contracts, enter into contracts for the operation of the lottery, or any part thereof, and into contracts for the promotion of the lottery. No contract awarded or entered into by the director may be assigned by the holder thereof except by specific approval of the commission: PROVIDED, That nothing in this chapter authorizes the director to enter into public contracts for the regular and permanent administration of the lottery after the initial development and implementation.

(7) Certify quarterly to the state treasurer and the commission a full and complete statement of lottery revenues, prize disbursements, and other expenses for the preceding quarter.

(8) Carry on a continuous study and investigation of the lottery throughout the state: (a) For the purpose of ascertain-

ing any defects in this chapter or in the rules issued thereunder by reason whereof any abuses in the administration and operation of the lottery or any evasion of this chapter or the rules may arise or be practiced, (b) for the purpose of formulating recommendations for changes in this chapter and the rules promulgated thereunder to prevent such abuses and evasions, (c) to guard against the use of this chapter and the rules issued thereunder as a cloak for the carrying on of professional gambling and crime, and (d) to ensure that this chapter and rules shall be in such form and be so administered as to serve the true purposes of this chapter.

(9) Make a continuous study and investigation of: (a) The operation and the administration of similar laws which may be in effect in other states or countries, (b) the operation of an additional game or games for the benefit of a particular program or purpose, (c) any literature on the subject which from time to time may be published or available, (d) any federal laws which may affect the operation of the lottery, and (e) the reaction of the citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter.

(10) Have all enforcement powers granted in chapter 9.46 RCW.

(11) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [1998 c 245 § 106. Prior: 1987 c 511 § 3; 1987 c 505 § 57; 1986 c 158 § 21; 1985 c 375 § 2; 1982 2nd ex.s. c 7 § 5.]

67.70.055 Activities prohibited to officers, employees, and members. The director, deputy directors, any assistant directors, and employees of the state lottery and members of the lottery commission shall not:

(1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;

(2) Receive or share in, directly or indirectly, the gross profits of any lottery or other gambling activity regulated by the gambling commission;

(3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of a lottery or other gambling activity, or the provision of independent consultant services in connection with a lottery or other gambling activity. [1987 c 511 § 4; 1986 c 4 § 2.]

67.70.060 Powers of director. (1) The director or the director's authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the director or an administrative law judge

appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the director's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in chapter 34.05 RCW.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1989 c 175 § 123; 1982 2nd ex.s. c 7 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

67.70.070 Licenses for lottery sales agents—Factors—"Person" defined. No license as an agent to sell lottery tickets or shares may be issued to any person to engage in business exclusively as a lottery sales agent. Before issuing a license the director shall consider such factors as: (1) The financial responsibility and security of the person and his business or activity, (2) the accessibility of his place of business or activity to the public, (3) the sufficiency of existing licenses to serve the public convenience, and (4) the volume of expected sales.

For purposes of this section, the term "person" means an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" does not mean any department, commission, agency, or instrumentality of the state, or any county or municipality or any agency or instrumentality thereof, except for retail outlets of the state liquor control board. [1982 2nd ex.s. c 7 § 7.]

67.70.080 License as authority to act. Any person licensed as provided in this chapter is hereby authorized and empowered to act as a lottery sales agent. [1982 2nd ex.s. c 7 § 8.]

67.70.090 Denial, suspension, and revocation of licenses. The director may deny an application for, or suspend or revoke, after notice and hearing, any license issued pursuant to this chapter. Such license may, however, be tem-

porarily suspended by the director without prior notice, pending any prosecution, investigation, or hearing. A license may be suspended or revoked or an application may be denied by the director for one or more of the following reasons:

(1) Failure to account for lottery tickets received or the proceeds of the sale of lottery tickets or to file a bond if required by the director or to comply with the instructions of the director concerning the licensed activity;

(2) For any of the reasons or grounds stated in RCW 9.46.075 or violation of this chapter or the rules of the commission;

(3) Failure to file any return or report or to keep records or to pay any tax required by this chapter;

(4) Fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

(5) That the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs, or that public convenience is adequately served by other licensees;

(6) A material change, since issuance of the license with respect to any matters required to be considered by the director under RCW 67.70.070.

For the purpose of reviewing any application for a license and for considering the denial, suspension, or revocation of any license the director may consider any prior criminal conduct of the applicant or licensee and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. [1982 2nd ex.s. c 7 § 9.]

67.70.100 Assignment of rights prohibited—Exceptions—Notices—Assignment of payment of remainder of an annuity—Intervention—Limitation on payment by director—Rules—Recovery of costs of commission—Federal ruling required—Discharge of liability. (1) Except under subsection (2) of this section, no right of any person to a prize drawn is assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled.

(2)(a) The payment of all or part of the remainder of an annuity may be assigned to another person, pursuant to a voluntary assignment of the right to receive future annual prize payments, if the assignment is made pursuant to an appropriate judicial order of the Thurston county superior court or the superior court of the county in which the prize winner resides, if the winner is a resident of Washington state. If the prize winner is not a resident of Washington state, the winner must seek an appropriate order from the Thurston county superior court.

(b) If there is a voluntary assignment under (a) of this subsection, a copy of the petition for an order under (a) of this subsection and all notices of any hearing in the matter shall be served on the attorney general no later than ten days before any hearing or entry of any order.

(c) The court receiving the petition may issue an order approving the assignment and directing the director to pay to the assignee the remainder or portion of an annuity so assigned upon finding that all of the following conditions have been met:

(i) The assignment has been memorialized in writing and executed by the assignor and is subject to Washington law;

(ii) The assignor provides a sworn declaration to the court attesting to the facts that the assignor has had the opportunity to be represented by independent legal counsel in connection with the assignment, has received independent financial and tax advice concerning the effects of the assignment, and is of sound mind and not acting under duress, and the court makes findings determining so;

(iii) The assignee has provided a one-page written disclosure statement that sets forth in bold-face type, fourteen point or larger, the payments being assigned by amount and payment dates, the purchase price, or loan amount being paid; the interest rate or rate of discount to present value, assuming monthly compounding and funding on the contract date; and the amount, if any, of any origination or closing fees that will be charged to the lottery winner. The disclosure statement must also advise the winner that the winner should consult with and rely upon the advice of his or her own independent legal or financial advisors regarding the potential federal and state tax consequences of the transaction; and

(iv) The proposed assignment does not and will not include or cover payments or portions of payments subject to offsets pursuant to RCW 67.70.255 unless appropriate provision is made in the order to satisfy the obligations giving rise to the offset.

(d) The commission may intervene as of right in any proceeding under this section but shall not be deemed an indispensable or necessary party.

(3) The director will not pay the assignee an amount in excess of the annual payment entitled to the assignor.

(4) The commission may adopt rules pertaining to the assignment of prizes under this section, including recovery of actual costs incurred by the commission. The recovery of actual costs shall be deducted from the initial annuity payment made to the assignee.

(5) No voluntary assignment under this section is effective unless and until the national office of the federal internal revenue service provides a ruling that declares that the voluntary assignment of prizes will not affect the federal income tax treatment of prize winners who do not assign their prizes. If at any time the federal internal revenue service or a court of competent jurisdiction provides a determination letter, revenue ruling, other public ruling of the internal revenue service or published decision to any state lottery or state lottery prize winner declaring that the voluntary assignment of prizes will effect the federal income tax treatment of prize winners who do not assign their prizes, the director shall immediately file a copy of that letter, ruling, or published decision with the secretary of state. No further voluntary assignments may be allowed after the date the ruling, letter, or published decision is filed.

(6) The occurrence of any event described in subsection (5) of this section does not render invalid or ineffective assignments validly made and approved pursuant to an appropriate judicial order before the occurrence of any such event.

(7) The requirement for a disclosure statement in subsection (2)(c)(iii) of this section does not apply to any assignment agreement executed before April 21, 1997.

(8) The commission and the director shall be discharged of all further liability upon payment of a prize pursuant to this

section. [1997 c 111 § 1; 1996 c 228 § 2; 1982 2nd ex.s. c 7 § 10.]

Effective date—1997 c 111: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 111 § 2.]

Intent—1996 c 228: "The Washington state lottery act under chapter 7, Laws of 1982 2nd ex. sess., provides, among other things, that the right of any person to a prize shall not be assignable, except to the estate of a deceased prize winner, or to a person designated pursuant to an appropriate judicial order. Current law and practices provide that those who win lotto jackpots are paid in annual installments over a period of twenty years. The legislature recognizes that some prize winners, particularly elderly persons, those seeking to acquire a small business, and others with unique needs, may not want to wait to be paid over the course of up to twenty years. It is the intent of the legislature to provide a restrictive means to accommodate those prize winners who wish to enjoy more of their winnings currently, without impacting the current fiscal structure of the Washington state lottery commission." [1996 c 228 § 1.]

67.70.110 Maximum price of ticket or share limited—Sale by other than licensed agent prohibited. A person shall not sell a ticket or share at a price greater than that fixed by rule of the commission. No person other than a licensed lottery sales agent shall sell lottery tickets, except that nothing in this section prevents any person from giving lottery tickets or shares to another as a gift. [1982 2nd ex.s. c 7 § 11.]

67.70.120 Sale to minor prohibited—Exception—Penalties. (1) A ticket or share shall not be sold to any person under the age of eighteen, but this shall not be deemed to prohibit the purchase of a ticket or share for the purpose of making a gift by a person eighteen years of age or older to a person less than that age.

(2) Any licensee who knowingly sells or offers to sell a lottery ticket or share to any person under the age of eighteen is guilty of a misdemeanor.

(3) In the event that a person under the age of eighteen years directly purchases a ticket in violation of this section, that person is guilty of a misdemeanor. No prize will be paid to such person and the prize money otherwise payable on the ticket will be treated as unclaimed pursuant to RCW 67.70.190. [2003 c 53 § 303; 1987 c 511 § 6; 1982 2nd ex.s. c 7 § 12.]

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

67.70.125 Use of public assistance electronic benefit cards prohibited—Licensee to report violations. (1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards to purchase lottery tickets or shares authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of RCW 74.08.580. [2002 c 252 § 5.]

67.70.130 Prohibited acts—Penalty. (1) A person shall not alter or forge a lottery ticket. A person shall not claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation. A person shall not conspire, aid, abet, or agree to aid another person or persons to

claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 304; 1982 2nd ex.s. c 7 § 13.]

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

67.70.140 Penalty for unlicensed activity. (1) Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section. [2003 c 53 § 305; 1982 2nd ex.s. c 7 § 14.]

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

67.70.150 Penalty for false or misleading statement or entry or failure to produce documents. Whoever, in any application for a license or in any book or record required to be maintained or in any report required to be submitted, makes any false or misleading statement, or makes any false or misleading entry or wilfully fails to maintain or make any entry required to be maintained or made, or who wilfully refuses to produce for inspection any book, record, or document required to be maintained or made by federal or state law is guilty of a gross misdemeanor. [1982 2nd ex.s. c 7 § 15.]

67.70.160 Penalty for violation of chapter—Exceptions. Any person who violates any provision of this chapter for which no penalty is otherwise provided, or knowingly causes, aids, abets, or conspires with another to cause any person to violate any provision of this chapter is guilty of a class C felony, except where other penalties are specifically provided for in this chapter. [1982 2nd ex.s. c 7 § 16.]

67.70.170 Penalty for violation of rules—Exceptions. Any person who violates any rule adopted pursuant to this chapter for which no penalty is otherwise provided, or knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule adopted pursuant to this chapter is guilty of a gross misdemeanor, except where other penalties are specifically provided for in this chapter. [1982 2nd ex.s. c 7 § 17.]

67.70.180 Persons prohibited from purchasing tickets or shares or receiving prizes—Penalty. A ticket or share shall not be purchased by, and a prize shall not be paid to any member of the commission, the director, or an employee of the lottery or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member of the commission, the director or an employee of the lottery.

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A violation of this section is a misdemeanor. [1987 c 511 § 7; 1982 2nd ex.s. c 7 § 18.]

67.70.190 Unclaimed prizes. Unclaimed prizes shall be retained in the state lottery account for the person entitled thereto for one hundred eighty days after the drawing in which the prize is won, or after the official end of the game for instant prizes. If no claim is made for the prize within this time, all rights to the prize shall be extinguished, and the prize shall be retained in the state lottery fund for further use as prizes, except that one-third of all unclaimed prize money shall be deposited in the economic development strategic reserve account created in RCW 43.330.250. [2005 c 427 § 2; 1994 c 218 § 5; 1988 c 289 § 802; 1987 c 511 § 8; 1982 2nd ex.s. c 7 § 19.]

Effective date—1994 c 218: See note following RCW 9.46.010.

Severability—1988 c 289: See note following RCW 50.16.070.

67.70.200 Deposit of moneys received by agents from sales—Power of director—Reports. The director, in his discretion, may require any or all lottery sales agents to deposit to the credit of the state lottery account in banks designated by the state treasurer, all moneys received by such agents from the sale of lottery tickets or shares, less the amount, if any, retained as compensation for the sale of the tickets or shares, and to file with the director or his designated agents, reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as he may require. The director may make such arrangements for any person, including a bank, to perform such functions, activities, or services in connection with the operation of the lottery as he or she may deem advisable pursuant to this chapter and the rules of the commission, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person. [1987 c 511 § 9; 1982 2nd ex.s. c 7 § 20.]

67.70.210 Other law inapplicable to sale of tickets or shares. No other law, including chapter 9.46 RCW, providing any penalty or disability for the sale of lottery tickets or any acts done in connection with a lottery applies to the sale of tickets or shares performed pursuant to this chapter. [1982 2nd ex.s. c 7 § 21.]

67.70.220 Payment of prizes to minor. If the person entitled to a prize is under the age of eighteen years, and such prize is less than five thousand dollars, the director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of such minor. If the person entitled to a prize is under the age of eighteen years, and such prize is five thousand dollars or more, the director may direct payment to such minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a guardian of the minor as custodian for such minor. The person so named as custodian shall have the same duties and powers as a person designated as a custodian in a manner prescribed by the Washington uniform transfers to minors act, chapter 11.114 RCW, and for the purposes of this section the terms "adult member of a minor's family," "guardian of a

minor," and "bank" shall have the same meaning as in chapter 11.114 RCW. The commission and the director shall be discharged of all further liability upon payment of a prize to a minor pursuant to this section. [1991 c 193 § 30; 1985 c 7 § 128; 1982 2nd ex.s. c 7 § 22.]

Effective date—Severability—1991 c 193: See RCW 11.114.903 and 11.114.904.

67.70.230 State lottery account created. There is hereby created and established a separate account, to be known as the state lottery account. Such account shall be managed, maintained, and controlled by the commission and shall consist of all revenues received from the sale of lottery tickets or shares, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. The account shall be a separate account outside the state treasury. No appropriation is required to permit expenditures and payment of obligations from the account. [1985 c 375 § 4; 1982 2nd ex.s. c 7 § 23.]

67.70.240 Use of moneys in state lottery account limited. The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the education construction fund and student achievement fund created in RCW 43.135.045. For the transition period from July 1, 2001, until and including June 30, 2002, fifty percent of the moneys not otherwise obligated under this section shall be placed in the student achievement fund and fifty percent of these moneys shall be placed in the education construction fund. On and after July 1, 2002, until June 30, 2004, seventy-five percent of these moneys shall be placed in the student achievement fund and twenty-five percent shall be placed in the education construction fund. On and after July 1, 2004, all deposits not otherwise obligated under this section shall be placed in the education construction fund. Moneys in the state lottery account deposited in the education construction fund and the student achievement fund are included in "general state revenues" under RCW 39.42.070;

(4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distri-

bution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For the purchase and promotion of lottery games and game-related services; and

(7) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments. [2001 c 3 § 4 (Initiative Measure No. 728, approved November 7, 2000); 1997 c 220 § 206 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 105; 1987 c 513 § 7; 1985 c 375 § 5; 1982 2nd ex.s. c 7 § 24.]

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Effective date—Severability—1987 c 513: See notes following RCW 18.85.285.

State contribution for baseball stadium limited: RCW 82.14.0486.

67.70.241 Promotion of lottery by person or entity responsible for operating stadium and exhibition center—Commission approval—Cessation of obligation.

The person or entity responsible for operating a stadium and exhibition center as defined in RCW 36.102.010 shall promote the lottery with any combination of in-kind advertising, sponsorship, or prize promotions, valued at one million dollars annually beginning January 1998 and increased by four percent each year thereafter for the purpose of increasing lottery sales of games authorized under RCW 67.70.043. The content and value of the advertising sponsorship or prize promotions are subject to reasonable approval in advance by the lottery commission. The obligation of this section shall cease when the distributions under RCW 67.70.240(5) end, but not later than December 31, 2020. [1997 c 220 § 208 (Referendum Bill No. 48, approved June 17, 1997).]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

67.70.250 Methods for payment of prizes by installments. If the director decides to pay any portion of or all of the prizes in the form of installments over a period of years, the director shall provide for the payment of all such installments for any specific lottery game by one, but not both, of the following methods:

(1) The director may enter into contracts with any financially responsible person or firm providing for the payment of such installments; or

(2) The director may establish and maintain a reserve account into which shall be placed sufficient moneys for the director to pay such installments as they become due. Such reserve account shall be maintained as a separate and independent fund outside the state treasury. [1987 c 511 § 11; 1982 2nd ex.s. c 7 § 25.]

67.70.255 Debts owed to state agency or political subdivision—Debt information to lottery commission—Prize set off against debts. (1) Any state agency or political subdivision that maintains records of debts owed to the state or political subdivision, or that the state is authorized to enforce or collect, may submit data processing tapes containing debt information to the lottery in a format specified by the lottery. State agencies or political subdivisions submitting debt information tapes shall provide updates on a regular basis at intervals not to exceed one month and shall be solely responsible for the accuracy of the information contained therein.

(2) The lottery shall include the debt information submitted by state agencies or political subdivisions in its validation and prize payment process. The lottery shall delay payment of a prize exceeding six hundred dollars for a period not to exceed two working days, to any person owing a debt to a state agency or political subdivision pursuant to the information submitted in subsection (1) of this section. The lottery shall contact the state agency or political subdivision that provided the information to verify the debt. The prize shall be paid to the claimant if the debt is not verified by the submitting state agency or political subdivision within two working days. If the debt is verified, the prize shall be disbursed pursuant to subsection (3) of this section.

(3) Prior to disbursement, any lottery prize exceeding six hundred dollars shall be set off against any debts owed by the prize winner to a state agency or political subdivision, or that the state is authorized to enforce or collect. [1986 c 83 § 2.]

Policy—1986 c 83: "The award of prizes by the state lottery is one of many functions of the state government. As such, the lottery prizes should be subject to debts owed to the state or that the state is authorized to enforce or collect. This policy expedites collections of obligations through interagency cooperation." [1986 c 83 § 1.]

Effective date—1986 c 83: "This act shall take effect September 1, 1986." [1986 c 83 § 3.]

67.70.260 Lottery administrative account created. There is hereby created the lottery administrative account in the state treasury. The account shall be managed, controlled, and maintained by the director. The legislature may appropriate from the account for the payment of costs incurred in the operation and administration of the lottery. During the 2001-2003 fiscal biennium, the legislature may transfer from the lottery administrative account to the state general fund such amounts as reflect the appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings. [2002 c 371 § 919; 1985 c 375 § 6; 1982 2nd ex.s. c 7 § 26.]

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

(2008 Ed.)

67.70.270 Members of commission—Compensation—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission and actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested by a majority vote of the commission or by the director. [1984 c 287 § 101; 1982 2nd ex.s. c 7 § 27.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

67.70.280 Application of administrative procedure act. The provisions of the administrative procedure act, chapter 34.05 RCW, shall apply to administrative actions taken by the commission or the director pursuant to this chapter. [1982 2nd ex.s. c 7 § 28.]

67.70.290 Post-audits by state auditor. The state auditor shall conduct an annual post-audit of all accounts and transactions of the lottery and such other special post-audits as he may be directed to conduct pursuant to chapter 43.09 RCW. [1982 2nd ex.s. c 7 § 29.]

67.70.300 Investigations by attorney general authorized. The attorney general may investigate violations of this chapter, and of the criminal laws within this state, by the commission, the director, or the director's employees, licensees, or agents, in the manner prescribed for criminal investigations in RCW 43.10.090. [1987 c 511 § 13; 1982 2nd ex.s. c 7 § 30.]

67.70.310 Management review by director of financial management. The director of financial management may conduct a management review of the commission's lottery operations to assure that:

(1) The manner and time of payment of prizes to the holder of winning tickets or shares is consistent with this chapter and the rules adopted under this chapter;

(2) The apportionment of total revenues accruing from the sale of lottery tickets or shares and from all other sources is consistent with this chapter;

(3) The manner and type of lottery being conducted, and the expenses incidental thereto, are the most efficient and cost-effective; and

(4) The commission is not unnecessarily incurring operating and administrative costs.

In conducting a management review, the director of financial management may inspect the books, documents, and records of the commission. Upon completion of a management review, all irregularities shall be reported to the attorney general, the joint legislative audit and review committee, and the state auditor. The director of financial management shall make such recommendations as may be necessary for the most efficient and cost-effective operation of the lottery. [1996 c 288 § 50; 1982 2nd ex.s. c 7 § 31.]

67.70.320 Verification by certified public accountant. The director of financial management shall select a certified public accountant to verify that:

(1) The manner of selecting the winning tickets or shares is consistent with this chapter; and

(2) The manner and time of payment of prizes to the holder of winning tickets or shares is consistent with this chapter. The cost of these services shall be paid from moneys placed within the lottery administrative account created in RCW 67.70.260. [1987 c 511 § 14; 1982 2nd ex.s. c 7 § 32.]

67.70.330 Enforcement powers of director—Office of the director designated law enforcement agency. The director shall have the power to enforce this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. The director, the deputy director, assistant directors, and each of the director's investigators, enforcement officers, and inspectors shall have the power to enforce this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power and authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the penal provisions of this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power to arrest without a warrant, any person or persons found in the act of violating any of the penal provisions of this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. To the extent set forth in this section, the office of the director shall be a law enforcement agency of this state with the power to investigate for violations of and to enforce the provisions of this chapter and to obtain information from and provide information to all other law enforcement agencies. [1987 c 511 § 15; 1982 2nd ex.s. c 7 § 33.]

67.70.340 Transfer of shared game lottery proceeds.

(1) The legislature recognizes that creating a shared game lottery could result in less revenue being raised by the existing state lottery ticket sales. The legislature further recognizes that the two funds most impacted by this potential event are the student achievement fund and the education construction account. Therefore, it is the intent of the legislature to use some of the proceeds from the shared game lottery to make up the difference that the potential state lottery revenue loss would have on the student achievement fund and the education construction account. The legislature further intends to use some of the proceeds from the shared game lottery to fund programs and services related to problem and pathological gambling.

(2) The student achievement fund and the education construction account are expected to collectively receive one hundred two million dollars annually from state lottery games other than the shared game lottery. For fiscal year 2003 and thereafter, if the amount of lottery revenues earmarked for the student achievement fund and the education construction account is less than one hundred two million dollars, the commission, after making the transfer required under subsection (3) of this section, must transfer sufficient moneys from revenues derived from the shared game lottery into the student achievement fund and the education construction account to bring the total revenue up to one hundred two million dollars. The funds transferred from the shared game lottery account under this subsection must be divided between the student achievement fund and the education construction account in a manner consistent with RCW 67.70.240(3).

(3)(a) The commission shall transfer, from revenue derived from the shared game lottery, to the problem gambling account created in RCW 43.20A.892, an amount equal to the percentage specified in (b) of this subsection of net receipts. For purposes of this subsection, "net receipts" means the difference between (i) revenue received from the sale of lottery tickets or shares and revenue received from the sale of shared game lottery tickets or shares; and (ii) the sum of payments made to winners.

(b) In fiscal year 2006, the percentage to be transferred to the problem gambling account is one-tenth of one percent. In fiscal year 2007 and subsequent fiscal years, the percentage to be transferred to the problem gambling account is thirteen one-hundredths of one percent.

(4) The remaining net revenues, if any, in the shared game lottery account after the transfers pursuant to this section shall be deposited into the general fund. [2005 c 369 § 4; 2002 c 349 § 3.]

Findings—Intent—Severability—Effective date—2005 c 369: See notes following RCW 43.20A.890.

67.70.902 Construction—1982 2nd ex.s. c 7. This act shall be liberally construed to carry out the purposes and policies of the act. [1982 2nd ex.s. c 7 § 35.]

67.70.903 Severability—1982 2nd ex.s. c 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 2nd ex.s. c 7 § 40.]

67.70.904 Severability—1985 c 375. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 375 § 9.]

67.70.905 Effective date—1985 c 375. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect March 1, 1985. [1985 c 375 § 10.]

Reviser's note: 1985 c 375 was signed by the governor May 20, 1985.

Title 68

CEMETERIES, MORGUES, AND HUMAN REMAINS

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Chapter 68.04 RCW

DEFINITIONS

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- 68.04.020 "Human remains," "remains."
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- 68.04.240 "Owner of interment rights."
- 68.04.250 "Interment right."
- 68.04.260 "Scattering garden."

68.04.270 "Scattering."

68.04.280 "Multiple interment."

68.04.020 "Human remains," "remains." "Human remains" or "remains" means the body of a deceased person, includes the body in any stage of decomposition, and includes cremated human remains. [2005 c 365 § 27; 1977 c 47 § 1; 1943 c 247 § 2; Rem. Supp. 1943 § 3778-2.]

Short title—1943 c 247: "This act shall be known as the 'General Cemetery Act.'" [1943 c 247 § 1.]

Severability—1943 c 247: "If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act." [1943 c 247 § 147.]

The annotations apply to 1943 c 247, the general cemetery act, which was codified as RCW 68.04.020 through 68.04.240, 68.08.010 through 68.08.030, 68.08.120 through 68.08.220, 68.08.240, 68.20.010 through 68.20.100, 68.24.010 through 68.24.180, 68.28.010 through 68.28.070, 68.32.010 through 68.32.170, 68.36.010 through 68.36.100, 68.40.010 through 68.40.090, 68.44.010 through 68.44.170, and 68.48.040 through 68.48.090.

68.04.030 "Cremated human remains." "Cremated human remains" means the end products of cremation. [2005 c 365 § 28; 1977 c 47 § 2; 1943 c 247 § 3; Rem. Supp. 1943 § 3778-3.]

68.04.040 "Cemetery." "Cemetery" means: (1) Any one, or a combination of more than one, of the following, in a place used, or intended to be used for the placement of human remains and dedicated, for cemetery purposes:

- (a) A burial park, for earth interments.
 - (b) A mausoleum, for crypt interments.
 - (c) A columbarium, for permanent niche interments; or
- (2) For the purposes of chapter 68.60 RCW only, "cemetery" means any burial site, burial grounds, or place where five or more human remains are buried. Unless a cemetery is designated as a parcel of land identifiable and unique as a cemetery within the records of the county assessor, a cemetery's boundaries shall be a minimum of ten feet in any direction from any burials therein. [2005 c 365 § 29; 1990 c 92 § 7; 1979 c 21 § 1; 1943 c 247 § 4; Rem. Supp. § 3778-4.]

68.04.050 "Burial park." "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 5; Rem. Supp. 1943 § 3778-5.]

68.04.060 "Mausoleum." "Mausoleum" means a structure or building for the entombment of human remains in crypts in a place used, or intended to be used, and dedicated, for cemetery purposes. [1979 c 21 § 2; 1943 c 247 § 6; Rem. Supp. 1943 § 3778-6.]

68.04.070 "Crematory." "Crematory" means a building or area of a building that houses one or more cremation chambers, to be used for the cremation of human remains. [2005 c 365 § 30; 1943 c 247 § 7; Rem. Supp. 1943 § 3778-7.]

68.04.080 "Columbarium." "Columbarium" means a structure, room, or other space in a building or structure containing niches for permanent placement of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes. [2005 c 365 § 31; 1943 c 247 § 8; Rem. Supp. 1943 § 3778-8.]

68.04.100 "Interment." "Interment" means the placement of human remains in a cemetery. [2005 c 365 § 32; 1943 c 247 § 10; Rem. Supp. 1943 § 3778-10.]

68.04.110 "Cremation." "Cremation" means the reduction of human remains to bone fragments in a crematory by means of incineration. [2005 c 365 § 33; 1987 c 331 § 1; 1977 c 47 § 3; 1943 c 247 § 11; Rem. Supp. 1943 § 3778-11.]

Effective date—1987 c 331: See RCW 68.05.900.

68.04.120 "Inurnment." "Inurnment" means placing cremated human remains in a cemetery. [2005 c 365 § 34; 1943 c 247 § 12; Rem. Supp. 1943 § 3778-12.]

68.04.130 "Entombment." "Entombment" means the placement of human remains in a crypt. [2005 c 365 § 35; 1943 c 247 § 13; Rem. Supp. 1943 § 3778-13.]

68.04.140 "Burial." "Burial" means the placement of human remains in a grave. [1943 c 247 § 14; Rem. Supp. 1943 § 3778-14.]

68.04.150 "Grave." "Grave" means a space of ground in a burial park, used or intended to be used, for burial. [1943 c 247 § 15; Rem. Supp. 1943 § 3778-15.]

68.04.160 "Crypt." "Crypt" means a space in a mausoleum for the placement of human remains. [2005 c 365 § 36; 1979 c 21 § 3; 1943 c 247 § 16; Rem. Supp. 1943 § 3778-16.]

68.04.165 "Outer burial container." "Outer burial container" means any container which is buried in the ground for the placement of human remains in the burial process. Outer burial containers include, but are not limited to vaults, lawn crypts, and liners. [2005 c 365 § 37; 1979 c 21 § 4.]

68.04.170 "Niche." "Niche" means a space in a columbarium for placement of cremated human remains. [2005 c 365 § 38; 1943 c 247 § 17; Rem. Supp. 1943 § 3778-17.]

68.04.190 "Cemetery authority." "Cemetery authority" means an entity that has obtained a certificate of authority to operate a cemetery from the cemetery board, or any other entity that operates a cemetery that is not under the jurisdiction of the cemetery board. [2005 c 365 § 39; 1943 c 247 § 19; Rem. Supp. 1943 § 3778-19.]

68.04.210 "Cemetery business." "Cemetery business" includes establishing, maintaining, operating, and improving a cemetery for the placement of human remains, and the care and preservation of the cemetery property. [2005 c 365 § 40; 1943 c 247 § 21; Rem. Supp. 1943 § 3778-21.]

68.04.230 "Lot" or "plot." "Lot" or "plot" means space in a cemetery, used or intended to be used for the interment of human remains. [2005 c 365 § 41; 1943 c 247 § 23; Rem. Supp. 1943 § 3778-23.]

68.04.240 "Owner of interment rights." "Owner of interment rights" means any person who is listed as the owner of record of a right or rights of interment in the office of a cemetery authority. [2005 c 365 § 45; 1943 c 247 § 24; Rem. Supp. 1943 § 3778-24.]

68.04.250 "Interment right." "Interment right" means the right to inter human remains in a particular space in a cemetery. [2005 c 365 § 42.]

68.04.260 "Scattering garden." "Scattering garden" means a designated area in a cemetery for the scattering of cremated human remains. [2005 c 365 § 43.]

68.04.270 "Scattering." "Scattering" means the removal of cremated human remains from their container for the purpose of scattering the cremated human remains in any lawful manner. [2005 c 365 § 44.]

68.04.280 "Multiple interment." "Multiple interment" means two or more human remains are buried in the ground, in outer burial enclosures or chambers, placed one on top of another, with a ground level surface the same size as a single grave or right of interment. [2005 c 359 § 1.]

Chapter 68.05 RCW CEMETERY BOARD

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68.05.040	Cemetery board created—Appointments—Terms.
68.05.050	Qualifications of members.
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68.05.400	Exemptions from chapter.
68.05.430	Uniform regulation of business and professions act.
68.05.900	Effective date—1987 c 331.

68.05.010 Definitions. The definitions in chapter 68.04 RCW are applicable to this chapter and govern the meaning of terms used in this chapter, except as otherwise provided. [2005 c 365 § 46; 1953 c 290 § 26.]

Short title—1953 c 290: "This act shall be known as 'The Cemetery Act.'" [1953 c 290 § 55.]

68.05.020 "Board" defined. The term "board" used in this chapter means the cemetery board. [1953 c 290 § 27.]

68.05.024 "Department" defined. "Department" used in this chapter means the department of licensing. [1987 c 331 § 2.]

68.05.028 "Director" defined. "Director" used in this chapter means the director of licensing. [1987 c 331 § 3.]

68.05.030 "Endowment care," "endowed care" defined. The terms "endowment care" or "endowed care" used in this chapter shall include special care funds and all funds held for or represented as maintenance funds. [2005 c 365 § 47; 1987 c 331 § 4; 1953 c 290 § 28.]

68.05.040 Cemetery board created—Appointments—Terms. A cemetery board is created to consist of five members to be appointed by the governor. Appointments shall be for four-year terms. Each member shall hold office until the expiration of the term for which the member is appointed or until a successor has been appointed and qualified. [2005 c 365 § 48; 1987 c 331 § 5; 1977 ex.s. c 351 § 1; 1953 c 290 § 31.]

Severability—1977 ex.s. c 351: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 351 § 7.]

68.05.050 Qualifications of members. Four members of the board shall be persons who have had experience in this state in the active administrative management of a cemetery

authority or as a member of a cemetery's board of directors. One member of the board shall represent the general public and shall not have a financial interest in the cemetery business. [2005 c 365 § 49; 1979 c 21 § 5; 1977 ex.s. c 351 § 2; 1953 c 290 § 32.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.060 Compensation and travel expenses. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 102; 1975-'76 2nd ex.s. c 34 § 156; 1953 c 290 § 33.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

68.05.080 Meetings. The board shall meet at least once a year in order to conduct its business. The board may meet at other designated times as determined by the chair, the director, or a majority of board members. The board may meet at any place within this state. [2005 c 365 § 50; 1987 c 331 § 6; 1953 c 290 § 35.]

68.05.090 Administration and enforcement of title. The board shall enforce and administer the provisions of chapters 68.04 through 68.50 RCW, subject to provisions of RCW 68.05.400. The board may adopt and amend bylaws establishing its organization and method of operation. The board may refer such evidence as may be available concerning violations of chapters 68.04 through 68.50 RCW to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action the board might commence, bring an action against any person to restrain or prevent the doing of any act or practice prohibited or declared unlawful in chapters 68.04 through 68.50 RCW and shall have standing to seek enforcement of said provisions in the superior court of the state of Washington for the county in which the principal office of the cemetery authority is located. [2005 c 365 § 51; 1987 c 331 § 7; 1979 c 21 § 6; 1953 c 290 § 39.]

68.05.095 Officers—Executive secretary. The board shall elect annually a chairman and vice chairman and such other officers as it shall determine from among its members. The director, in consultation with the board, may employ and prescribe the duties of the executive secretary. The executive secretary shall have a minimum of five years' experience in cemetery management unless this requirement is waived by the board. [1987 c 331 § 8; 1953 c 290 § 34. Formerly RCW 68.05.070.]

68.05.100 Rules. The board may establish necessary rules for the enforcement of this title and the laws subject to its jurisdiction. The board shall prescribe the application forms and reports provided for in this title. Rules regulating the cremation of human remains and establishing requirements shall be adopted in consultation with the state board of funeral directors and embalmers. [2005 c 365 § 52; 1993 c 43 § 3; 1987 c 331 § 9; 1985 c 402 § 8; 1953 c 290 § 36.]

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

Legislative finding—1985 c 402: See note following RCW 68.50.185.

68.05.105 Authority of the board. In addition to the authority in RCW 18.235.030, the board has the following authority:

(1) To adopt, amend, and rescind rules necessary to carry out this title; and

(2) To adopt standards of professional conduct or practice. [2005 c 365 § 53; 2002 c 86 § 316; 1987 c 331 § 10.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.115 Sale or transfer of cemetery authority or creation of a new cemetery—Penalty for noncompliance. Prior to the sale or transfer of ownership or control of any cemetery authority or the creation of a new cemetery, any person or entity desiring to acquire such ownership or control or to create a new cemetery shall apply in writing to the board for a new certificate of authority to operate a cemetery. The board shall enter any order deemed necessary for the protection of all endowment care funds and/or prearrangement trust fund during such transfer. As a condition of applying for a new certificate of authority, the entity desiring to acquire such ownership or control must agree to be bound by all then existing prearrangement contracts. Persons and business entities selling and persons and business entities purchasing ownership or control of a cemetery authority shall each verify and attest to an endowment care fund report and/or a prearrangement trust fund report showing the status of such funds on the date of the sale on a written report form prescribed by the board. Such reports shall be considered part of the application for authority to operate. Failure to comply with this section shall be a gross misdemeanor and any sale or transfer in violation of this section shall be void. [2005 c 365 § 54; 1987 c 331 § 11; 1979 c 21 § 11; 1973 1st ex.s. c 68 § 17; 1969 ex.s. c 99 § 5. Formerly RCW 68.05.255.]

68.05.120 Actions to enforce law—Attorney general. The board is authorized to bring actions to enforce the provisions of the law subject to its jurisdiction, in which actions it shall be represented by the attorney general. [1953 c 290 § 38.]

68.05.150 Examination of funds—Powers, duties. In making such examination the board:

(1) Shall have free access to the books and records relating to the endowment care funds and prearrangement trust funds;

(2) Shall inspect and examine the endowment care funds and prearrangement trust funds to determine their condition and the status of the investments; and

(3) Shall verify that the cemetery authority has complied with all the laws applicable to endowment care funds and prearrangement trust funds. [2005 c 365 § 55; 1979 c 21 § 8; 1973 1st ex.s. c 68 § 14; 1953 c 290 § 44.]

68.05.155 Prearrangement sales license. To enter into prearrangement contracts as defined in RCW 68.46.010, a

cemetery authority shall have a valid prearrangement sales license. To apply for a prearrangement sales license, a cemetery authority shall:

(1) File with the board its request showing:

(a) Its name, location, and organization date;

(b) The kinds of cemetery business or merchandise it proposes to transact;

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

(d) Such other documents, stipulations, or information as the board may reasonably require to evidence compliance with the provisions of this chapter; and

(2) Deposit with the department the fees required by this chapter to be paid for filing the accompanying documents, and for the prearrangement sales license, if granted. [1987 c 331 § 12; 1979 c 21 § 28. Formerly RCW 68.46.140.]

68.05.160 Action required when authority fails to deposit minimum endowment amount or comply with prearrangement contract provisions. If any examination made by the board, or any report filed with it, shows that there has not been collected and deposited in the endowment care funds the minimum amounts required by this title, or if the board finds that the cemetery authority has failed to comply with the requirements of this chapter and chapter 68.46 RCW with respect to prearrangement contracts, merchandise, or services, unconstructed crypts or niches or undeveloped graves, or prearrangement trust funds, the board shall require such cemetery authority to comply with this chapter or with chapter 68.40 or 68.46 RCW, as the case may be. [1979 c 21 § 9; 1973 1st ex.s. c 68 § 15; 1953 c 290 § 45.]

68.05.170 Order requiring reinvestment in compliance with title—Actions for preservation and protection. (1) Whenever the board finds, after notice and hearing, that any endowment care funds have been invested in violation of this title, it may by written order mailed to the person or body in charge of the fund require the reinvestment of the funds in conformity with this title within the period specified by it which shall be not more than six months. Such period may be extended by the board in its discretion.

(2) The board may bring actions for the preservation and protection of endowment care funds in the superior court of the county in which the cemetery is located. The court shall appoint substitute trustees and make any other order which may be necessary for the preservation, protection, and recovery of endowment care funds, whenever a cemetery authority or the trustees of its fund have:

(a) Transferred or attempted to transfer any property to, or made any loan from, the endowment care funds for the benefit of the cemetery authority or any director, officer, agent or employee of the cemetery authority or trustee of any endowment care funds; or,

(b) Failed to reinvest endowment care funds in accordance with a board order issued under subsection (1) of this section; or,

(c) Invested endowment care funds in violation of this title; or,

(d) Taken action or failed to take action to preserve and protect the endowment care funds; or,

(e) Become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible; or,

(f) Is in danger of becoming insolvent or has gone into bankruptcy or receivership; or,

(g) Taken any action in violation of Title 68 RCW or failed to take action required by Title 68 RCW or has failed to comply with lawful rules and orders of the board.

(3) Whenever the board or its representative has reason to believe that endowment care funds or prearrangement trust funds are in danger of being lost or diminished during the time required for notice and hearing, it may immediately impound or seize documents, financial instruments, or other trust fund assets, or take other actions deemed necessary under the circumstances for the preservation and protection of endowment care funds or prearrangement trust funds, including, but not limited to, immediate substitutions of trustees. [2005 c 365 § 56; 2002 c 86 § 317; 1987 c 331 § 23; 1969 ex.s. c 99 § 1; 1953 c 290 § 46.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.173 Revocation, suspension of certificate or license. Upon violation of any of the provisions of this title, the board may revoke or suspend the certificate of authority or any other license issued by the board. [2005 c 365 § 57; 1987 c 331 § 24; 1953 c 290 § 49. Formerly RCW 68.05.250.]

68.05.175 Permit or endorsement required for cremation—Regulation of affiliated and nonaffiliated crematories. A permit or endorsement issued by the cemetery board or under chapter 18.39 RCW is required in order to operate a crematory or conduct a cremation. Crematories owned or operated by or located on property licensed as a funeral establishment shall be regulated by the board of funeral directors and embalmers. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board. [1987 c 331 § 13; 1985 c 402 § 4. Formerly RCW 68.05.257.]

Legislative finding—1985 c 402: See note following RCW 68.50.185.

68.05.180 Annual report of authority—Contents—Verification. Each cemetery authority in charge of cemetery endowment care funds shall annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file with the board a written report in form and content prescribed by the board.

These reports shall be verified by the president or vice president, one other officer of the cemetery authority, the accountant or auditor preparing the same, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. [1979 c 21 § 10; 1977 ex.s. c 351 § 3; 1973 1st ex.s. c 68 § 16; 1953 c 290 § 40.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

(2008 Ed.)

68.05.190 Examination of reports. The board shall examine the reports filed with it as to their compliance with the requirements of the law. [1953 c 290 § 41.]

68.05.195 Burial or scatter of cremated remains—Permit. Any person other than persons defined in RCW 68.50.160 who buries or scatters cremated remains by land, air, or sea or performs any other disposition of cremated human remains outside of a cemetery shall have a permit issued in accordance with RCW 68.05.100 and shall be subject to that section. [2005 c 365 § 58; 1987 c 331 § 15.]

68.05.205 Fees. The director with the consent of the cemetery board shall set all fees for chapters 68.05, 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, and 68.46 RCW in accordance with RCW 43.24.086, including fees for licenses, certificates, regulatory charges, permits, or endorsements, and the department shall collect the fees. [1993 c 43 § 4; 1987 c 331 § 16; 1983 1st ex.s. c 5 § 1; 1977 ex.s. c 351 § 4; 1969 ex.s. c 99 § 4; 1953 c 290 § 51. Formerly RCW 68.05.230.]

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

Severability—1983 1st ex.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 5 § 3.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.210 Proof of applicant's compliance with laws and financial responsibility. The board may require such proof as it deems advisable concerning the compliance by such applicant to all the laws, rules, regulations, ordinances and orders applicable to it. The board shall also require proof that the applicant and its officers and directors are financially responsible, in order that only cemeteries of permanent benefit to the community in which they are located will be established in this state. [2005 c 365 § 59; 1969 ex.s. c 99 § 2; 1953 c 290 § 48.]

68.05.215 Certificates—Regulatory charges—Expiration. The regulatory charges for cemetery certificates at all periods of the year are the same as provided in this chapter. All regulatory charges are payable at the time of the filing of the application and in advance of the issuance of the certificates. All certificates shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold. Cemetery certificates shall not be transferable. [2005 c 365 § 60; 1987 c 331 § 17; 1969 ex.s. c 99 § 3; 1953 c 290 § 50. Formerly RCW 68.05.220.]

68.05.225 Sales licenses—Terms—Fees. All prearrangement sales licenses issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold.

The director, in accordance with RCW 43.24.086, shall set and the department shall collect in advance the fees

required for licensing. [2005 c 365 § 61; 1987 c 331 § 18; 1979 c 21 § 29. Formerly RCW 68.46.180.]

68.05.235 Reports—Failure to file. (1) Each authorized cemetery authority shall, within ninety days after the close of its accounting year, file with the board an endowment care trust fund report and a prearrangement trust fund report for the preceding year. The reports shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The failure to file a report as required under subsection (1) of this section constitutes unprofessional conduct for which the board may take disciplinary action against the prearrangement sales license of the cemetery authority. In addition, the board may take disciplinary action against any other license held by the cemetery authority. [2005 c 365 § 62; 2002 c 86 § 318; 1987 c 331 § 19; 1979 c 21 § 37. Formerly RCW 68.46.095.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.240 Interment, certificate of authority required—Penalty. It shall be a misdemeanor for any cemetery authority to make any interment without a valid, unsuspended certificate of authority. Each interment shall be a separate violation. [2005 c 365 § 63; 1953 c 290 § 52.]

68.05.245 Crematory permits or endorsements—Terms—Fees. All crematory permits or endorsements issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority which operates such crematory is transferred or sold.

The director shall set and the department shall collect in advance the fees required for licensing. [2005 c 365 § 64; 1987 c 331 § 20.]

68.05.254 Examination of endowment funds and prearrangement trust funds. (1) The board shall examine the endowment care and prearrangement trust fund or funds of a cemetery authority:

(a) Whenever it deems necessary, but at least once every three years after the original examination except where the cemetery authority is either required by the board to, or voluntarily files an annual financial report for the fund certified by a certified public accountant or a licensed public accountant in accordance with generally accepted auditing standards;

(b) One year following the issuance of a new certificate of authority;

(c) Whenever the cemetery authority in charge of endowment care or prearrangement trust fund or funds fails after reasonable notice from the board to file the reports required by this chapter; or

(d) Whenever it is requested by verified petition signed by twenty-five lot owners alleging that the endowment care funds are not in compliance with this title, or whenever it is requested by verified petition signed by twenty-five purchas-

ers or beneficiaries of prearrangement merchandise or services alleging that the prearrangement trust funds are not in compliance with this title, in either of which cases, the examination shall be at the expense of the petitioners.

(2) The expense of the endowment care and prearrangement trust fund examination as provided in subsection (1)(a) and (b) of this section shall be paid by the cemetery authority. Such examination shall be privately conducted in the principal office of the cemetery authority.

(3) The requirements that examinations be conducted once every three years and that they be conducted in the principal office of the cemetery authority do not apply to any endowment care or prearrangement fund that is less than twenty-five thousand dollars. The board shall, at its discretion, decide when and where the examinations shall take place.

(4) Examination expenses incurred in conjunction with a transfer of ownership of a cemetery must be paid by the selling entity.

(5) All examination expense moneys collected by the department must be paid to the cemetery account created in RCW 68.05.285. [2005 c 365 § 65; 1987 c 331 § 21; 1979 c 21 § 7; 1973 1st ex.s. c 68 § 12; 1953 c 290 § 42. Formerly RCW 68.05.130.]

68.05.259 Payment of examination expenses. If any cemetery authority refuses to pay any examination expenses within thirty days of completion of the examination or refuses to pay certain examination expenses in advance as required by the department for cause, the board may take disciplinary action against any existing certificate of authority. [2005 c 365 § 66; 2002 c 86 § 319; 1987 c 331 § 22; 1973 1st ex.s. c 68 § 13; 1953 c 290 § 43. Formerly RCW 68.05.140.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.285 "Cemetery account." The cemetery account is created in the custody of the state treasurer. All moneys received under this chapter must be deposited in the account. Expenditures from the account may be used only for the purposes of this chapter. Only the cemetery board may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 365 § 67; 1953 c 290 § 29. Formerly RCW 68.05.270.]

Cemetery fund abolished and moneys transferred to cemetery account in state treasury: RCW 43.79.330 through 43.79.334.

68.05.290 Board members' immunity from suits. Members of the board shall be immune from suit in any action, civil or criminal, based upon any official acts performed in good faith as members of the board. The state shall defend, indemnify, and hold the members of the board harmless from all claims or suits arising in any manner from such acts. Expenses incurred by the state under this section shall be paid from the general fund. [2005 c 365 § 68; 1979 c 21 § 12.]

68.05.300 Unprofessional conduct—Disciplinary action. In addition to the unprofessional conduct described in RCW 18.235.130, the board may take disciplinary action if the cemetery authority:

(1) Fails to comply with any provision of this chapter or any proper order or regulation of the board;

(2) Is found by the board to be in such condition that further execution of prearrangement contracts would be hazardous to purchasers or beneficiaries and the people of this state; or

(3) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued operation hazardous to purchasers, beneficiaries, or the public. [2002 c 86 § 320; 1987 c 331 § 25; 1979 c 21 § 30. Formerly RCW 68.46.190.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.310 Prearrangement sales—Disciplinary action. No cemetery authority whose prearrangement sales license has been the subject of disciplinary action shall be authorized to enter into prearrangement contracts unless specifically authorized by the board and only upon full compliance with the conditions required by the board. Any prearrangement sale by an unlicensed cemetery authority shall be voidable by the purchaser who shall be entitled to a full refund. [2002 c 86 § 321; 1989 c 175 § 124; 1987 c 331 § 26; 1979 c 21 § 31. Formerly RCW 68.46.200.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Effective date—1989 c 175: See note following RCW 34.05.010.

68.05.320 Board action against authorities—Administrative procedures. (1) The board or its authorized representative may issue and serve upon a cemetery authority a notice of charges if in the opinion of the board or its authorized representative the cemetery authority:

(a) Is engaging in or has engaged in practices likely to endanger the future delivery of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves;

(b) Is violating or has violated any statute of the state of Washington or any rule of the board; or

(c) Is about to do an act prohibited in (a) or (b) of this subsection when the opinion is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the cemetery authority. The hearing shall be set not earlier than ten nor later than thirty days after service of the notice unless a later date is set by the board or its authorized representative at the request of the cemetery authority.

Unless the cemetery authority appears at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of a cease and desist order. In the event of this consent or if upon the record made at the hearing the board finds that any violation or practice specified in the

notice of charges has been established, the board may issue and serve upon the cemetery authority an order to cease and desist from the violation or practice. The order may require the cemetery authority and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the cemetery authority to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after service of the order upon the cemetery authority except that a cease and desist order issued upon consent shall become effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(4) The powers of the board under this section are in addition to the power of the board to take disciplinary action against a cemetery authority's prearrangement sales license. [2002 c 86 § 322; 1979 c 21 § 32. Formerly RCW 68.46.220.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.330 Violation—Penalty—Unfair practice—Other laws applicable. Unless specified otherwise in this title, any person who violates or aids or abets any person in the violation of any of the provisions of this title shall be guilty of a class C felony punishable under chapter 9A.20 RCW. A violation shall constitute an unfair practice under chapter 19.86 RCW and shall be grounds for disciplinary action against the certificate of authority or any other license issued by the board under this chapter and chapter 18.235 RCW. Retail installment transactions under this chapter shall be governed by chapter 63.14 RCW. The provisions of this chapter shall not affect any other remedy available at law. [2005 c 365 § 69; 2002 c 86 § 323; 1987 c 331 § 27; 1984 c 53 § 6; 1979 c 21 § 39. Formerly RCW 68.46.210.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.340 Board action against authorities—Cease and desist orders. Whenever the board or its authorized representative determines that a cemetery authority is in violation of this title or that the continuation of acts or practices of the cemetery authority is likely to cause insolvency or substantial loss of assets or earnings of the cemetery authority's endowment care or prearrangement trust fund, the board, or its authorized representative, may issue a temporary order requiring the cemetery authority to cease and desist from the violation or practice. The order shall become effective upon service on the cemetery authority. The order shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 68.05.350, until the board dismisses the charges specified in the notice, or until the effective date of a cease and desist order issued against the cemetery authority under RCW 68.05.320. Actions for unlicensed activity must be conducted under RCW 18.235.150. [2005 c 365 § 70; 2002 c 86 § 324; 1987 c 331 § 28; 1979 c 21 § 33. Formerly RCW 68.46.230.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.350 Delaying board action pending administrative proceedings. Within ten days after a cemetery authority has been served with a temporary cease and desist order issued under RCW 68.05.320, the cemetery authority may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending completion of the administrative proceedings under RCW 68.05.320. [2002 c 86 § 325; 1987 c 331 § 29; 1979 c 21 § 34. Formerly RCW 68.46.240.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.360 Board action against authorities—Hearing location—Decision—Review. Any administrative hearing under RCW 68.05.320 may be held at such place as is designated by the board and shall be conducted in accordance with chapter 34.05 RCW.

Within sixty days after the hearing the board shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 68.05.320.

Review of the decision shall be as provided in chapter 34.05 RCW. [1987 c 331 § 30; 1979 c 21 § 35. Formerly RCW 68.46.250.]

68.05.370 Board action against authorities—Enforcement of orders. The board may apply to the superior court of the county of the principal place of business of the cemetery authority affected for enforcement of any effective and outstanding order issued under RCW 68.05.320 or 68.05.340, and the court shall have jurisdiction to order compliance with the order. [1987 c 331 § 31; 1979 c 21 § 36. Formerly RCW 68.46.260.]

68.05.390 Permit or endorsement required for cremation—Penalty. Conducting a cremation without a permit or endorsement is a misdemeanor. Each such cremation is a violation. [1987 c 331 § 32.]

68.05.400 Exemptions from chapter. The provisions of this chapter do not apply to any of the following:

(1) Nonprofit cemeteries which are owned or operated by any recognized religious denomination which qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built; or

(2) Any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1979 c 21 § 13; 1961 c 133 § 1; 1953 c 290 § 30. Formerly RCW 68.05.280.]

68.05.430 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 326.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.900 Effective date—1987 c 331. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 331 § 91.]

Chapter 68.20 RCW PRIVATE CEMETERIES

Sections

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68.20.010 Incorporation required. It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation duly organized for that purpose. [1943 c 247 § 42; Rem. Supp. 1943 § 3778-42.]

68.20.020 Corporations, how organized. Any private corporation authorized by its articles so to do, may establish, maintain, manage, improve, or operate a cemetery, and conduct any or all of the businesses of a cemetery, either for or without profit to its members or stockholders. A nonprofit cemetery corporation may be organized in the manner provided in chapter 24.03 RCW. A profit corporation may be organized in the manner provided in the general corporation laws of the state of Washington. [1983 c 3 § 167; 1943 c 247 § 43; Rem. Supp. 1943 § 3778-43. Prior: 1899 c 33 § 1; 1856-7 p 28 § 1.]

68.20.030 Powers of existing corporations enlarged. The powers, privileges and duties conferred and imposed upon any corporation, firm, copartnership, association, trust, or individual, existing and doing business under the laws of this state, are hereby enlarged as each particular case may require to conform to the provisions of *this act. [1943 c 247 § 45; Rem. Supp. 1943 § 3778-45.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

68.20.040 Prior corporations not affected. The provisions of *this act do not affect the corporate existence or

rights or powers of any cemetery organized under any law then existing prior to June 9, 1943, and as to such cemeteries and their rights, powers specified in their charters or articles of incorporation, the laws under which the corporation was organized and existed and under which such rights and powers become fixed or vested are applicable. [1943 c 247 § 44; Rem. Supp. 1943 § 3778-44.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.20.050 General powers of cemetery corporations.

Unless otherwise limited by the law under which created[,] cemetery authorities shall in the conduct of their business have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitation of general law as may be required, and may secure them by mortgage, deed of trust, or otherwise upon their property. [1943 c 247 § 59; Rem. Supp. 1943 § 3778-59.]

68.20.060 Specific powers—Rule making and enforcement. A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in RCW 68.20.061 through 68.20.067, 68.20.070 and *68.48.080. [1943 c 247 § 46; Rem. Supp. 1943 § 3778-46. Formerly RCW 68.20.070, part. FORMER PART OF SECTION: 1943 c 247 §§ 47 through 52 now codified as RCW 68.20.061 through 68.20.066.]

***Reviser's note:** RCW 68.48.080 was recodified as RCW 68.56.050 pursuant to 1987 c 331 § 89.

68.20.061 Specific powers—Control of property. It may restrict and limit the use of all property within its cemetery, including interment rights. [2005 c 365 § 71; 1943 c 247 § 47; Rem. Supp. 1943 § 3778-47. Formerly RCW 68.20.060, part.]

68.20.062 Specific powers—Regulation as to type of markers, monuments, etc. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions. [1943 c 247 § 48; Rem. Supp. 1943 § 3778-48. Formerly RCW 68.20.060, part.]

68.20.063 Specific powers—Regulation or prohibition as to the erection of monuments, effigies, etc. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the cemetery. [1943 c 247 § 49; Rem. Supp. 1943 § 3778-49. Formerly RCW 68.20.060, part.]

68.20.064 Specific powers—Regulation of plants and shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the cemetery. [1943 c 247 § 50; Rem. Supp. 1943 § 3778-50. Formerly RCW 68.20.060, part.]

68.20.065 Specific powers—Prevention of interment. It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use

of interment plots for purposes violative of its restrictions or rules and regulations. [1943 c 247 § 51; Rem. Supp. 1943 § 3778-51. Formerly RCW 68.20.060, part.]

68.20.066 Specific powers—Prevention of improper assemblages. It may regulate the conduct of persons and prevent improper assemblages in the cemetery. [1943 c 247 § 52; Rem. Supp. 1943 § 3778-52. Formerly RCW 68.20.060, part.]

68.20.067 Specific powers—Rules and regulations for general purposes. It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted. [1943 c 247 § 53; Rem. Supp. 1943 § 3778-53. Formerly RCW 68.20.070, part.]

68.20.070 Rules and regulations—Posting. The rules and regulations made pursuant to RCW 68.20.060 shall be plainly printed or typewritten and maintained subject to inspection in the office of the cemetery authority or in such place or places within the cemetery as the cemetery authority may prescribe. [1943 c 247 § 54; Rem. Supp. 1943 § 3778-54. FORMER PART OF SECTION: 1943 c 247 §§ 46 and 53 now codified as RCW 68.20.060 and 68.20.067.]

68.20.080 Cities and counties may regulate cemeteries. Cities and counties are authorized to enact ordinances regulating or prohibiting the establishment of new cemeteries or the extension of existing ones and to give power to local planning commissions to pass upon and make recommendations to local legislative bodies concerning the establishment or extension of cemeteries. [1943 c 247 § 143; Rem. Supp. 1943 § 3778-143.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.110 Nonprofit cemetery association—Tax exempt land. Nonprofit cemetery associations shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes without discrimination as to race, color, national origin or ancestry, and in nowise with a view to profit of the members of such association: PROVIDED, That when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. [2005 c 365 § 72; 1961 c 103 § 2; 1899 c 33 § 3; RRS § 3766. Formerly RCW 68.20.110 and 68.24.200.]

Construction—1961 c 103: See note following RCW 49.60.040.

Property taxes, exemptions: RCW 84.36.020.

68.20.120 Sold lots exempt from taxes, etc.—Non-profit associations. Burial lots, sold by *such association shall be for the sole purpose of interment, and shall be exempt

from taxation, execution, attachment or other claims, lien or process whatsoever, if used as intended, exclusively for burial purposes and in nowise with a view to profit. [1899 c 33 § 5; RRS § 3768. Formerly RCW 68.24.210.]

***Reviser's note:** For "such association," see note following RCW 68.20.110.

*Cemetery property exempt from execution: RCW 68.24.220.
taxation: RCW 84.36.020.*

68.20.140 Certain cemeteries exempt from chapter.

This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 33.]

Effective date—1987 c 331: See RCW 68.05.900.

Chapter 68.24 RCW CEMETERY PROPERTY

Sections

68.24.010	Right to acquire property.
68.24.020	Surveys and maps.
68.24.030	Declaration of dedication and maps—Filing.
68.24.040	Dedication, when complete.
68.24.050	Constructive notice.
68.24.060	Maps and plats—Amendment.
68.24.070	Permanency of dedication.
68.24.080	Rule against perpetuities, etc., inapplicable.
68.24.090	Removal of dedication—Procedure.
68.24.100	Notice of hearing.
68.24.110	Sale of plots or rights of interment.
68.24.115	Execution of conveyances.
68.24.120	Plots or rights of interment indivisible.
68.24.130	Sale for resale prohibited—Penalty.
68.24.140	Commission on sales prohibited—Penalty.
68.24.150	Unlawful employment of others to dispose of human remains.
68.24.160	Liens subordinate to dedication.
68.24.170	Record of ownership and transfers.
68.24.180	Opening of roads, railroads through cemetery—Consent required.
68.24.190	Opening road through cemetery—Penalty.
68.24.220	Burying place exempt from execution.
68.24.240	Certain cemetery lands exempt from taxes, etc.—1901 c 147.
68.24.250	Cemetery arrangements, notice requirements—Disclosure of multiple interment.

68.24.010 Right to acquire property. Cemetery authorities may take by purchase, donation, or devise, property consisting of lands, mausoleums, crematories, and columbariums, or other property within which the placement of human remains may be authorized by law. [2005 c 365 § 73; 1943 c 247 § 61; Rem. Supp. 1943 § 3778-61.]

68.24.020 Surveys and maps. Every cemetery authority, from time to time as its property may be required for cemetery purposes, shall:

(1) In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks, or other subdivisions; make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers.

(2) In case of a mausoleum, or columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names or numbers. [1943 c 247 § 62; Rem. Supp. 1943 § 3778-62.]

68.24.030 Declaration of dedication and maps—Filing. The cemetery authority shall file the map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The cemetery authority shall also file for record in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to cemetery purposes. [1943 c 247 § 63; Rem. Supp. 1943 § 3778-63.]

County auditor: Chapter 36.22 RCW.

County auditor fees, generally: RCW 36.18.010.

68.24.040 Dedication, when complete. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property shall be held, occupied, and used exclusively for a cemetery and for cemetery purposes. [1943 c 247 § 64; Rem. Supp. 1943 § 3778-64.]

68.24.050 Constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to cemetery purposes. [1943 c 247 § 66; Rem. Supp. 1943 § 3778-66.]

68.24.060 Maps and plats—Amendment. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person. [1943 c 247 § 65; Rem. Supp. 1943 § 3778-65.]

68.24.070 Permanency of dedication. After property is dedicated to cemetery purposes pursuant to RCW 68.24.010 through 68.24.060, neither the dedication, nor the title of a plot owner, shall be affected by the dissolution of the cemetery authority, by nonuser on its part, by alienation of the property, by any incumbrances, by sale under execution, or otherwise except as provided in *this act. [1943 c 247 § 67; Rem. Supp. 1943 § 3778-67.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.24.080 Rule against perpetuities, etc., inapplicable. Dedication to cemetery purposes pursuant to *this act is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the placement of human remains, and a duty to, and for the benefit of, the general public. [2005 c 365 § 74; 1943 c 247 § 68; Rem. Supp. 1943 § 3778-68.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.24.090 Removal of dedication—Procedure. Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) That no placements of human remains were made in or that all placements of human remains have been removed from that portion of the property from which dedication is sought to be removed.

(2) That the portion of the property from which dedication is sought to be removed is not being used for placement of human remains.

(3) That notice of the proposed removal of dedication has been given in writing to both the cemetery board and the *office of archaeology and historic preservation. This notice must be given at least sixty days before filing the proceedings in superior court. The notice of the proposed removal of dedication shall be recorded with the auditor or recording officer of the county where the cemetery is located at least sixty days before filing the proceedings in superior court. [2005 c 365 § 75; 1999 c 367 § 2; 1987 c 331 § 34; 1943 c 247 § 76; Rem. Supp. 1943 § 3778-76.]

***Reviser's note:** Powers, duties, and functions of the office of archaeology and historic preservation were transferred to the department of archaeology and historic preservation pursuant to 2005 c 333 § 12.

Effective date—1987 c 331: See RCW 68.05.900.

68.24.100 Notice of hearing. The notice of hearing provided in RCW 68.24.090 shall be given by publication once a week for at least three consecutive weeks in a newspaper of general circulation in the county where said cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. The notice shall:

(1) Describe the portion of the cemetery property sought to be removed from dedication.

(2) State that all human remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(3) Specify the time and place of the hearing. [2005 c 365 § 76; 1943 c 247 § 77; Rem. Supp. 1943 § 3778-77.]

68.24.110 Sale of plots or rights of interment. After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots or rights of interment subject to the rules in effect or thereafter adopted by the cemetery authority. Plots or rights of interment may be subject to other limitations, conditions, and restrictions as may be part of the declaration of dedication by reference, or included in the instrument of conveyance of the plot or rights of interment. [2005 c 365 § 77; 1943 c 247 § 70; Rem. Supp. 1943 § 3778-70. FORMER PART OF SECTION: 1943 c 247 § 72 now codified as RCW 68.24.115.]

68.24.115 Execution of conveyances. All conveyances made by a cemetery authority shall be signed by such officer or officers as are authorized by the cemetery authority. [1943 c 247 § 72; Rem. Supp. 1943 § 3778-72. Formerly RCW 68.24.110, part.]

68.24.120 Plots or rights of interment indivisible. All plots or rights of interment, the use of which has been conveyed by deed or certificate of ownership as a separate plot or right of interment, are indivisible except with the consent of the cemetery authority, or as provided by law. [2005 c 365 § 78; 1943 c 247 § 71; Rem. Supp. 1943 § 3778-71.]

68.24.130 Sale for resale prohibited—Penalty. It shall be unlawful for any person, firm, or corporation to sell or offer to sell a cemetery plot or right of interment upon the promise, representation, or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [2005 c 365 § 79; 1943 c 247 § 73; Rem. Supp. 1943 § 3778-73.]

68.24.140 Commission on sales prohibited—Penalty. It shall be unlawful for a cemetery authority to pay or offer to pay to any person, firm, or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot, right of interment, or services. This shall not apply to an owner or a person regularly employed by the cemetery authority for such purpose. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [2005 c 365 § 80; 1943 c 247 § 74; Rem. Supp. 1943 § 3778-74.]

68.24.150 Unlawful employment of others to dispose of human remains. Every person who pays, causes to be paid, or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in RCW 68.24.140, any commission, bonus, or rebate, or other thing of value in consideration of recommending or causing the disposition of human remains in any crematory or cemetery, is guilty of a misdemeanor. Each violation shall constitute a separate offense. [2005 c 365 § 81; 1943 c 247 § 75; Rem. Supp. 1943 § 3778-75.]

68.24.160 Liens subordinate to dedication. All mortgages, deeds of trust, and other liens placed upon property which has been dedicated as a cemetery, or which is afterwards dedicated to cemetery purposes pursuant to this section, shall not affect or defeat the dedication. The mortgage, deed of trust, or other lien is subject and subordinate to the dedication. Any and all sales made upon foreclosure are subject and subordinate to the dedication for cemetery purposes. [2005 c 365 § 82; 1943 c 247 § 60; Rem. Supp. 1943 § 3778-60.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.24.170 Record of ownership and transfers. A record shall be kept of the ownership of all plots or rights of interment in the cemetery, which have been conveyed by the cemetery authority and of all transfers of plots and rights of interment in the cemetery. No transfer of any plot or right of interment, shall be complete or effective until recorded on the books of the cemetery authority. [2005 c 365 § 83; 1943 c 247 § 40; Rem. Supp. 1943 § 3778-40. FORMER PART OF SECTION: 1943 c 247 § 41 now codified as RCW 68.24.175.]

68.24.180 Opening of roads, railroads through cemetery—Consent required. After dedication under this title, and as long as the property remains dedicated to cemetery purposes, a railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility shall not be laid out, through, over, or across any part of it without the consent of

the cemetery authority or of not less than two-thirds of the owners of plots or rights of interment. [2005 c 365 § 84; 1994 c 273 § 20; 1984 c 7 § 369; 1959 c 217 § 1; 1947 c 69 § 1; 1943 c 247 § 69; Rem. Supp. 1947 § 3778-69.]

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

68.24.190 Opening road through cemetery—Penalty.

Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement over, through, in, or upon any property used for the burial of human remains, without authority of law or the consent of the owner, shall be guilty of a misdemeanor. [2005 c 365 § 85; 1909 c 249 § 241; RRS § 2493.]

68.24.220 Burying place exempt from execution.

Whenever any part of such burying ground shall have been designated and appropriated by the owners as the burying place of any particular person or family, the same shall not be liable to be taken or disposed of by any warrant, execution, tax, or debt whatever; nor shall the same be liable to be sold to satisfy the demands of creditors whenever the estate of the owner shall be insolvent. [2005 c 365 § 86; 1857 p 28 § 2; RRS § 3760.]

Cemetery property exempt from taxation: RCW 84.36.020.

68.24.240 Certain cemetery lands exempt from taxes, etc.—1901 c 147. Upon compliance with the requirements of *this act said lands shall forever be exempt from taxation, judgment and other liens and executions. [1901 c 147 § 4; RRS § 3763.]

***Reviser's note:** "this act" appears in 1901 c 147, the remaining sections of which were repealed by 1943 c 247 § 148. These sections read as follows:

"Section 1. Any person owning any land, exclusive of encumbrances of any kind, situate two miles outside of the corporate limits of any incorporated city or town, may have the same reserved exclusively for burial and cemetery purposes by complying with the terms of this act, provided said lands so sought to be reserved shall not exceed in area one acre.

Sec. 2. Such person or persons shall cause such land to be surveyed and platted.

Sec. 3. A deed of dedication of said tract for burial and cemetery purposes with a copy of said plat shall be filed with the county auditor of the county in which said lands are situated and the title thereto shall be and remain in the owner, his heirs and assigns, subject to the trust aforesaid."

Property taxes, exemptions: RCW 84.36.020.

68.24.250 Cemetery arrangements, notice requirements—Disclosure of multiple interment. (1) Every cemetery shall disclose and give to the person making cemetery arrangements a written statement, contract, or other document that indicates all the items of property, merchandise, and service that the customer is purchasing, and the price of those items.

(2) Any cemetery offering single burial use of multiple interment space must include the following disclosure on the written statement, contract, or other document in conspicuous bold face type no smaller than other text provisions in the written statement, contract, or other document, to be initialed by the person making the cemetery arrangements in immediate proximity to the space reserved for the signature lines:

"DISCLOSURE OF MULTIPLE INTERMENT"

State law provides that "multiple interment" means two or more noncremated human remains are buried in the ground, in outer burial enclosures or chambers, placed one on top of another, with a ground level surface the same size as a single grave or right of interment." [2005 c 359 § 2.]

Chapter 68.28 RCW

MAUSOLEUMS AND COLUMBARIUMS

Sections

68.28.010	Sections applicable to mausoleums, columbariums, etc.
68.28.020	Building converted to use for human remains placement.
68.28.030	Standards of construction.
68.28.040	Fireproof construction.
68.28.050	Ordinances and specifications to be complied with.
68.28.060	Improper construction a nuisance—Penalty.
68.28.065	Court to fix costs.
68.28.070	Construction in compliance with existing laws.

68.28.010 Sections applicable to mausoleums, columbariums, etc. RCW 68.28.020 through 68.28.070, 68.20.080, *68.20.090, 68.56.040, and 68.56.050, apply to all buildings, mausoleums, and columbariums used or intended to be used for the placement of the human remains of fifteen or more persons, whether erected under or above the surface of the earth, where any portion of the building is exposed to view or, when interment is completed, is less than three feet below the surface of the earth and covered by earth. [2005 c 365 § 87; 1943 c 247 § 134; Rem. Supp. 1943 § 3778-134.]

***Reviser's note:** RCW 68.20.090 was repealed by 2005 c 365 § 161.

68.28.020 Building converted to use for human remains placement. A building not erected for, or which is not used as, a place for placement of human remains which is converted or altered for such use is subject to *this act. [2005 c 365 § 88; 1943 c 247 § 135; Rem. Supp. 1943 § 3778-135.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.28.030 Standards of construction. No building or structure intended to be used for the placement of human remains shall be constructed, and a building not used for the placement of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will ensure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science. [2005 c 365 § 89; 1943 c 247 § 136; Rem. Supp. 1943 § 3778-136.]

68.28.040 Fireproof construction. All mausoleums or columbariums hereafter constructed shall be of class A fireproof construction. [1943 c 247 § 137; Rem. Supp. 1943 § 3778-137.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.28.050 Ordinances and specifications to be complied with. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing class A construction, the provisions of the local ordinances and specifications shall not be violated. [1943 c 247 § 138; Rem. Supp. 1943 § 3778-138.]

68.28.060 Improper construction a nuisance—Penalty. Every owner or operator of a mausoleum or columbarium erected in violation of *this act is guilty of maintaining a public nuisance. A violation of this section is a gross misdemeanor. [2005 c 365 § 90; 2003 c 53 § 306; 1943 c 247 § 140; Rem. Supp. 1943 § 3778-140.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

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

68.28.065 Court to fix costs. The costs, expenses and disbursements shall be fixed by the court having jurisdiction of the case. [1943 c 247 § 141; Rem. Supp. 1943 § 3778-141.]

68.28.070 Construction in compliance with existing laws. The penalties of *this act shall not apply as to any building which, at the time of construction was constructed in compliance with the laws then existing, if its use is not in violation of the laws for the protection of public health. [1943 c 247 § 142; Rem. Supp. 1943 § 3778-142.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

Chapter 68.32 RCW

TITLE AND RIGHTS TO CEMETERY PLOTS

Sections

68.32.010	Presumption as to title.
68.32.020	Vested right of spouse or state registered domestic partner.
68.32.030	Vested right—Termination.
68.32.040	Descent of title to plot or right of interment.
68.32.050	Affidavit as authorization.
68.32.060	Family plot—Sale.
68.32.070	Joint tenants—Vested rights.
68.32.080	Joint tenants—Survivorship.
68.32.090	Joint tenants—Identification.
68.32.100	Co-owners may designate representative.
68.32.110	Order of interment—General.
68.32.130	Waiver of right of placement.
68.32.140	Termination of vested right by waiver.
68.32.150	Limitations on vested rights.
68.32.160	Conveyance of plot or right of interment to cemetery authority, effect.
68.32.170	Exemption from inheritance tax.

68.32.010 Presumption as to title. All plots or rights of interment conveyed to individuals are presumed to be the sole and separate property rights of the owner named in the instrument of conveyance. [2005 c 365 § 91; 1943 c 247 § 88; Rem. Supp. 1943 § 3778-88.]

68.32.020 Vested right of spouse or state registered domestic partner. The spouse or state registered domestic partner, of an owner of any plot or right of interment containing more than one placement space has a vested right of placement in the plot and any person thereafter becoming the spouse or state registered domestic partner, of the owner has a vested right of placement in the plot if more than one space is unoccupied at the time the person becomes the spouse or state registered domestic partner, of the owner. [2007 c 156 § 15; 2005 c 365 § 92; 1943 c 247 § 89; Rem. Supp. 1943 § 3778-89.]

(2008 Ed.)

68.32.030 Vested right—Termination. No conveyance or other action of the owner without the written consent of the spouse or state registered domestic partner, of the owner divests the spouse or state registered domestic partner, of a vested right of placement. A final decree of divorce between them or certification of termination of the state registered domestic partnership terminates the vested right of placement unless otherwise provided in the decree. [2007 c 156 § 16; 2005 c 365 § 93; 1943 c 247 § 90; Rem. Supp. 1943 § 3778-90.]

68.32.040 Descent of title to plot or right of interment. If no placement is made in a plot or right of interment, which has been transferred by deed or certificate of ownership to an individual owner, the title descends to the surviving spouse or state registered domestic partner. If there is no surviving spouse or state registered domestic partner, the title descends to the heirs at law of the owner. Following death of the owner, if all remains previously placed are lawfully removed and the owner did not dispose of the plot or right of interment by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the title descends to the surviving spouse or state registered domestic partner. If there is no surviving spouse or state registered domestic partner, the title descends to the heirs at law of the owner. [2007 c 156 § 17; 2005 c 365 § 94; 1979 c 21 § 15; 1943 c 247 § 91; Rem. Supp. 1943 § 3778-91.]

68.32.050 Affidavit as authorization. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot or right of interment pursuant to RCW 68.32.010 through 68.32.040, is complete authorization to the cemetery authority to permit the use of the unoccupied portions of the plot or interment right by the person entitled to the use of it. [2005 c 365 § 95; 1943 c 247 § 93; Rem. Supp. 1943 § 3778-93.]

68.32.060 Family plot—Sale. Whenever an interment of the human remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and both the owner and the surviving spouse or state registered domestic partner, if any, die with children then living without making disposition of the plot either by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot shall thereafter be held as a family plot and shall be subject to sale only upon agreement of the children of the owner living at the time of sale. [2007 c 156 § 18; 2005 c 365 § 96; 1979 c 21 § 16; 1943 c 247 § 98; Rem. Supp. 1943 § 3778-98.]

68.32.070 Joint tenants—Vested rights. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of placement in the plot or right of interment conveyed. [2005 c 365 § 97; 1943 c 247 § 94; Rem. Supp. 1943 § 3778-94.]

68.32.080 Joint tenants—Survivorship. Upon the death of a joint tenant, the title to the plot or right of interment held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the deceased joint tenant. [2005 c 365 § 98; 1943 c 247 § 95; Rem. Supp. 1943 § 3778-95.]

Co-owners, simultaneous death: RCW 11.05A.040.

68.32.090 Joint tenants—Identification. An affidavit by any person having knowledge of the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot or right of interment, when filed with the cemetery authority, is complete authorization to the cemetery authority to permit the use of the unoccupied portion of the plot or right of interment in accordance with the directions of the surviving joint tenants. [2005 c 365 § 99; 1943 c 247 § 96; Rem. Supp. 1943 § 3778-96.]

68.32.100 Co-owners may designate representative. When there are several owners of a plot or right of interment, they may designate one or more persons to represent the plot or interment right and file written notice of designation with the cemetery authority. In the absence of such notice or of written objection to its so doing, the cemetery authority is not liable to any owner for permitting the placement in the plot or right of interment upon the request or direction of any co-owner of the plot or right of interment. [2005 c 365 § 100; 1943 c 247 § 97; Rem. Supp. 1943 § 3778-97.]

68.32.110 Order of interment—General. In a family plot one right of interment may be used for the owner's interment and one for the owner's surviving spouse or state registered domestic partner, if any. Any unoccupied spaces may then be used by the remaining parents and children of the deceased owner, if any, then to the spouse or state registered domestic partner of any child of the owner, then to the heirs at law of the owner, in the order of death. [2007 c 156 § 19; 2005 c 365 § 101; 1943 c 247 § 99; Rem. Supp. 1943 § 3778-99.]

68.32.130 Waiver of right of placement. Any surviving spouse, state registered domestic partner, parent, child, or heir having a right of placement in a family plot may waive such right in favor of any other relative, spouse, or state registered domestic partner of a relative of the deceased owner. Upon such a waiver, the remains of the person in whose favor the waiver is made may be placed in the plot. [2007 c 156 § 20; 2005 c 365 § 102; 1943 c 247 § 101; Rem. Supp. 1943 § 3778-101.]

68.32.140 Termination of vested right by waiver. A vested right of placement may be waived and is terminated upon the placement elsewhere of the remains of the person in whom vested. [2005 c 365 § 103; 1943 c 247 § 102; Rem. Supp. 1943 § 3778-102.]

68.32.150 Limitations on vested rights. No vested right of interment gives any person the right to have his or her remains interred in any interment space in which the remains

of any deceased person having a prior vested right of interment have been interred. No vested right of interment gives any person the right to have the remains of more than one deceased person placed in a single space in violation of the rules and regulations of the cemetery in which the space is located. [2005 c 365 § 104; 1943 c 247 § 103; Rem. Supp. 1943 § 3778-103.]

68.32.160 Conveyance of plot or right of interment to cemetery authority, effect. A cemetery authority may take and hold any plot or right of interment conveyed to it by the plot owner so that it will be nontransferable. Placements shall be restricted to the persons designated in the conveyance. [2005 c 365 § 105; 1943 c 247 § 104; Rem. Supp. 1943 § 3778-104.]

68.32.170 Exemption from inheritance tax. Cemetery property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes. [1943 c 247 § 92; Rem. Supp. 1943 § 3778-92.]

Reviser's note: The inheritance tax was repealed by 1981 2nd ex.s. c 7 § 83.100.160 (Initiative Measure No. 402). See RCW 83.100.900. For later enactment, see chapter 83.100 RCW.

Chapter 68.36 RCW ABANDONED LOTS

Sections

68.36.010	Sale of abandoned space—Presumption of abandonment.
68.36.020	Notice—Requirements—Limitation on placing.
68.36.030	Petition for order of abandonment—Notice and hearing.
68.36.040	Service of notice.
68.36.050	Hearing—Order—Attorneys' fees.
68.36.060	Contract for care before adjudication.
68.36.070	Contract for care within one year after adjudication.
68.36.080	Sale after one year.
68.36.100	Petition may cover several lots.

68.36.010 Sale of abandoned space—Presumption of abandonment. The ownership or right to unoccupied cemetery space in this state shall, upon abandonment, be subject to forfeiture and sale by the person or entity having ownership or management of the cemetery. Unoccupied cemetery space is presumed to be abandoned if it has been neglected and in a state of disrepair for a period of five years. [2005 c 365 § 106; 1943 c 247 § 78; Rem. Supp. 1943 § 3778-78.]

68.36.020 Notice—Requirements—Limitation on placing. Cemetery management shall place a suitable notice on each unoccupied space, setting forth the date the notice is placed and that the unoccupied space is subject to forfeiture and sale by the cemetery. If the owner of the unoccupied space fails during the next three years following the date of the notice to maintain or care for the unoccupied space, the cemetery may reclaim the unoccupied space. However, such a notice cannot be placed on the unoccupied space in any cemetery lot until twenty years have elapsed since the last interment in any such lot of a member of the immediate family of the record owner. [2005 c 365 § 107; 1943 c 247 § 79; Rem. Supp. 1943 § 3778-79.]

68.36.030 Petition for order of abandonment—Notice and hearing. After a three-year period, the owner or manager of the cemetery may file a verified petition in the office of the county clerk, setting forth the facts relating to the abandonment. The petition may ask for an order of the superior court for abandonment.

At the time of filing the petition, the cemetery authority shall request a hearing of the petition. The superior court will fix the time for the hearing. Not less than sixty days before the time fixed for the hearing of the petition, notice and nature of the hearing shall be given to the owner of such unoccupied space. [2005 c 365 § 108; 1943 c 247 § 80; Rem. Supp. 1943 § 3778-80.]

68.36.040 Service of notice. The notice may be served personally upon the owner, or may be given by the mailing of the notice by registered mail to the owner to his or her last known address and by publishing the notice three times in a legal newspaper published in the county in which the cemetery is located. In the event that the whereabouts of the owner is unknown, then the notice may be given by publishing the notice three times in a legal newspaper as required by this section. The cemetery authority may file an affidavit in the proceeding to the effect that the owner is unknown and that the cemetery exercised diligence in attempting to locate the unknown parties. The affidavit shall be conclusive to that effect. [2005 c 365 § 109; 1943 c 247 § 81; Rem. Supp. 1943 § 3778-81.]

68.36.050 Hearing—Order—Attorneys’ fees. An owner or claimant may appear and answer the allegations of the petition. If an owner fails to do so prior to the day fixed for hearing, a default shall be entered and it shall then be the duty of the superior court to immediately enter an order adjudging the unoccupied space to have been abandoned and subject to sale. In the event the owner or claimant shall appear and file his or her answer prior to the day fixed for the hearing, the presumption of abandonment shall no longer exist, and on the day fixed for the hearing of the petition or on any subsequent day to which the hearing of the cause is adjourned, the allegations and proof of the parties shall be presented to the court and if the court shall determine that there has been a continued failure to maintain or care for the unoccupied space for a period of three consecutive years preceding the filing of the petition, an order shall be entered accordingly adjudging the unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation, or municipality having ownership of the cemetery containing the same. Upon any adjudication of abandonment, the court shall fix such sum as it shall deem reasonable as attorneys’ fees for petitioner’s attorney for rights of interment adjudged to have been abandoned in such proceedings. [2005 c 365 § 110; 1943 c 247 § 82; Rem. Supp. 1943 § 3778-82.]

68.36.060 Contract for care before adjudication. If at any time before the adjudication of abandonment the owner of an unoccupied space contracts with the owner or manager of the cemetery for the endowment care of the space, the court shall dismiss the proceedings as to such unoccupied

space. [1953 c 290 § 1; 1943 c 247 § 83; Rem. Supp. 1943 § 3778-83.]

68.36.070 Contract for care within one year after adjudication. If at any time within one year after the adjudication of abandonment, the former owner of the unoccupied space shall contract for its endowment care, and reimburse the owner or manager of the cemetery for the expense of the proceedings, including attorney’s fees, the space shall not be sold and the order adjudging it to have been abandoned shall be vacated upon petition of the former owner. [1953 c 290 § 2; 1943 c 247 § 84; Rem. Supp. 1943 § 3778-84.]

68.36.080 Sale after one year. One year after the entry of the order adjudging such lot, part of lot, lots or parts of lots to have been abandoned, the owner or manager of the cemetery in which the same is located shall have the power to sell the same, in whole or in part, at public or private sale, and convey by deed good, clear and sufficient title thereto. [1943 c 247 § 85; Rem. Supp. 1943 § 3778-85.]

68.36.100 Petition may cover several lots. In any one petition for abandonment, a petitioner may, irrespective of diversity of ownership, include in any such petition as many lots or parts of lots as come within the provisions of *this act. The petition for abandonment shall be entitled: "In the Matter of the Abandonment, Forfeiture and Sale of Unoccupied and Uncared for Space located in Cemetery." [1943 c 247 § 87; Rem. Supp. 1943 § 3778-87.]

*Reviser’s note: For "this act," see note following RCW 68.04.020.

Chapter 68.40 RCW

ENDOWMENT AND NONENDOWMENT CARE

Sections

- 68.40.010 Cemetery authorities—Deposit in endowment care fund required.
- 68.40.025 Nonendowed sections—Identification.
- 68.40.040 Endowment care fiscal reports—Review by plot owners.
- 68.40.060 May accept property in trust—Application of income.
- 68.40.085 Representing fund as perpetual—Penalty.
- 68.40.090 Penalty.
- 68.40.095 Certain cemeteries exempt from chapter.
- 68.40.100 Only nonendowment care cemeteries now in existence are authorized.
- 68.40.900 Effective date—1987 c 331.

68.40.010 Cemetery authorities—Deposit in endowment care fund required. A cemetery authority not exempt under this chapter shall deposit in an endowment care fund not less than the following amounts for plots or interment rights sold: Ten percent of the gross sales price for each grave, niche, or crypt.

In the event that a cemetery authority sells an interment right at a price that is less than its current list price, or gives away, bequeaths, or otherwise gives title to an interment right, the interment right shall be endowed at the rate at which it would normally be endowed.

The deposits shall be made not later than the twentieth day of the month following the final payment on the sale price. If a contract for interment rights is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the endow-

ment care fund ten percent of the gross sales price of the interment right within twenty days of receipt of payment of the proceeds from such sale or loan.

Any cemetery hereafter established shall have deposited in an endowment care fund the sum of twenty-five thousand dollars before selling any interment right. [2005 c 365 § 111; 1987 c 331 § 35; 1984 c 53 § 1; 1961 c 133 § 2; 1953 c 290 § 4; 1943 c 247 § 118; Rem. Supp. 1943 § 3778-118.]

68.40.025 Nonendowed sections—Identification. Cemeteries with nonendowed sections opened before July 1, 1987, shall only be required to endow sections opened after July 1, 1987. On the face of any contract, receipt, or deed used for sales of nonendowed interment rights shall be prominently displayed the words "Nonendowment section." All nonendowed sections shall be identified as such by posting of a legible sign containing the following phrase: "Nonendowment section." [2005 c 365 § 112; 1987 c 331 § 36.]

68.40.040 Endowment care fiscal reports—Review by plot owners. A cemetery authority not exempt under this chapter shall file in its principal office for review by plot owners the previous seven fiscal years' endowment care reports as filed with the cemetery board in accordance with RCW 68.44.150. [1987 c 331 § 37; 1953 c 290 § 7; 1943 c 247 § 122; Rem. Supp. 1943 § 3778-122.]

68.40.060 May accept property in trust—Application of income. The cemetery authority of an endowment care cemetery may accept any property bequeathed, granted, or given to it in trust and may apply the income from such property to any or all of the following purposes:

- (1) Improvement or embellishment of all or any part of the cemetery;
- (2) Erection, renewal, repair, or preservation of any monument, fence, building, or other structure in the cemetery;
- (3) Planting or cultivation of trees, shrubs, or plants in or around any part of the cemetery;
- (4) Special care or ornamenting of any part of any interment right, section, or building in the cemetery; and
- (5) Any purpose or use consistent with the purpose for which the cemetery was established or is maintained. [2005 c 365 § 113; 1987 c 331 § 38; 1953 c 290 § 8; 1943 c 247 § 129; Rem. Supp. 1943 § 3778-129.]

68.40.085 Representing fund as perpetual—Penalty. It is a misdemeanor for any cemetery authority, its officers, employees, or agents, or a cemetery broker or salesman to represent that an endowment care fund, or any other fund set up for maintaining care, is perpetual. [1953 c 290 § 24.]

68.40.090 Penalty. Any person, partnership, corporation, association, or his or its agents or representatives who shall violate any of the provisions of this chapter or make any false statement appearing on any sign, contract, agreement, receipt, statement, literature or other publication shall be guilty of a misdemeanor. [1987 c 331 § 39; 1943 c 247 § 125; Rem. Supp. 1943 § 3778-125.]

68.40.095 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 40.]

68.40.100 Only nonendowment care cemeteries now in existence are authorized. After June 7, 1979, no nonendowment care cemetery may be established. However, any nonendowment care cemetery in existence on June 7, 1979, may continue to operate as a nonendowment care cemetery. [1979 c 21 § 18.]

68.40.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.44 RCW ENDOWMENT CARE FUND

Sections

68.44.010	Funds authorized—Investments.
68.44.020	Use and care of funds.
68.44.030	Authorized investments.
68.44.060	Unauthorized loans—Penalty.
68.44.070	Use of contributions to funds.
68.44.080	Plans for care—Financing.
68.44.090	Covenant to care for cemetery.
68.44.100	Agreement by owner to care for plot.
68.44.110	Trustees of fund.
68.44.115	Trustee to file statement with board—Resignation of trusteeship.
68.44.120	Directors as trustees—Secretary.
68.44.130	Bank or trust company as trustee.
68.44.140	Compensation of trustees.
68.44.150	Annual report.
68.44.160	Contributions.
68.44.170	Use of income from fund.
68.44.180	Certain cemeteries exempt from chapter.
68.44.900	Effective date—1987 c 331.

68.44.010 Funds authorized—Investments. Any cemetery authority not exempt under chapter 68.40 RCW shall establish, maintain, and operate an inviolable endowment care fund. Endowment care, special care, and other cemetery authorities' endowment care funds may be commingled for investment and the income therefrom shall be divided between the funds in the proportion that each contributed to the sum invested. The funds shall be held in the name of the trustees appointed by the cemetery authority with the words "endowment care fund" being a part of the name. [1987 c 331 § 41; 1953 c 290 § 11; 1943 c 247 § 105; Rem. Supp. 1943 § 3778-105.]

68.44.020 Use and care of funds. Endowment care funds shall not be used for any purpose other than to provide, through income only, for the endowment care stipulated in the instrument by which the fund was established. Endowment care funds shall be kept separate and distinct from all assets of the cemetery authority. Endowment care principal shall remain inviolable and may not be reduced in any way not found within RCW 11.100.020. [2005 c 365 § 114; 1987 c 331 § 42; 1953 c 290 § 12. Prior: (i) 1943 c 247 § 106; Rem. Supp. 1943 § 3778-106. (ii) 1943 c 247 § 126; Rem. Supp. 1943 § 3778-126.]

68.44.030 Authorized investments. Endowment care funds shall be kept invested in accordance with the provisions of RCW 11.100.020 subject to the following restrictions:

(1) No officer or director of the cemetery authority, trustee of the endowment care or special care funds, or spouse, sibling, parent, grandparent, or issue of such officer, director, or trustee, shall borrow any of such funds for himself, directly or indirectly.

(2) No funds shall be loaned to the cemetery authority, its agents, or employees, or to any corporation, partnership, or other business entity in which the cemetery authority has any ownership interest.

(3) No funds shall be invested with persons or business entities operating in a business field directly related to cemeteries, including, but not limited to, mortuaries, monument production and sales, florists, and rental of funeral facilities.

(4) Notwithstanding any other provisions contained in this section, funds may be invested in any commercial bank, mutual savings bank, or savings and loan association duly chartered and operating under the laws of the United States or statutes of the state of Washington. [1985 c 30 § 138. Prior: 1984 c 149 § 175; 1979 c 21 § 19; 1953 c 290 § 13; 1943 c 247 § 127; Rem. Supp. 1943 § 3778-127.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

68.44.060 Unauthorized loans—Penalty. Every director or officer authorizing or consenting to a loan, and the person who receives a loan, in violation of RCW 68.44.030 are severally guilty of a class C felony punishable under chapter 9A.20 RCW. [1984 c 53 § 2; 1943 c 247 § 133; Rem. Supp. 1943 § 3778-133.]

68.44.070 Use of contributions to funds. Contributions to endowment care and special care funds are permitted for charitable purposes. Endowment care and such contributions are provisions for the discharge of a duty from the persons contributing to the persons interred or to be interred in the cemetery. This provision is for the benefit and protection of the public by preserving and keeping cemeteries from becoming neglected places of disgrace in the communities they serve. [2005 c 365 § 115; 1953 c 290 § 16. Prior: (i) 1943 c 247 § 130; Rem. Supp. 1943 § 3778-130. (ii) 1943 c 247 § 117; Rem. Supp. 1943 § 3778-117.]

68.44.080 Plans for care—Financing. The cemetery authority may adopt plans for the care, maintenance, and embellishment of its cemetery. A cemetery authority may charge and collect from all purchasers of plots or rights of interment a reasonable sum that will generate a fund, and the income from the fund will provide care, maintenance, and embellishment on an endowment basis. [2005 c 365 § 116; 1953 c 290 § 17; 1943 c 247 § 108; Rem. Supp. 1943 § 3778-108.]

68.44.090 Covenant to care for cemetery. Upon payment of the purchase price and the contribution for endowment care, a deed of conveyance or other instrument may

include an agreement to care for the cemetery, on an endowment basis to the extent the income will permit. [2005 c 365 § 117; 1953 c 290 § 18; 1943 c 247 § 109; Rem. Supp. 1943 § 3778-109.]

68.44.100 Agreement by owner to care for plot. Upon the application of an owner of a plot, and upon the payment by the owner of the amount fixed as a reasonable and proportionate contribution for endowment care, a cemetery authority may enter into an agreement with the owner for the special care of his or her plot and its appurtenances. [2005 c 365 § 118; 1953 c 290 § 19; 1943 c 247 § 110; Rem. Supp. 1943 § 3778-110.]

68.44.110 Trustees of fund. Unless an association of lot owners has been created for the purpose of appointing trustees, the cemetery authority shall appoint a minimum of three trustees for its endowment care fund, who shall hold office subject to the direction of the cemetery authority. [2005 c 365 § 119; 1987 c 331 § 43; 1953 c 290 § 20; 1943 c 247 § 111; Rem. Supp. 1943 § 3778-111.]

68.44.115 Trustee to file statement with board—Resignation of trusteeship. To be considered qualified as a trustee, each trustee of an endowment care fund appointed in accordance with this chapter shall file with the board a statement of acceptance of fiduciary responsibility, on a form approved by the board, before assuming the duties of trustee. The trustee shall remain in the trustee's fiduciary capacity until such time as the trustee advises the cemetery board in writing of the trustee's resignation of trusteeship. [1987 c 331 § 44.]

68.44.120 Directors as trustees—Secretary. The directors of a cemetery authority may be the trustees of its endowment care fund. When the fund is in the care of the directors, the secretary of the cemetery authority shall keep a true record of all of its proceedings. [2005 c 365 § 120; 1987 c 331 § 45; 1953 c 290 § 21; 1943 c 247 § 112; Rem. Supp. 1943 § 3778-112.]

68.44.130 Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, a cemetery authority may appoint, as sole trustee of its endowment care fund, any bank or trust company qualified to engage in the trust business. The bank or trust company shall be authorized to receive and accept the endowment care fund at the time of its appointment. [2005 c 365 § 121; 1987 c 331 § 46; 1943 c 247 § 113; Rem. Supp. 1943 § 3778-113.]

68.44.140 Compensation of trustees. Compensation to the board of trustees or trustee for services as trustee and other compensation for administration of trust funds shall not exceed the customary fees charged by banks and trust companies for like services. Such fees may not be paid from the fund principal. [2005 c 365 § 122; 1987 c 331 § 47; 1979 c 21 § 20; 1943 c 247 § 114; Rem. Supp. 1943 § 3778-114.]

68.44.150 Annual report. The cemetery authority or the trustees in whose names the funds are held shall, annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file in its office and with the cemetery board endowment care trust fund, a report showing the actual financial condition of the funds. The report must be signed by an officer of the cemetery authority or one or more of the trustees. The report must be maintained for a period of seven years. [2005 c 365 § 123; 1987 c 331 § 48; 1979 c 21 § 21; 1943 c 247 § 115; Rem. Supp. 1943 § 3778-115.]

68.44.160 Contributions. A cemetery authority which has established an endowment care fund may take and hold, as a part of the fund, any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund. [2005 c 365 § 124; 1953 c 290 § 22; 1943 c 247 § 116; Rem. Supp. 1943 § 3778-116.]

68.44.170 Use of income from fund. The income from the endowment care fund shall be used solely for the general care, maintenance, and embellishment of the cemetery, and shall be applied in such manner as the cemetery authority may from time to time determine to be for the best interest of the cemetery. [1953 c 290 § 23; 1943 c 247 § 107; Rem. Supp. 1943 § 3778-107.]

68.44.180 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 49.]

68.44.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.46 RCW

PREARRANGEMENT CONTRACTS

Sections

68.46.010	Definitions.
68.46.020	Prearrangement trust funds—Required.
68.46.030	Prearrangement trust funds—Deposits—Bond requirements.
68.46.040	Prearrangement trust funds—Deposit of funds.
68.46.050	Withdrawals from trust funds—Notice of department of social and health services' claim.
68.46.055	Indebtedness limitations.
68.46.060	Termination of contract by purchaser or beneficiary.
68.46.070	Involuntary termination of contract—Refund.
68.46.075	Inactive contracts—Funds transfer—Obligations.
68.46.080	Other use of trust funds prohibited.
68.46.090	Financial reports—Filing—Verification.
68.46.100	Prearrangement contract requirements.
68.46.110	Compliance required.
68.46.125	Certain cemeteries exempt from chapter.
68.46.130	Exemptions from chapter granted by board.
68.46.160	Contract forms—Filing.
68.46.170	Sales licenses—Requirement.
68.46.175	Unconstructed crypts, etc., as part of contract—Requirements.
68.46.900	Effective date—1987 c 331.

Prearrangement funeral service contracts: RCW 18.39.240 through 18.39.360.

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

(1) "Prearrangement contract" means a contract for purchase of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(2) "Cemetery merchandise or services" and "merchandise or services" mean those services normally performed by cemetery authorities, including the sale of monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, interment services, or any one or more of them.

(3) "Prearrangement trust fund" means all funds required to be maintained in one or more funds for the benefit of beneficiaries by either this chapter or by the terms of a prearrangement contract, as herein defined.

(4) "Board" means the cemetery board established under chapter 68.05 RCW or its authorized representative.

(5) "Undeveloped grave" means any grave in an area which a cemetery authority has not landscaped, groomed, or developed to the extent customary in the cemetery industry. [2005 c 365 § 125; 1979 c 21 § 22; 1975 1st ex.s. c 55 § 1; 1973 1st ex.s. c 68 § 1.]

68.46.020 Prearrangement trust funds—Required.

Any cemetery authority selling by prearrangement contracts any merchandise or services shall establish and maintain one or more prearrangement trust funds for the benefit of beneficiaries of prearrangement contracts. [2005 c 365 § 126; 1973 1st ex.s. c 68 § 2.]

68.46.030 Prearrangement trust funds—Deposits—Bond requirements.

(1) For each prearrangement contract, a cemetery authority shall deposit the greater of the following amounts in its prearrangement trust fund:

(a) For merchandise:

(i) Fifty percent of the contract price; or

(ii) The wholesale cost of the item.

(b) For services:

(i) Fifty percent of the contract price; or

(ii) The direct cost of providing the service.

(2) Any cemetery authority which does not file and maintain with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund an amount as determined under subsection (1) of this section, excluding sales tax and endowment care if such charge is made.

(3) Any cemetery authority which files and maintains with the board a bond as provided in subsection (4) of this section may retain the nontrustable portion of the contract before depositing the balance of payments into its prearrangement trust fund, as determined under subsection (1) of this section, excluding sales tax and endowment care, if such charge is made.

(4) Each cemetery authority electing to make payments to its prearrangement trust fund pursuant to subsection (3) of this section shall file and maintain with the board a bond, issued by a surety company authorized to do business in the state, in the amount by which the cemetery authority's contingent liability for refunds pursuant to RCW 68.46.060 exceeds the amount deposited in its prearrangement trust

fund. The bond shall be conditioned that it is for the use and benefit of any person requesting a refund pursuant to RCW 68.46.060 if the cemetery authority does not promptly pay to the person the refund due pursuant to RCW 68.46.060. In addition to any other remedy, every person not promptly receiving the refund due pursuant to RCW 68.46.060 may sue the surety for the refund. The liability of the surety shall not exceed the amount of the bond. Termination or cancellation shall not be effective unless notice is delivered by the surety to the board at least thirty days prior to the date of termination or cancellation. The board shall immediately notify the cemetery authority affected by the termination or cancellation by certified mail, return receipt requested. The cemetery authority shall thereupon obtain another bond or make such other arrangement as may be satisfactory to the board to ensure its ability to make refunds pursuant to RCW 68.46.060.

(5) Deposits to the prearrangement trust fund shall be made not later than the twentieth day of each month following receipt of each payment required to be deposited. If a prearrangement contract is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the prearrangement trust fund fifty percent of the total sale price of the prearrangement contract within twenty days of receipt of payment of the proceeds from the sale or loan.

(6) Any failure to fund a prearrangement contract as required by this section shall be grounds for disciplinary action against the cemetery authority and the cemetery authority's prearrangement sales license. [2005 c 365 § 127; 1984 c 53 § 3; 1979 c 21 § 24; 1973 1st ex.s. c 68 § 3.]

68.46.040 Prearrangement trust funds—Deposit of funds. All prearrangement trust funds shall be deposited in a public depository as defined by RCW 39.58.010, in a state or federally chartered credit union, or in instruments issued or insured by any agency of the federal government. Such accounts shall be designated as the "prearrangement trust fund" by name and the particular cemetery authority for the benefit of the beneficiaries named in any prearrangement contract. [2005 c 365 § 128; 1987 c 331 § 50; 1973 1st ex.s. c 68 § 4.]

68.46.050 Withdrawals from trust funds—Notice of department of social and health services' claim. (1) A depository of prearrangement funds shall permit a cemetery authority to withdraw all funds deposited under any specific prearrangement contract plus interest accrued thereon, under the following circumstances and conditions:

(a) If the cemetery authority files a verified statement with the depository that the prearrangement merchandise and services covered by a contract have been furnished and delivered; or

(b) If the cemetery authority files a verified statement that a specific prearrangement contract has been canceled in accordance with its terms.

(2) The department of social and health services shall notify the cemetery authority maintaining a prearrangement trust fund regulated by this chapter that the department has a claim on the estate of a beneficiary for long-term care ser-

vices. Such notice shall be renewed at least every three years. The cemetery authority, upon becoming aware of the death of a beneficiary, shall give notice to the department of social and health services, office of financial recovery, who shall file any claim there may be within thirty days of the notice. [2005 c 365 § 129; 1995 1st sp.s. c 18 § 65; 1973 1st ex.s. c 68 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

68.46.055 Indebtedness limitations. No cemetery authority may enter into a retail contract for the purchase of debentures, shares, scrip, bonds, notes, or any instrument or evidence of indebtedness that requires the cemetery authority to furnish cemetery merchandise, services, or interment rights to the holder at a future date. This section does not include retail installment sales transactions governed by chapter 63.14 RCW. [2005 c 365 § 130; 1984 c 53 § 8.]

68.46.060 Termination of contract by purchaser or beneficiary. Any purchaser or beneficiary may, upon written demand of any cemetery authority, demand that any prearrangement contract with such cemetery authority be terminated. In such event, the cemetery authority shall, within thirty days, refund to the purchaser or beneficiary fifty percent of the moneys received less the contractual price of any merchandise delivered or services performed before the termination plus interest earned. In any case, where, under a prearrangement contract there is more than one beneficiary, no written demand as provided in this section shall be honored by any cemetery authority unless the written demand provided for in this section shall bear the signatures of all of such beneficiaries. [2005 c 365 § 132; 1987 c 331 § 51; 1984 c 53 § 4; 1979 c 21 § 25; 1973 1st ex.s. c 68 § 6.]

68.46.070 Involuntary termination of contract—Refund. Prearrangement contracts shall terminate upon demand of the purchaser of the contract if the cemetery authority shall go out of business, become insolvent or bankrupt, make an assignment for the benefit of creditors, or for any other reason be unable to fulfill the obligations under the contract. Upon demand by the purchaser or beneficiary or beneficiaries of any prearrangement contract, the cemetery authority shall refund one hundred percent of the original contract, less delivered services and merchandise, including funds held in deposit and interest earned thereon, unless otherwise ordered by a court of competent jurisdiction. [1987 c 331 § 52; 1979 c 21 § 26; 1973 1st ex.s. c 68 § 7.]

68.46.075 Inactive contracts—Funds transfer—Obligations. In the event the beneficiary of a prearrangement contract make[s] no claim within fifty years of the date of the contract for the merchandise and services provided in the prearrangement contract, the funds deposited in the prearrangement trust for that contract, plus interest, shall be transferred to the cemetery authority's endowment fund, to be used for the purposes for which the endowment fund was established. However, the cemetery authority shall remain obligated for merchandise and services, unconstructed crypts, niches, and undeveloped property under the terms of the prearrangement

contract. Claims may be made for merchandise and services, unconstructed crypts, niches, and undeveloped property on a prearrangement contract after the funds have been transferred to the endowment fund. These claims shall be paid for from the endowment fund income on a contract by contract basis. [2005 c 365 § 133; 1979 c 21 § 27.]

68.46.080 Other use of trust funds prohibited. Prearrangement trust funds shall not be used in any way for the benefit of the cemetery authority or any director, officer, agent, or employee of any cemetery authority, including, but not limited to any encumbrance, pledge, or other utilization or prearrangement trust funds as collateral or other security. [2005 c 365 § 134; 1973 1st ex.s. c 68 § 8.]

68.46.090 Financial reports—Filing—Verification. Any cemetery authority selling prearrangement merchandise or other prearrangement services shall file in its office and with the cemetery board a written report upon forms prepared by the cemetery board which shall state the amount of the principle of the prearrangement trust fund, the depository of such fund, and cash on hand which is or may be due to the fund as well as other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually. These reports shall be verified by the president, or the vice president, and one other officer of the cemetery authority, the accountant or auditor who prepared the report, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. [2005 c 365 § 135; 1983 c 190 § 1; 1977 ex.s. c 351 § 5; 1973 1st ex.s. c 68 § 9.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.46.100 Prearrangement contract requirements. Every prearrangement contract shall contain language which informs the purchaser of the prearrangement trust fund and the amount to be deposited in the prearrangement trust fund. The amount deposited to the prearrangement trust fund must meet the requirements of RCW 68.46.030.

Every prearrangement contract shall contain language prominently featured on the face of the contract disclosing to the purchaser what items will be delivered before need, either stored or installed, and thus not subject to funding or refund.

Every prearrangement contract for the sale of unconstructed crypts, niches, or undeveloped property shall contain language which informs the purchaser that sales of unconstructed or undeveloped property are subject to the provisions of RCW 68.46.030. [2005 c 365 § 136; 1987 c 331 § 53; 1984 c 53 § 5; 1973 1st ex.s. c 68 § 10.]

68.46.110 Compliance required. No cemetery authority shall sell, offer to sell, or authorize the sale of cemetery merchandise or services or accept funds in payment of any prearrangement contract unless such acts are performed in compliance with this title and under the authority of a valid and unsuspended certificate of authority to operate a cemetery in this state. [2005 c 365 § 137; 1973 1st ex.s. c 68 § 11.]

68.46.125 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and

operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 54.]

68.46.130 Exemptions from chapter granted by board. The cemetery board may grant an exemption from any or all of the requirements of this chapter relating to prearrangement contracts to any cemetery authority which:

(1) Sells less than twenty prearrangement contracts per year; and

(2) Deposits one hundred percent of all funds received into a trust fund under RCW 68.46.030, as now or hereafter amended. [1979 c 21 § 43.]

68.46.160 Contract forms—Filing. No cemetery authority shall use a prearrangement contract without first filing the form of such contract with the board: PROVIDED, That the board may order the cemetery authority to cease using any prearrangement contract form which:

(1) Is in violation of any provision of this chapter;

(2) Is misleading or deceptive; or

(3) Is being used in connection with solicitation by false, misleading or deceptive advertising or sales practices.

Use of a prearrangement contract form which is not on file with the board or which the board has ordered the cemetery authority not to use shall be a violation of this chapter. [1979 c 21 § 38.]

68.46.170 Sales licenses—Requirement. No cemetery authority shall enter into prearrangement contracts in this state unless the cemetery authority has obtained a prearrangement sales license issued by the board or its authorized representative and such license is then current and valid. [1979 c 21 § 23.]

68.46.175 Unconstructed crypts, etc., as part of contract—Requirements. (1) A cemetery authority that enters into prearrangement contracts for the sale of unconstructed crypts, niches, or undeveloped property, or that conveys undeveloped property by gift, shall maintain an adequate inventory of constructed crypts or niches and developed property. The inventory shall be a minimum of ten percent of the unconstructed or undeveloped property sales. The inventory shall be equal or better in quality than the unconstructed crypts or niches, or undeveloped property if they were constructed or developed.

(2) If the death of a purchaser or owner of an unconstructed crypt, niche, or undeveloped property occurs before the property is constructed or developed, the cemetery authority shall provide a constructed crypt, niche, or developed property of equal or better quality without additional cost or charge.

(3) If two or more unconstructed crypts, niches, or undeveloped properties are conveyed with the intention that the crypts, niches, or properties shall be contiguous to each other or maintained together as a group and the death of any one purchaser or owner in such group occurs before the unconstructed crypts, niches, or undeveloped property is developed, the cemetery authority shall provide additional constructed crypts, niches, or developed property of equal or better quality, contiguous to each other or together as a group, as

originally intended, to other purchasers or owners in the group without additional cost or charge.

(4) The representative of the deceased purchaser may agree to the placement of the decedent in a temporary crypt, niche, or grave until the construction is completed and the decedent is placed in the new crypt, niche, or grave.

(5) Prearrangement sales of unconstructed crypts, niches, or undeveloped property must meet the requirements of RCW 68.46.030. [2005 c 365 § 131.]

68.46.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.50 RCW HUMAN REMAINS

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Disposal of remains prohibited unless accompanied by proper permit: RCW 70.58.260.

Fetal deaths: Chapter 70.58 RCW.

Undertaker must file death certificate: RCW 70.58.240.

Veterans and relatives: Chapter 73.24 RCW.

68.50.010 Coroner's jurisdiction over remains. The jurisdiction of bodies of all deceased persons who come to their death suddenly when in apparent good health without medical attendance within the thirty-six hours preceding death; or where the circumstances of death indicate death was caused by unnatural or unlawful means; or where death occurs under suspicious circumstances; or where a coroner's autopsy or post mortem or coroner's inquest is to be held; or where death results from unknown or obscure causes, or where death occurs within one year following an accident; or where the death is caused by any violence whatsoever, or where death results from a known or suspected abortion; whether self-induced or otherwise; where death apparently results from drowning, hanging, burns, electrocution, gunshot wounds, stabs or cuts, lightning, starvation, radiation, exposure, alcoholism, narcotics or other addictions, tetanus, strangulations, suffocation or smothering; or where death is due to premature birth or still birth; or where death is due to a violent contagious disease or suspected contagious disease which may be a public health hazard; or where death results from alleged rape, carnal knowledge or sodomy, where death occurs in a jail or prison; where a body is found dead or is not claimed by relatives or friends, is hereby vested in the county coroner, which bodies may be removed and placed in the morgue under such rules as are adopted by the coroner with the approval of the county commissioners, having jurisdiction, providing therein how the bodies shall be brought to and cared for at the morgue and held for the proper identification where necessary. [1963 c 178 § 1; 1953 c 188 § 1; 1917 c 90 § 3; RRS § 6042. Formerly RCW 68.08.010.]

68.50.015 Immunity for determining cause and manner of death—Judicial review of determination. A county coroner or county medical examiner or persons acting in that capacity shall be immune from civil liability for determining the cause and manner of death. The accuracy of the determinations is subject to judicial review. [1987 c 263 § 1.]

68.50.020 Notice to coroner—Penalty. It shall be the duty of every person who knows of the existence and location of a dead body coming under the jurisdiction of the coroner as set forth in RCW 68.50.010, to notify the coroner thereof in the most expeditious manner possible, unless such person shall have good reason to believe that such notice has already been given. Any person knowing of the existence of such dead body and not having good reason to believe that the coroner has notice thereof and who shall fail to give notice to the coroner as aforesaid, shall be guilty of a misdemeanor. [1987 c 331 § 55; 1917 c 90 § 4; RRS § 6043. Formerly RCW 68.08.020.]

68.50.032 Transportation of remains directed by coroner or medical examiner—Costs. Whenever a coroner or medical examiner assumes jurisdiction over human remains and directs transportation of those remains by a funeral establishment, as defined in RCW 18.39.010, the reasonable costs of transporting shall be borne by the county if: (1) The funeral establishment transporting the remains is not providing the funeral or disposition services; or (2) the funeral establishment providing the funeral or disposition services is required to transport the remains to a facility other than its own.

Except as provided in RCW 36.39.030, 68.52.030, and 73.08.070, any transportation costs or other costs incurred after the coroner or medical examiner has released jurisdiction over the human remains shall not be borne by the county. [1991 c 176 § 1.]

68.50.035 Unlawful to refuse burial to non-Caucasian. It shall be unlawful for any cemetery under this chapter to refuse burial to any person because such person may not be of the Caucasian race. [1953 c 290 § 53. Formerly RCW 68.05.260.]

Reviser's note: RCW 68.50.035 (formerly RCW 68.05.260) was declared unconstitutional in *Price v. Evergreen Cemetery Co. of Seattle* (1960) 157 Wash. Dec. 249.

68.50.040 Deceased's effects to be listed. Duplicate lists of all jewelry, moneys, papers, and other personal property of the deceased shall be made immediately upon finding the same by the coroner or his assistants. The original of such lists shall be kept as a public record at the morgue and the duplicate thereof shall be forthwith duly certified to by the coroner and filed with the county auditor. [1917 c 90 § 6; RRS § 6045. Formerly RCW 68.08.040.]

68.50.050 Removal or concealment of body—Penalty. Any person, not authorized by the coroner or his deputies, who removes the body of a deceased person not claimed by a relative or friend, or who came to their death by reason of violence or from unnatural causes or where there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, to any undertaking rooms or elsewhere, or any person who directs, aids or abets such taking, and any person who in any way conceals the body of a deceased person for the purpose of taking the same to any undertaking rooms or elsewhere, shall in each of said cases be guilty of a gross misdemeanor and upon conviction thereof shall be punished by fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year or by both fine and imprisonment in the discretion of the court. [1917 c 90 § 7; RRS § 6046. Formerly RCW 68.08.050.]

68.50.060 Bodies for instruction purposes. Any physician or surgeon of this state, or any medical student under the authority of any such physician or surgeon, may obtain, as hereinafter provided, and have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction. [1891 c 123 § 1; RRS § 10026. Formerly RCW 68.08.060.]

68.50.070 Bodies, when may be used for dissection.

Any sheriff, coroner, keeper or superintendent of a county poorhouse, public hospital, county jail, or state institution shall surrender the dead bodies of persons required to be buried at the public expense, to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being given to medical schools in this state, for their use in the instruction of medical students. If the deceased person during his last sickness requested to be buried, or if within thirty days after his death some person claiming to be a relative or a responsible officer of a church organization with which the deceased at the time of his death was affiliated requires the body to be buried, his body shall be buried. [1959 c 23 § 1; 1953 c 224 § 2; 1891 c 123 § 2; RRS § 10027. Formerly RCW 68.08.070.]

68.50.080 Certificate and bond before receiving bodies. Every physician or surgeon before receiving the dead body must give to the board or officer surrendering the same to him a certificate from the medical society of the county in which he resides, or if there is none, from the board of supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such purpose in this state only, and so as in no event to outrage the public feeling. [1891 c 123 § 3; RRS § 10028. Formerly RCW 68.08.080.]

68.50.090 Penalty. Any person violating any provision of RCW 68.50.060 through 68.50.080 shall upon conviction thereof be fined in any sum not exceeding five hundred dollars. [1987 c 331 § 56; 1891 c 123 § 4; RRS § 10029. Formerly RCW 68.08.090.]

68.50.100 Dissection, when permitted—Autopsy of person under the age of three years. (1) The right to dissect a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he or she may authorize dissection; and cases where the spouse, state registered domestic partner, or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized: PROVIDED, That the coroner, in his or her discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or postmortem in any case in which the coroner has jurisdiction of a body: PROVIDED, FURTHER, That the coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he or she has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death.

(2) Every person who shall make, cause, or procure to be made any dissection of a body, except as provided in this section, is guilty of a gross misdemeanor. [2007 c 156 § 21; 2003 c 53 § 307; 1963 c 178 § 2; 1953 c 188 § 2; 1909 c 249 § 237; RRS § 2489. Formerly RCW 68.08.100.]

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

68.50.101 Autopsy, post mortem—Who may authorize. Autopsy or post mortem may be performed in any case where authorization has been given by a member of one of the following classes of persons in the following order of priority:

- (1) The surviving spouse or state registered domestic partner;
- (2) Any child of the decedent who is eighteen years of age or older;
- (3) One of the parents of the decedent;
- (4) Any adult brother or sister of the decedent;
- (5) A person who was guardian of the decedent at the time of death;
- (6) Any other person or agency authorized or under an obligation to dispose of the remains of the decedent. The chief official of any such agency shall designate one or more persons to execute authorizations pursuant to the provisions of this section.

If the person seeking authority to perform an autopsy or post mortem makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class, in the order of descending priority. However, no person under this section shall have the power to authorize an autopsy or post mortem if a person of higher priority under this section has refused such authorization: PROVIDED, That this section shall not affect autopsies performed pursuant to RCW 68.50.010 or 68.50.103. [2007 c 156 § 22; 1987 c 331 § 57; 1977 c 79 § 1; 1953 c 188 § 11. Formerly RCW 68.08.101.]

68.50.102 Court petition for autopsy—Cost. Any party by showing just cause may petition the court to have autopsy made and results thereof made known to said party at his own expense. [1953 c 188 § 12. Formerly RCW 68.08.102.]

68.50.103 Autopsies in industrial deaths. In an industrial death where the cause of death is unknown, and where the department of labor and industries is concerned, said department in its discretion, may request the coroner in writing to perform an autopsy to determine the cause of death. The coroner shall be required to promptly perform such autopsy upon receipt of the written request from the department of labor and industries. [1953 c 188 § 6. Formerly RCW 68.08.103.]

68.50.104 Cost of autopsy. (1) The cost of autopsy shall be borne by the county in which the autopsy is performed, except when requested by the department of labor and industries, in which case, the department shall bear the cost of such autopsy.

(2) Except as provided in (c) of this subsection, when the county bears the cost of an autopsy, it shall be reimbursed from the death investigations account, established by RCW 43.79.445, as follows:

(a) Up to forty percent of the cost of contracting for the services of a pathologist to perform an autopsy;

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(b) Up to twenty-five percent of the salary of pathologists who are primarily engaged in performing autopsies and are (i) county coroners or county medical examiners, or (ii) employees of a county coroner or county medical examiner; and

(c) When the county bears the cost of an autopsy of a child under the age of three whose death was sudden and unexplained, the county shall be reimbursed for the expenses of the autopsy when the death scene investigation and the autopsy have been conducted under RCW 43.103.100 (4) and (5), and the autopsy has been done at a facility designed for the performance of autopsies.

Payments from the account shall be made pursuant to biennial appropriation: PROVIDED, That no county may reduce funds appropriated for this purpose below 1983 budgeted levels. [2001 c 82 § 2; 1983 1st ex.s. c 16 § 14; 1963 c 178 § 3; 1953 c 188 § 7. Formerly RCW 68.08.104.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.105 Autopsies, post mortems—Reports and records confidential—Exceptions. Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician or advanced registered nurse practitioner, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or to the department of labor and industries in cases in which it has an interest under RCW 68.50.103.

The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, state registered domestic partner, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death. [2007 c 439 § 1; 2007 c 156 § 23; 1987 c 331 § 58; 1985 c 300 § 1; 1977 c 79 § 2; 1953 c 188 § 9. Formerly RCW 68.08.105.]

Reviser's note: This section was amended by 2007 c 156 § 23 and by 2007 c 439 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

68.50.106 Autopsies, post mortems—Analyses—Opinions—Evidence—Costs. In any case in which an autopsy or post mortem is performed, the coroner or medical examiner, upon his or her own authority or upon the request of the prosecuting attorney or other law enforcement agency having jurisdiction, may make or cause to be made an analysis of the stomach contents, blood, or organs, or tissues of a deceased person and secure professional opinions thereon and retain or dispose of any specimens or organs of the deceased which in his or her discretion are desirable or needful for anatomic, bacteriological, chemical, or toxicological examination or upon lawful request are needed or desired for evidence to be presented in court. Costs shall be borne by the county. [1993 c 228 § 19; 1987 c 331 § 59; 1975-'76 2nd ex.s. c 28 § 1; 1953 c 188 § 10. Formerly RCW 68.08.106.]

68.50.107 State toxicological laboratory established—State toxicologist. There shall be established in conjunction with the chief of the Washington state patrol and under the authority of the state forensic investigations council a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners, medical examiners, and prosecuting attorneys. The state forensic investigations council, after consulting with the chief of the Washington state patrol and director of the bureau of forensic laboratory services, shall appoint a toxicologist as state toxicologist, who shall report to the director of the bureau of forensic laboratory services and the office of the chief of the Washington state patrol. Toxicological services shall be funded by disbursement from the spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility license fees as provided in RCW 66.08.180 and by appropriation from the death investigations account as provided in RCW 43.79.445. [1999 c 281 § 13; 1999 c 40 § 8; 1995 c 398 § 10; 1986 c 87 § 2; 1983 1st ex.s. c 16 § 10; 1975-'76 2nd ex.s. c 84 § 1; 1970 ex.s. c 24 § 1; 1953 c 188 § 13. Formerly RCW 68.08.107.]

Reviser's note: This section was amended by 1999 c 40 § 8 and by 1999 c 281 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1999 c 40: See note following RCW 43.103.010.

Effective date—1986 c 87: See note following RCW 66.08.180.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

State forensic investigations council: Chapter 43.103 RCW.

68.50.108 Autopsies, post mortems—Consent to embalm or cremate body—Time limitation. No dead body upon which the coroner, or prosecuting attorney, if there be no coroner in the county, may perform an autopsy or post mortem, shall be embalmed or cremated without the consent of the coroner having jurisdiction, and failure to obtain such consent shall be a misdemeanor: PROVIDED, That such autopsy or post mortem must be performed within five days, unless the coroner shall obtain an order from the superior court extending such time. [1953 c 188 § 8. Formerly RCW 68.08.108.]

68.50.110 Burial or cremating. Except in cases of dissection provided for in RCW 68.50.100, and where human remains shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, human remains lying within this state, and the remains of any dissected body, after dissection, shall be decently buried, or cremated within a reasonable time after death. [2005 c 365 § 138; 1987 c 331 § 60; 1909 c 249 § 238; RRS § 2490. Formerly RCW 68.08.110.]

68.50.120 Holding body for debt—Penalty. Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, is guilty of a gross misdemeanor. [1943 c 247 § 27; Rem. Supp. 1943 § 3778-27. Formerly RCW 68.08.120.]

68.50.130 Unlawful disposal of remains. Every person who performs a disposition of any human remains, except as otherwise provided by law, in any place, except in a cemetery or a building dedicated exclusively for religious purposes, is guilty of a misdemeanor. Disposition of cremated human remains may also occur on private property, with the consent of the property owner; and on public or government lands or waters with the approval of the government agency that has either jurisdiction or control, or both, of the lands or waters. [2005 c 365 § 139; 1943 c 247 § 28; Rem. Supp. 1943 § 3778-28. Formerly RCW 68.08.130.]

68.50.140 Unlawful disturbance, removal, or sale of human remains—Penalty. (1) Every person who shall remove human remains, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, is guilty of a class C felony.

(2) Every person who shall purchase or receive, except for burial or cremation, human remains or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, is guilty of a class C felony.

(3) Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where human remains are placed, with intent to sell or remove the casket, urn, or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the human remains, is guilty of a class C felony.

(4) Every person who removes, disinters, or mutilates human remains from a place of interment, without authority of law, is guilty of a class C felony. [2005 c 365 § 140; 2003 c 53 § 308; 1992 c 7 § 44; 1909 c 249 § 239; RRS § 2491. FORMER PART OF SECTION: 1943 c 247 § 25 now codified as RCW 68.50.145. Formerly RCW 68.08.140.]

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

68.50.160 Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost. (1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions

have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

- (a) The surviving spouse or state registered domestic partner.
- (b) The surviving adult children of the decedent.
- (c) The surviving parents of the decedent.
- (d) The surviving siblings of the decedent.
- (e) A person acting as a representative of the decedent under the signed authorization of the decedent.

(4) If a cemetery authority as defined in RCW 68.04.190 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the person cited in subsection (3)(a) through (e) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally or civilly liable for burying or cremating the human remains. In the event any government agency provides the funds for the disposition of any human remains and the government agency elects to provide funds for cremation only, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

(5) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent. [2007 c 156 § 24; 2005 c 365 § 141; 1993 c 297 § 1; 1992 c 108 § 1; 1943 c 247 § 29; Rem. Supp. 1943 § 3778-29. Formerly RCW 68.08.160.]

Disposal of remains of indigent persons: RCW 36.39.030.

Order of payment of debts of estate: RCW 11.76.110.

68.50.170 Effect of authorization. Any person signing any authorization for the interment or cremation of any human remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose human remains are sought to be interred or cremated, and his or her authority to order interments or cremation. That person is personally liable for all damage occasioned by or resulting from breach of such warranty. [2005 c 365 § 142; 1943 c 247 § 30; Rem. Supp. 1943 § 3778-30. Formerly RCW 68.08.170.]

68.50.185 Individual cremation—Exception—Penalty. (1) A person authorized to dispose of human remains shall not cremate or cause to be cremated more than one human remains at a time unless written permission, after full and adequate disclosure regarding the manner of cremation, has been received from the person or persons under RCW 68.50.160 having the authority to order cremation. This restriction shall not apply when equipment, techniques, or devices are employed that keep human remains separate and distinct before, during, and after the cremation process.

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(2) Violation of this section is a gross misdemeanor. [2005 c 365 § 143; 1987 c 331 § 61; 1985 c 402 § 3. Formerly RCW 68.08.185.]

Legislative finding—1985 c 402: "The legislature finds that certain practices in storing human remains and in performing cremations violate common notions of decency and generally held expectations. In enacting this legislation, the legislature is reaffirming that certain practices, which have never been acceptable, violate principles of human dignity." [1985 c 402 § 1.]

68.50.200 Permission to remove human remains. Human remains may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

- (1) The surviving spouse or state registered domestic partner.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.
- (4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: PROVIDED, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority. [2007 c 156 § 25; 2005 c 365 § 144; 1943 c 247 § 33; Rem. Supp. 1943 § 3778-33. Formerly RCW 68.08.200.]

68.50.210 Notice for order to remove remains. Notice of application to the court for such permission shall be given, at least ten days prior thereto, personally, or at least fifteen days prior thereto if by mail, to the cemetery authority and to the persons not consenting, and to every other person on whom service of notice may be required by the court. [1943 c 247 § 34; Rem. Supp. 1943 § 3778-34. Formerly RCW 68.08.210.]

68.50.220 Exceptions. RCW 68.50.200 and 68.50.210 do not apply to or prohibit the removal of any human remains from one plot to another in the same cemetery or the removal of [human] remains by a cemetery authority from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor do they apply to the disinterment of human remains upon order of court or coroner. However, a cemetery authority shall provide notification to the person cited in RCW 68.50.200 before moving human remains. [2005 c 365 § 145; 1987 c 331 § 62; 1943 c 247 § 35; Rem. Supp. 1943 § 3778-35. Formerly RCW 68.08.220.]

68.50.230 Undisposed human remains—Rules. Whenever any human remains shall have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect, or refuse to direct the disposition, the human remains may be disposed of by the person, firm, corporation, or association having such lawful possession thereof, under and in accordance with rules adopted by the cemetery board and the board of funeral directors and embalmers, not inconsistent with any statute of the state of Washington or rule adopted by the state board of health. [2005 c 365 § 146; 1985 c 402 § 9; 1979 c

158 § 218; 1937 c 108 § 14; RRS § 8323-3. Formerly RCW 68.08.230.]

Legislative finding—1985 c 402: See note following RCW 68.50.185.

68.50.232 Undisposed remains—Entrusting to funeral homes or mortuaries. See RCW 36.24.155.

68.50.240 Record of human remains to be kept. The person in charge of any premises on which interments or cremations are made shall keep a record of all human remains interred or cremated on the premises under his or her charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral establishment. [2005 c 365 § 147; 1943 c 247 § 39; Rem. Supp. 1943 § 3778-39. Formerly RCW 68.08.240.]

68.50.270 Possession of cremated human remains. The person or persons determined under RCW 68.50.160 as having authority to order cremation shall be entitled to possession of the cremated human remains without further intervention by the state or its political subdivisions. [2005 c 365 § 148; 1987 c 331 § 63; 1977 c 47 § 4. Formerly RCW 68.08.245.]

68.50.290 Corneal tissue for transplantation—Presumption of good faith. In any subsequent civil action in which the next of kin of a decedent contends that he/she affirmatively informed the county coroner or medical examiner or designee of his/her objection to removal of corneal tissue from the decedent, it shall be presumed that the county coroner or medical examiner acted in good faith and without knowledge of the objection. [1975-'76 2nd ex.s. c 60 § 2. Formerly RCW 68.08.305.]

68.50.300 Release of information concerning a death. (1) The county coroner, medical examiner, or prosecuting attorney having jurisdiction may in such official's discretion release information concerning a person's death to the media and general public, in order to aid in identifying the deceased, when the identity of the deceased is unknown to the official and when he does not know the information to be readily available through other sources.

(2) The county coroner, medical examiner, or prosecuting attorney may withhold any information which directly or indirectly identifies a decedent until either:

(a) A notification period of forty-eight hours has elapsed after identification of the decedent by such official; or

(b) The next of kin of the decedent has been notified.

During the forty-eight hour notification period, such official shall make a good faith attempt to locate and notify the next of kin of the decedent. [1981 c 176 § 2. Formerly RCW 68.08.320.]

68.50.310 Dental identification system established—Powers and duties. A dental identification system is established in the identification section of the Washington state patrol. The dental identification system shall act as a repository or computer center or both for dental examination records and it shall be responsible for comparing such records with dental records filed under RCW 68.50.330. It

shall also determine which scoring probabilities are the highest for purposes of identification and shall submit such information to the coroner or medical examiner who prepared and forwarded the dental examination records. Once the dental identification system is established, operating funds shall come from the state general fund. [1987 c 331 § 65; 1983 1st ex.s. c 16 § 15. Formerly RCW 68.08.350.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.320 Procedures for investigating missing persons—Availability of files. When a person reported missing has not been found within thirty days of the report, or at any time the investigating agency suspects criminal activity to be the basis of the victim being missing, the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority initiating and conducting the investigation for the missing person shall: (1) File a missing person's report with the Washington state patrol missing and unidentified persons unit; (2) initiate the collection of DNA samples from the known missing person and their family members for nuclear and mitochondrial DNA testing along with the necessary consent forms; and (3) ask the missing person's family or next of kin to give written consent to contact the dentist or dentists of the missing person and request the person's dental records.

The missing person's dentist or dentists shall provide diagnostic quality copies of the missing person's dental records or original dental records to the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority, when presented with the written consent from the missing person's family or next of kin or with a statement from the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority that the missing person's family or next of kin could not be located in the exercise of due diligence or that the missing person's family or next of kin refuse to consent to the release of the missing person's dental records and there is reason to believe that the missing person's family or next of kin may have been involved in the missing person's disappearance.

As soon as possible after collecting the DNA samples, the sheriff, chief of police, or other law enforcement authority shall submit the DNA samples to the appropriate laboratory. Dental records shall be submitted as soon as possible to the Washington state patrol missing and unidentified persons unit.

The descriptive information from missing person's reports and dental data submitted to the Washington state patrol missing and unidentified persons unit shall be recorded and maintained by the Washington state patrol missing and unidentified persons unit in the applicable dedicated missing person's databases.

When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall report such information to the Washington state patrol.

The dental identification system shall maintain a file of information regarding persons reported to it as missing. The file shall contain the information referred to in this section

and such other information as the Washington state patrol finds relevant to assist in the location of a missing person.

The files of the dental identification system shall, upon request, be made available to law enforcement agencies attempting to locate missing persons. [2007 c 10 § 5. Prior: 2006 c 235 § 4; 2006 c 102 § 6; 2001 c 223 § 1; 1984 c 17 § 18; 1983 1st ex.s. c 16 § 16. Formerly RCW 68.08.355.]

Intent—2007 c 10: See note following RCW 43.103.110.

Purpose—Effective date—2006 c 235: See notes following RCW 70.02.050.

Finding—Intent—2006 c 102: See note following RCW 36.28A.100.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

Missing children clearinghouse and hot line: Chapter 13.60 RCW.

68.50.330 Identification of body or human remains by dental examination—Comparison of dental examination records with dental records of dental identification system. If the county coroner or county medical examiner investigating a death is unable to establish the identity of a body or human remains by visual means, fingerprints, or other identifying data, he or she shall have a qualified dentist, as determined by the county coroner or county medical examiner, carry out a dental examination of the body or human remains. If the county coroner or county medical examiner with the aid of the dental examination and other identifying findings is still unable to establish the identity of the body or human remains, he or she shall prepare and forward such dental examination records within thirty days of the date the body or human remains were found to the dental identification system of the state patrol identification and criminal history section on forms supplied by the state patrol for such purposes.

The dental identification system shall act as a repository or computer center or both with respect to such dental examination records. It shall compare such dental examination records with dental records filed with it and shall determine which scoring probabilities are the highest for the purposes of identification. It shall then submit such information to the county coroner or county medical examiner who prepared and forwarded the dental examination records. [2001 c 172 § 1; 1984 c 17 § 19; 1983 1st ex.s. c 16 § 17. Formerly RCW 68.08.360.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.645 Skeletal human remains—Duty to notify—Ground disturbing activities—Coroner determination—Definitions. (1) It is the duty of every person who knows of the existence and location of skeletal human remains to notify the coroner and local law enforcement in the most expeditious manner possible, unless such person has good reason to believe that such notice has already been given. Any person knowing of the existence of skeletal human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice to the coroner and local law enforcement, is guilty of a misdemeanor.

(2) Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:

(a) Immediately cease any activity which may cause further disturbance;

(b) Make a reasonable effort to protect the area from further disturbance;

(c) Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and

(d) Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:

(i) The finding of the remains was based on inadvertent discovery;

(ii) The requirements of the subsection are otherwise met; and

(iii) The person is otherwise in compliance with applicable law.

(3) The coroner must make a determination of whether the skeletal human remains are forensic or nonforensic within five business days of receiving notification of a finding of such human remains provided that there is sufficient evidence to make such a determination within that time period. The coroner will retain jurisdiction over forensic remains.

(a) Upon determination that the remains are nonforensic, the coroner must notify the department of archaeology and historic preservation within two business days. The department will have jurisdiction over such remains until provenance of the remains is established. A determination that remains are nonforensic does not create a presumption of removal or nonremoval.

(b) Upon receiving notice from a coroner of a finding of nonforensic skeletal human remains, the department must notify the appropriate local cemeteries, and all affected Indian tribes via certified mail to the head of the appropriate tribal government, and contact the appropriate tribal cultural resources staff within two business days of the finding. The determination of what are appropriate local cemeteries to be notified is at the discretion of the department. A notification to tribes of a finding of such nonforensic skeletal human remains does not create a presumption that the remains are Indian.

(c) The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains within two business days of notification of a finding of nonforensic remains. If the remains are determined to be Indian, the department must notify all affected Indian tribes via certified mail to the head of the appropriate tribal government within two business days and contact the appropriate tribal cultural resources staff.

(d) The affected tribes have five business days to respond via telephone or writing to the department as to their interest in the remains.

(4) For the purposes of this section:

(a) "Affected tribes" are:

(i) Those federally recognized tribes with usual and accustomed areas in the jurisdiction where the remains were found;

(ii) Those federally recognized tribes that submit to the department maps that reflect the tribe's geographical area of cultural affiliation; and

(iii) Other tribes with historical and cultural affiliation in the jurisdiction where the remains were found.

(b) "Forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW 68.50.010.

(c) "Inadvertent discovery" has the same meaning as used in RCW 27.44.040.

(5) Nothing in this section constitutes, advocates, or otherwise grants, confers, or implies federal or state recognition of those tribes that are not federally recognized pursuant to 25 C.F.R. part 83, procedures for establishing that an American Indian group exists as an Indian tribe. [2008 c 275 § 1.]

Reporting requirements—2008 c 275: "The department of archaeology and historic preservation must communicate with the appropriate committees of the legislature by November 15, 2009, and biennially thereafter, regarding the numbers of inadvertent discoveries of skeletal human remains and other associated activities pursuant to this act." [2008 c 275 § 8.]

68.50.900 Effective date—1987 c 331. See RCW 68.05.900.

68.50.901 Application—1993 c 228. RCW *68.50.520 through **68.50.630 and 68.50.901 through 68.50.904 apply to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after July 25, 1993. [1993 c 228 § 12.]

Reviser's note: *(1) RCW 68.50.520 through 68.50.620 were repealed by 2008 c 139 § 31.

** (2) RCW 68.50.630 was repealed by 2002 c 45 § 1.

68.50.902 Application—Construction—1993 c 228. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [1993 c 228 § 13.]

68.50.903 Severability—1993 c 228. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 228 § 14.]

68.50.904 Short title—1993 c 228. RCW *68.50.520 through **68.50.630 and 68.50.901 through 68.50.903 may be cited as the "uniform anatomical gift act." [1993 c 228 § 16.]

Reviser's note: *(1) RCW 68.50.520 through 68.50.620 were repealed by 2008 c 139 § 31.

** (2) RCW 68.50.630 was repealed by 2002 c 45 § 1.

Chapter 68.52 RCW

PUBLIC CEMETERIES AND MORGUES

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68.52.901	Effective date—1987 c 331.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

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68.52.010 Morgues authorized in counties. The county legislative authority of each county may at its discretion provide and equip a public morgue together with suitable morgue wagon for the conveyance, receipt and proper disposition of the bodies of all deceased persons not claimed by relatives, and of all dead bodies which are by law subject to a post mortem or coroner's inquest: PROVIDED, HOWEVER, That only one public morgue may be established in any county: PROVIDED FURTHER, That counties may agree to establish joint morgue facilities pursuant to chapter 39.34 RCW. [1983 1st ex.s. c 16 § 19; 1917 c 90 § 1; RRS § 6040. Formerly RCW 68.12.010.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.52.020 Coroner to control morgue—Expense. Such morgue shall be under the control and management of the coroner who shall have power with the advice and consent of the county commissioners, to employ the necessary deputies and employees; and, with the advice and consent of the county commissioners, to fix their salaries and compensation, which, together with the expenses of operating such morgue, shall be paid monthly out of the county treasury. [1917 c 90 § 2; RRS § 6041. Formerly RCW 68.12.020.]

68.52.030 Counties and cities may provide for burial, acquire cemeteries, etc. Each and every county, town or city, shall have power to provide a hearse and pall for burial of the dead, and to procure and hold lands for burying grounds, and to make regulations and fence the same, and to preserve the monuments erected therein, and to levy and col-

lect the necessary taxes for that purpose, in the same manner as other taxes are levied and collected. [1857 p 28 § 3; RRS § 3772. Formerly RCW 68.12.030.]

68.52.040 Cities and towns may own, improve, etc., cemeteries. Any city or town may acquire, hold, or improve land for cemetery purposes, and may sell lots therein, and may provide by ordinance that a specified percentage of the proceeds therefrom be set aside and invested, and the income from the investment be used in the care of the lots, and may take and hold any property devised, bequeathed or given upon trust, and apply the income thereof for the improvement or embellishment of the cemeteries or the erection or preservation of structures, fences, or walks therein, or for the repair, preservation, erection, or renewal of any tomb, monument, gravestone, fence, railing, or other erection at or around a cemetery, lot, or plat, or for planting and cultivating trees, shrubs, flowers, or plants in or around the lot or plot, or for improving or embellishing the cemetery in any other manner or form consistent with the design and purpose of the city, according to the terms of the grant, devise, or bequest. [1955 c 378 § 1; 1909 c 156 § 1; RRS § 3773. Formerly RCW 68.12.040.]

68.52.045 Cities and towns may provide for a cemetery board. The legislative body of any city or town may provide by ordinance for a cemetery board to be appointed by the mayor in cities and towns operating under the mayor-council form of government, by the city commission in cities operating under the commission form of government, and by the city manager in cities and towns operating under the council-manager form of government: PROVIDED FURTHER, That no ordinance shall be enacted, pursuant to this section, in conflict with provisions contained in charters of cities of the first class. [1955 c 378 § 2. Formerly RCW 68.12.045.]

68.52.050 Cemetery improvement fund. All moneys received in the manner above provided shall be deposited with the city treasurer, and shall be kept apart in a fund known as the cemetery improvement fund, and shall be paid out only upon warrants drawn by the order of the cemetery board, if such a board exists, or by order of the body, department, commission, or committee duly authorized by ordinance to issue such an order, or by the legislative body of a city or town, which order shall be approved by such legislative body if such order is not issued by the legislative body, and shall be indorsed by the mayor and attested by the city comptroller or other authorized officer. [1955 c 378 § 3; 1909 c 156 § 4; RRS § 3776. Formerly RCW 68.12.050.]

68.52.060 Care and investment of fund. It shall be the duty of the cemetery board and other body or commission having in charge the care and operation of cemeteries to invest all sums set aside from the sale of lots, and all sums of money received, and to care for the income of all money and property held in trust for the purposes designated herein: PROVIDED, HOWEVER, That all investments shall be made in municipal, county, school or state bonds, general obligation warrants of the city owning such cemetery, or in

first mortgages on good and improved real estate. [1933 c 91 § 1; 1909 c 156 § 2; RRS § 3774. FORMER PART OF SECTION: 1909 c 156 § 3 now codified as RCW 68.52.065. Formerly RCW 68.12.060.]

68.52.065 Approval of investments. All investments shall be approved by the council or legislative body of the city. [1909 c 156 § 3; RRS § 3775. Formerly RCW 68.12.060, part, and 68.12.065.]

68.52.070 Cemetery improvement fund—Management. The said city shall, by ordinance, make all necessary rules and regulations concerning the control and management of said fund to properly safeguard the same, but shall in no wise be liable for any of said funds except a misappropriation thereof, and shall not have power to bind the city or said fund for any further liability than whatever net interest may be actually realized from such investments, and shall not be liable to any particular person for more than the proportionate part of such net earnings. [1909 c 156 § 6; RRS § 3778. Formerly RCW 68.12.070.]

68.52.080 Books of account—Audit. Accurate books of account shall be kept of all transactions pertaining to said fund, which books shall be open to the public for inspection and shall be audited by the auditing committee of said city. [1909 c 156 § 5; RRS § 3777. Formerly RCW 68.12.080.]

68.52.090 Establishment authorized. Cemetery districts may be established in all counties and on any island in any county, as in this chapter provided. [1971 c 19 § 1; 1957 c 99 § 1; 1953 c 41 § 1; 1947 c 27 § 1; 1947 c 6 § 1; Rem. Supp. 1947 § 3778-150. Formerly RCW 68.16.010.]

68.52.100 Petition—Requisites—Examination. For the purpose of forming a cemetery district, a petition designating the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges, and legal subdivisions, signed by not less than ten percent of the registered voters who reside within the boundaries of the proposed district, setting forth the object of the formation of such district and stating that the establishment thereof will be conducive to the public welfare and convenience, shall be filed with the county auditor of the county within which the proposed district is located, accompanied by an obligation signed by two or more petitioners agreeing to pay the cost of publishing the notice hereinafter provided for. The county auditor shall, within thirty days from the date of filing of such petition, examine the signatures and certify to the sufficiency or insufficiency thereof. The name of any person who signed a petition shall not be withdrawn from the petition after it has been filed with the county auditor. If the petition is found to contain a sufficient number of valid signatures, the county auditor shall transmit it, with a certificate of sufficiency attached, to the county legislative authority, which shall thereupon, by resolution entered upon its minutes, receive the same and fix a day and hour when it will publicly hear the petition. [2008 c 96 § 1; 1994 c 223 § 74; 1947 c 6 § 2; Rem. Supp. 1947 § 3778-151. Formerly RCW 68.16.020.]

thereof in writing to the board of county commissioners. If upon examination of the certificate of the canvassing officials it is found that two-thirds of all the votes cast at said election were in favor of the formation of the cemetery district, the board of county commissioners shall, by resolution entered upon its minutes, declare such territory duly organized as a cemetery district under the name theretofore designated and shall declare the three candidates receiving the highest number of votes for cemetery commissioners, the duly elected first cemetery commissioners of the district. The clerk of the board of county commissioners shall certify a copy of the resolution and cause it to be filed for record in the offices of the county auditor and the county assessor of the county. The certified copy shall be entitled to record without payment of a recording fee. If the certificate of the canvassing officials shows that the proposition to organize the proposed cemetery district failed to receive two-thirds of the votes cast at said election, the board of county commissioners shall enter a minute to that effect and all proceedings theretofore had shall become null and void. [1947 c 6 § 9; Rem. Supp. 1947 § 3778-158. Formerly RCW 68.16.090.]

68.52.180 Review—Organization complete. Any person, firm or corporation having a substantial interest involved, and feeling aggrieved by any finding, determination or resolution of the board of county commissioners under the provisions of this chapter, may appeal within five days after such finding, determination or resolution was made to the superior court of the county in the same manner as provided by law for appeals from orders of said board. After the expiration of five days from the date of the resolution declaring the district organized, and upon filing of certified copies thereof in the offices of the county auditor and county assessor, the formation of the district shall be complete and its legal existence shall not thereafter be questioned by any person by reason of any defect in the proceedings had for the creation thereof. [1947 c 6 § 10; Rem. Supp. 1947 § 3778-159. Formerly RCW 68.16.100.]

Appeals from action of board of county commissioners: RCW 36.32.330.

68.52.185 Ballot proposition authorized for district formation. A county legislative authority may, by ordinance or resolution, provide for a ballot proposition to form a cemetery district. When proposed by ordinance or resolution of the county legislative authority, a ballot proposition shall designate the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges, and legal subdivisions. The ballot proposition authorizing the formation of a cemetery district shall be submitted to the voters residing within the proposed district consistent with the provisions of this chapter. [2008 c 96 § 2.]

68.52.190 General powers of district. Cemetery districts created under this chapter shall be deemed to be municipal corporations within the purview of the Constitution and laws of the state of Washington. They shall constitute bodies corporate and possess all the usual powers of corporations for public purposes. They shall have full authority to carry out the objects of their creation, and to that end are empowered to

acquire, hold, lease, manage, occupy and sell real and personal property or any interest therein; to enter into and perform any and all necessary contracts; to appoint and employ necessary officers, agents and employees; to contract indebtedness, to borrow money, and to issue general obligation bonds in accordance with chapter 39.46 RCW; to levy and enforce the collection of taxes against the lands within the district, and to do any and all lawful acts to effectuate the purposes of this chapter. [1984 c 186 § 58; 1967 c 164 § 6; 1947 c 6 § 11; Rem. Supp. 1947 § 3778-160. Formerly RCW 68.16.110.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Tortious conduct of local governmental entities: RCW 4.96.010.

68.52.192 Public cemetery facilities or services—Cooperation with public or private agencies—Joint purchasing. A cemetery district may jointly operate or provide, cooperate to operate and provide and/or contract for a term of not to exceed five years to provide or have provided public cemetery facilities or services, with any other public or private agency, including out of state public agencies, which each is separately authorized to operate or provide, under terms mutually agreed upon by such public or private agencies. The governing body of a cemetery district may join with any other public or private agency in buying supplies, equipment, and services collectively. [1963 c 112 § 3. Formerly RCW 68.16.112.]

68.52.193 Public cemetery facilities or services—"Public agency" defined. As used in RCW 68.52.192, "public agency" means counties, cities and towns, special districts, or quasi municipal corporations. [1987 c 331 § 73; 1963 c 112 § 2. Formerly RCW 68.16.113.]

68.52.195 Community revitalization financing—Public improvements. In addition to other authority that a cemetery district possesses, a cemetery district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a cemetery district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 21.]

Severability—2001 c 212: See RCW 39.89.902.

68.52.200 Right of eminent domain. The taking and damaging of property or rights therein by any cemetery district to carry out the purposes of its creation, are hereby declared to be for a public use, and any such district shall have and exercise the power of eminent domain to acquire any property or rights therein, either inside or outside the district for the use of such district. In exercising the power of eminent domain, a district shall proceed in the manner provided by law for the appropriation of real property or rights therein by private corporations. It may at its option unite in a single action proceedings to condemn property held by separate owners. Two or more condemnation suits instituted sep-

arately may also in the discretion of the court be consolidated upon motion of any interested party into a single action. In such cases the jury shall render separate verdicts for each tract of land in different ownership. No finding of the jury or decree of the court as to damages in any condemnation suit instituted by the district shall be held or construed to destroy the right of the district to levy and collect taxes for any and all district purposes against the uncondemned land situated within the district. [1947 c 6 § 12; Rem. Supp. 1947 § 3778-161. Formerly RCW 68.16.120.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by corporations: Chapter 8.20 RCW.

68.52.210 Power to do cemetery business—District boundaries may include cities and towns—Eminent domain exception. (1) A cemetery district organized under this chapter shall have power to acquire, establish, maintain, manage, improve and operate cemeteries and conduct any and all of the businesses of a cemetery as defined in this title. A cemetery district shall constitute a cemetery authority as defined in this title and shall have and exercise all powers conferred thereby upon a cemetery authority and be subject to the provisions thereof.

(2) A cemetery district may include within its boundaries the lands embraced within the corporate limits of any incorporated city or town and in any such cases the district may acquire any cemetery or cemeteries theretofore maintained and operated by any such city or town and proceed to maintain, manage, improve and operate the same under the provisions hereof. In such event the governing body of the city or town, after the transfer takes place, shall levy no cemetery tax. The power of eminent domain heretofore conferred shall not extend to the condemnation of existing cemeteries within the district: PROVIDED, That no cemetery district shall operate a cemetery within the corporate limits of any city or town where there is a private cemetery operated for profit. [2006 c 335 § 1; 1994 c 81 § 82; 1971 c 19 § 2; 1959 c 23 § 2; 1957 c 39 § 1; 1947 c 6 § 13; Rem. Supp. 1947 § 3778-162. Formerly RCW 68.16.130.]

68.52.220 District commissioners—Compensation—Election. The affairs of the district shall be managed by a board of cemetery district commissioners composed of three members. The board may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to ninety dollars for each day or portion of a day spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district. However, the compensation for each commissioner must not exceed eight thousand six hundred forty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. The board shall fix the compensation to be paid the secretary and other employees of the dis-

trict. Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of chapter 42.17 RCW.

The initial cemetery district commissioners shall assume office immediately upon their election and qualification. Staggering of terms of office shall be accomplished as follows: (1) The person elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall assume office immediately after they are elected and qualified but their terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office as provided in RCW 29A.20.040.

The polling places for a cemetery district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the cemetery district is located, and no such election shall be held irregular or void on that account.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 6; 1998 c 121 § 6; 1994 c 223 § 77; 1990 c 259 § 33; 1982 c 60 § 3; 1979 ex.s. c 126 § 40; 1947 c 6 § 14; Rem. Supp. 1947 § 3778-163. Formerly RCW 68.16.140.]

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

68.52.250 Special elections. Special elections submitting propositions to the registered voters of the district may be called at any time by resolution of the cemetery commissioners in accordance with *RCW 29.13.010 and 29.13.020, and shall be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided for the election to determine whether the district shall be created. [1990 c 259 § 34; 1947 c 6 § 17; Rem. Supp. 1947 § 3778-166. Formerly RCW 68.16.170.]

***Reviser's note:** RCW 29.13.010 and 29.13.020 were recodified as RCW 29A.04.320 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

Qualifications of electors: RCW 29A.08.210.

68.52.260 Oath of commissioners. Each cemetery commissioner, before assuming the duties of his office, shall take and subscribe an official oath to faithfully discharge the duties of his office, which oath shall be filed in the office of the county auditor. [1986 c 167 § 24; 1947 c 6 § 18; Rem. Supp. 1947 § 3778-167. Formerly RCW 68.16.180.]

Severability—1986 c 167: See note following RCW 29A.04.049.

68.52.270 Organization of board—Secretary—Office—Meetings—Powers. The board of cemetery district commissioners shall organize and elect a chairman from their number and shall appoint a secretary for such term as they may determine. The secretary shall keep a record of proceedings of the board and perform such other duties as may be prescribed by law or by the board, and shall also take and subscribe an oath for the faithful discharge of his duties, which shall be filed with the county clerk. The office of the board of cemetery commissioners and principal place of business of the district shall be at some place in the district designated by the board. The board shall hold regular monthly meetings at its office on such day as it may by resolution determine and may adjourn such meetings as may be required for the transaction of business. Special meetings of the board may be called at any time by a majority of the commissioners or by the secretary and the chairman of the board. Any commissioner not joining in the call of a special meeting shall be entitled to three days written notice by mail of such meeting, specifying generally the business to be transacted. All meetings of the board of cemetery commissioners shall be public and a majority shall constitute a quorum. All records of the board shall be open to the inspection of any elector of the district at any meeting of the board. The board shall adopt a seal for the district; manage and conduct the affairs of the district; make and execute all necessary contracts; employ any necessary service, and promulgate reasonable rules and regulations for the government of the district and the performance of its functions and generally perform all acts which may be necessary to carry out the purposes for which the district was formed. [1947 c 6 § 19; Rem. Supp. 1947 § 3778-168. Formerly RCW 68.16.190.]

68.52.280 Duty of county treasurer—Cemetery district fund. It shall be the duty of the county treasurer of the county in which any cemetery district is situated to receive and disburse all district revenues and collect all taxes autho-

rized and levied under this chapter. There is hereby created in the office of county treasurer of each county in which a cemetery district shall be organized for the use of the district, a cemetery district fund. All taxes levied for district purposes when collected shall be placed by the county treasurer in the cemetery district fund. [1947 c 6 § 20; Rem. Supp. 1947 § 3778-169. Formerly RCW 68.16.200.]

68.52.290 Tax levy authorized for fund. Annually, after the county board of equalization has equalized assessments for general tax purposes, the secretary of the district shall prepare a budget of the requirements of the cemetery district fund, certify the same and deliver it to the board of county commissioners in ample time for such board to levy district taxes. At the time of making general tax levies in each year, the board of county commissioners shall levy taxes required for cemetery district purposes against the real and personal property in the district in accordance with the equalized valuation thereof for general tax purposes, and as a part of said general taxes. Such levies shall be part of the general tax roll and be collected as a part of general taxes against the property in the district. [1947 c 6 § 21; Rem. Supp. 1947 § 3778-170. Formerly RCW 68.16.210.]

68.52.300 Disbursement of fund. The county treasurer shall disburse the cemetery district fund upon warrants issued by the county auditor on vouchers approved and signed by a majority of the board of cemetery commissioners and the secretary thereof. [1947 c 6 § 22; Rem. Supp. 1947 § 3778-171. Formerly RCW 68.16.220.]

68.52.310 Limitation of indebtedness—Limitation of tax levy. The board of cemetery commissioners shall have no authority to contract indebtedness in any year in excess of the aggregate amount of the currently levied taxes, which annual tax levy for cemetery district purposes shall not exceed eleven and one-quarter cents per thousand dollars of assessed valuation. [1973 1st ex.s. c 195 § 77; 1947 c 6 § 23; Rem. Supp. 1947 § 3778-172. Formerly RCW 68.16.230.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

68.52.320 Dissolution of districts. Cemetery districts may be dissolved by a majority vote of the electors at an election called for that purpose, which shall be conducted in the same manner as provided for special elections, and no further district obligations shall thereafter be incurred, but such dissolution shall not abridge or cancel any of the outstanding obligations of the district, and the board of county commissioners shall have authority to make annual levies against the lands included within the district until the obligations of the district are fully paid. When the obligations are fully paid, any moneys remaining in the cemetery district fund and all collections of unpaid district taxes shall be transferred to the current expense fund of the county. [1947 c 6 § 24; Rem. Supp. 1947 § 3778-173. Formerly RCW 68.16.240.]

Dissolution of districts: Chapter 53.48 RCW.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

68.52.330 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

68.52.900 Severability—1947 c 6. If any portion of this act shall be adjudged invalid or unconstitutional for any reason, such adjudication shall not affect, impair or invalidate the remaining portions of the act. [1947 c 6 § 25; no RRS. Formerly RCW 68.16.900.]

68.52.901 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.54 RCW

ANNEXATION AND MERGER OF CEMETERY DISTRICTS

Sections

68.54.010	Annexation—Petition—Procedure.
68.54.020	Merger—Authorized.
68.54.030	Merger—Petition—Procedure—Contents.
68.54.040	Merger—Petition—Rejection, concurrence or modification—Signatures.
68.54.050	Merger—Petition—Special election.
68.54.060	Merger—Petition—Election—Vote required—Merger effected.
68.54.070	Merger—Petition—When election dispensed with.
68.54.080	Merger—Preexisting obligations.
68.54.090	Merger—Transfer of all property, funds, assessments.
68.54.100	Merger and transfer of part of one district to adjacent district—Petition—Election—Vote.
68.54.110	Merger and transfer of part of one district to adjacent district—When election dispensed with.
68.54.120	Merger and transfer of part of one district to adjacent district—Preexisting indebtedness.
68.54.900	Effective date—1987 c 331.

68.54.010 Annexation—Petition—Procedure. Any territory contiguous to a cemetery district and not within the boundaries of a city or town other than as set forth in RCW 68.52.210 or other cemetery district may be annexed to such cemetery district by petition of ten percent of the registered voters residing within the territory proposed to be annexed who voted in the last general municipal election. Such petition shall be filed with the cemetery commissioners of the cemetery district and if the cemetery commissioners shall concur in the petition they shall then file such petition with the county auditor who shall within thirty days from the date of filing such petition examine the signatures thereof and certify to the sufficiency or insufficiency thereof. After the county auditor shall have certified to the sufficiency of the petition, the proceedings thereafter by the county legislative authority, and the rights and powers and duties of the county legislative authority, petitioners and objectors and the election and canvass thereof shall be the same as in the original proceedings to form a cemetery district: PROVIDED, That the county legislative authority shall have authority and it shall be its duty to determine on an equitable basis, the amount of obligation which the territory to be annexed to the district shall assume, if any, to place the taxpayers of the existing district on a fair and equitable relationship with the taxpayers of the territory to be annexed by reason of the benefits of coming into a going district previously supported by the taxpayers of the existing district, and such obligation may be paid to the district in yearly installments to be fixed by the

county legislative authority if within the limits as outlined in RCW 68.52.310 and included in the annual tax levies against the property in such annexed territory until fully paid. The amount of the obligation and the plan of payment thereof filed by the county legislative authority shall be set out in general terms in the notice of election for annexation: PROVIDED, That the special election shall be held only within the boundaries of the territory proposed to be annexed to the cemetery district. Upon the entry of the order of the county legislative authority incorporating such contiguous territory within such existing cemetery district, the territory shall become subject to the indebtedness, bonded or otherwise, of the existing district in like manner as the territory of the district. Should such petition be signed by sixty percent of the registered voters residing within the territory proposed to be annexed, and should the cemetery commissioners concur therein, an election in such territory and a hearing on such petition shall be dispensed with and the county legislative authority shall enter its order incorporating such territory within the existing cemetery district. [1990 c 259 § 35; 1987 c 331 § 74; 1969 ex.s. c 78 § 1. Formerly RCW 68.18.010.]

68.54.020 Merger—Authorized. A cemetery district organized under chapter 68.52 RCW may merge with another such district lying adjacent thereto, upon such terms and conditions as they agree upon, in the manner hereinafter provided. The district desiring to merge with another district shall hereinafter be called the "merging district", and the district into which the merger is to be made shall be called the "merger district". [1990 c 259 § 36; 1969 ex.s. c 78 § 2. Formerly RCW 68.18.020.]

68.54.030 Merger—Petition—Procedure—Contents. To effect such a merger, a petition therefor shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition upon their own initiative, and they shall file such a petition when it is signed by ten percent of the registered voters resident in the merging district who voted in the last general municipal election and presented to them. The petition shall state the reasons for the merger; give a detailed statement of the district's finances, listing its assets and liabilities; state the terms and conditions under which the merger is proposed; and pray for the merger. [1990 c 259 § 37; 1969 ex.s. c 78 § 3. Formerly RCW 68.18.030.]

68.54.040 Merger—Petition—Rejection, concurrence or modification—Signatures. The board of the merger district may, by resolution, reject the petition, or it may concur therein as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution thereon to the merging district. If the petition is concurred in as presented or as modified, the board of the merging district shall forthwith present the petition to the auditor of the county in which the merging district is situated, who shall within thirty days examine the signatures thereon and certify to the sufficiency or insufficiency thereof, and for that purpose he shall have access to all registration books and records in the possession of the registration officers of the election precincts included,

in whole or in part, within the merging district. Such books and records shall be prima facie evidence of truth of the certificate. No signatures may be withdrawn from the petition after the filing. [1969 ex.s. c 78 § 4. Formerly RCW 68.18.040.]

68.54.050 Merger—Petition—Special election. If the auditor finds that the petition contains the signatures of a sufficient number of qualified electors, he shall return it, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon such board shall adopt a resolution, calling a special election in the merging district, at which shall be submitted to the electors thereof, the question of the merger. [1969 ex.s. c 78 § 5. Formerly RCW 68.18.050.]

68.54.060 Merger—Petition—Election—Vote required—Merger effected. The board of [the] merging district shall notify the board of the merger district of the results of the election. If three-fifths of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1969 ex.s. c 78 § 6. Formerly RCW 68.18.060.]

68.54.070 Merger—Petition—When election dispensed with. If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary. In such case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of merger in the same manner and to the same effect as if the merger had been authorized by an election. [1969 ex.s. c 78 § 7. Formerly RCW 68.18.070.]

68.54.080 Merger—Preexisting obligations. None of the obligations of the merged districts or of a local improvement district therein shall be affected by the merger and dissolution, and all land liable to be assessed to pay any of such indebtedness shall remain liable to the same extent as if the merger had not been made, and any assessments theretofore levied against the land shall remain unimpaired and shall be collected in the same manner as if no merger had been made. The commissioners of the merged district shall have all the powers possessed at the time of the merger by the commissioners of the two districts, to levy, assess and cause to be collected all assessments against any land in both districts which may be necessary to provide for the payment of the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the merger: PROVIDED, That the board of the merged district may, with the consent of the creditors of the districts merged,

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cancel any or all assessments theretofore levied, in accordance with the terms and conditions of the merger, to the end that the lands in the respective districts shall bear their fair and proportionate share of such indebtedness. [1969 ex.s. c 78 § 8. Formerly RCW 68.18.080.]

68.54.090 Merger—Transfer of all property, funds, assessments. The commissioners of the merging district shall, forthwith upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments theretofore levied. [1969 ex.s. c 78 § 9. Formerly RCW 68.18.090.]

68.54.100 Merger and transfer of part of one district to adjacent district—Petition—Election—Vote. A part of one district may be transferred and merged with an adjacent district whenever such area can be better served by the merged district. To effect such a merger a petition, signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district. Such petition shall be promoted by one or more qualified electors within the area to be transferred. If the commissioners of the merging district act favorably upon the petition, then the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district act favorably upon the petition, an election shall be called in the area merged.

In the event that either board of cemetery commissioners should not concur with the petition, the petition may then be presented to a county review board established for such purposes, if there be no county review board for such purposes then to the state review board and if there be no state review board, then to the county commissioners of the county in which the area to be merged is situated, who shall decide if the area can be better served by such a merger; upon an affirmative decision an election shall be called in the area merged.

A majority of the votes cast shall be necessary to approve the transfer. [1969 ex.s. c 78 § 10. Formerly RCW 68.18.100.]

68.54.110 Merger and transfer of part of one district to adjacent district—When election dispensed with. If three-fifths of all the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the boards of the merging districts. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of transfer in the same manner and to the same effect as if the same had been authorized by an election. [1969 ex.s. c 78 § 11. Formerly RCW 68.18.110.]

68.54.120 Merger and transfer of part of one district to adjacent district—Preexisting indebtedness. When a part of one cemetery district is transferred to another as provided by RCW 68.54.100 and 68.54.110, said part shall be relieved of all liability for any indebtedness of the district from which it is withdrawn. However, the acquiring district

shall pay to the losing district that portion of the latter's indebtedness for which the transferred part was liable. This amount shall not exceed the proportion that the assessed valuation of the transferred part bears to the assessed valuation of the whole district from which said part is withdrawn. The adjustment of such indebtedness shall be based on the assessment for the year in which the transfer is made. The boards of commissioners of the districts involved in the said transfer and merger shall enter into a contract for the payment by the acquiring district of the above-referred to indebtedness under such terms as they deem proper, provided such contract shall not impair the security of existing creditors. [1987 c 331 § 75; 1969 ex.s. c 78 § 12. Formerly RCW 68.18.120.]

68.54.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.56 RCW

PENAL AND MISCELLANEOUS PROVISIONS

Sections

68.56.010	Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral.
68.56.020	Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage.
68.56.030	Unlawful damage to graves, markers, shrubs, etc.—Exceptions.
68.56.040	Nonconforming cemetery a nuisance—Penalty.
68.56.050	Defendant liable for costs.
68.56.060	Police authority—Who may exercise.
68.56.070	Forfeiture of office for inattention to duty.
68.56.900	Effective date—1987 c 331.

Burial, removal permits required: RCW 70.58.230.

Care of veterans' plot at Olympia: RCW 73.24.020.

68.56.010 Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral. Every person is guilty of a gross misdemeanor who unlawfully or without right wilfully does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any enclosure for the protection of a cemetery or any property in a cemetery.

(2) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within the limits of a cemetery.

(3) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment. [1943 c 247 § 36; Rem. Supp. 1943 § 3778-36. Cf. 1909 c 249 § 240 and 1856-57 p 28 §§ 4, 5. Formerly RCW 68.48.010.]

68.56.020 Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage. Any person violating any provision of *RCW 68.48.010 is liable, in a civil action by and in the name of the cemetery authority, to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed. [1943 c 247 § 37; Rem. Supp. 1943 § 3778-37. Formerly RCW 68.48.020.]

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*Reviser's note: RCW 68.48.010 was recodified as RCW 68.56.010 pursuant to 1987 c 331 § 89.

68.56.030 Unlawful damage to graves, markers, shrubs, etc.—Exceptions. The provisions of *RCW 68.48.010 do not apply to the removal or unavoidable breakage or injury, by a cemetery authority, of any thing placed in or upon any portion of its cemetery in violation of any of the rules or regulations of the cemetery authority, nor to the removal of anything placed in the cemetery by or with the consent of the cemetery authority which has become in a wrecked, unsightly or dilapidated condition. [1943 c 247 § 37; Rem. Supp. 1943 § 3778-37. Formerly RCW 68.48.030.]

*Reviser's note: RCW 68.48.010 was recodified as RCW 68.56.010 pursuant to 1987 c 331 § 89.

68.56.040 Nonconforming cemetery a nuisance—Penalty. Every person, firm, or corporation who is the owner or operator of a cemetery established in violation of *this act is guilty of maintaining a public nuisance, which is a gross misdemeanor. [2005 c 365 § 149; 2003 c 53 § 313; 1943 c 247 § 145; Rem. Supp. 1943 § 3778-145. Formerly RCW 68.48.040.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

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

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.56.050 Defendant liable for costs. Every person who violates any provision of *this act is guilty of a misdemeanor, and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case. [1943 c 247 § 139; Rem. Supp. 1943 § 3778-139. Formerly RCW 68.48.060.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

Costs, etc., to be fixed by court having jurisdiction: RCW 68.28.065.

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.56.060 Police authority—Who may exercise. The sexton, superintendent or other person in charge of a cemetery, and such other persons as the cemetery authority designates have the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he has charge, and within such radius as may be necessary to protect the cemetery property. [1943 c 247 § 55; Rem. Supp. 1943 § 3778-55. Formerly RCW 68.48.080.]

68.56.070 Forfeiture of office for inattention to duty. The office of any director or officer who acts or permits action contrary to *this act immediately thereupon becomes vacant. [1943 c 247 § 132; Rem. Supp. 1943 § 3778-132. Formerly RCW 68.48.090.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

68.56.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.60 RCW

ABANDONED AND HISTORIC CEMETERIES
AND HISTORIC GRAVES

Sections

68.60.010	Definitions.
68.60.020	Dedication.
68.60.030	Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries.
68.60.040	Protection of cemeteries—Penalties.
68.60.050	Protection of historic graves—Penalty.
68.60.055	Skeletal human remains—Duty to notify—Ground disturbing activities—Coroner determination—Definitions.
68.60.060	Violations—Civil liability.

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

(1) "Abandoned cemetery" means a burial ground of the human dead in [for] which the county assessor can find no record of an owner; or where the last known owner is deceased and lawful conveyance of the title has not been made; or in which a cemetery company, cemetery association, corporation, or other organization formed for the purposes of burying the human dead has either disbanded, been administratively dissolved by the secretary of state, or otherwise ceased to exist, and for which title has not been conveyed.

(2) "Historical cemetery" means any burial site or grounds which contain within them human remains buried prior to November 11, 1889; except that (a) cemeteries holding a valid certificate of authority to operate granted under RCW 68.05.115 and 68.05.215, (b) cemeteries owned or operated by any recognized religious denomination that qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built, and (c) cemeteries controlled or operated by a coroner, county, city, town, or cemetery district shall not be considered historical cemeteries.

(3) "Historic grave" means a grave or graves that were placed outside a cemetery dedicated pursuant to this chapter and to chapter 68.24 RCW, prior to June 7, 1990, except Indian graves and burial cairns protected under chapter 27.44 RCW.

(4) "Cemetery" has the meaning provided in RCW 68.04.040(2). [1990 c 92 § 1.]

68.60.020 Dedication. Any cemetery, abandoned cemetery, historical cemetery, or historic grave that has not been dedicated pursuant to RCW 68.24.030 and 68.24.040 shall be considered permanently dedicated and subject to RCW 68.24.070. Removal of dedication may only be made pursuant to RCW 68.24.090 and 68.24.100. [1999 c 367 § 3; 1990 c 92 § 2.]

68.60.030 Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries. (1)(a) The archaeological and historical division of the department of community, trade, and economic development may grant by nontransferable certificate authority to maintain and protect

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an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preservation of the abandoned cemetery, and shall not include authority to make burials. In order to activate a historical cemetery for burials, an applicant must apply for a certificate of authority to operate a cemetery from the state cemetery board.

(b) Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

(c) Should the maintenance and preservation corporation be dissolved, the archaeological and historical division of the department of community, trade, and economic development shall revoke the certificate of authority.

(d) Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds.

(2) Except as provided in subsection (1) of this section, the department of community, trade, and economic development may, in its sole discretion, authorize any Washington nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery, to restore, maintain, and protect one or more abandoned cemeteries. The authorization may include the right of access to any burial records, maps, and other historical documents, but shall not include the right to be the permanent custodian of original records, maps, or documents. This authorization shall be granted by a nontransferable certificate of authority. Any nonprofit corporation authorized and acting under this subsection is immune from liability to the same extent as if it were a preservation organization holding a certificate of authority under subsection (1) of this section.

(3) The department of community, trade, and economic development shall establish standards and guidelines for granting certificates of authority under subsections (1) and (2) of this section to assure that any restoration, maintenance, and protection activities authorized under this subsection are conducted and supervised in an appropriate manner. [2005 c 365 § 150; 1995 c 399 § 168; 1993 c 67 § 1; 1990 c 92 § 3.]

68.60.040 Protection of cemeteries—Penalties. (1) Every person who in a cemetery unlawfully or without right willfully destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post, or railing, or any enclosure for the protection of a

cemetery or any property in a cemetery is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) Every person who in a cemetery unlawfully or without right willfully destroys, cuts, breaks, removes, or injures any building, statuary, ornamentation, tree, shrub, flower, or plant within the limits of a cemetery is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(3) Every person who in a cemetery unlawfully or without right willfully opens a grave; removes personal effects of the decedent; removes all or portions of human remains; removes or damages caskets, surrounds, outer burial containers, or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery is guilty of a class C felony punishable under chapter 9A.20 RCW. [1990 c 92 § 4.]

68.60.050 Protection of historic graves—Penalty. (1)

Any person who knowingly removes, mutilates, defaces, injures, or destroys any historic grave shall be guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing historic graves through inadvertence, including disturbance through construction, shall reinter the human remains under the supervision of the *office of archaeology and historic preservation. Expenses to reinter such human remains are to be provided by the *office of archaeology and historic preservation to the extent that funds for this purpose are appropriated by the legislature.

(2) This section does not apply to actions taken in the performance of official law enforcement duties.

(3) It shall be a complete defense in a prosecution under subsection (1) of this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported. [1999 c 67 § 1; 1989 c 44 § 5. Formerly RCW 68.05.420.]

***Reviser's note:** Powers, duties, and functions of the office of archaeology and historic preservation were transferred to the department of archaeology and historic preservation pursuant to 2005 c 333 § 12.

Intent—1989 c 44: See RCW 27.44.030.

Captions not law—Liberal construction—1989 c 44: See RCW 27.44.900 and 27.44.901.

68.60.055 Skeletal human remains—Duty to notify—Ground disturbing activities—Coroner determination—Definitions. (1)

Any person who discovers skeletal human remains shall notify the coroner and local law enforcement in the most expeditious manner possible. Any person knowing of the existence of skeletal human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice thereof is guilty of a misdemeanor.

(2) Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:

(a) Immediately cease any activity which may cause further disturbance;

(b) Make a reasonable effort to protect the area from further disturbance;

(c) Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and

(d) Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:

(i) The finding of the remains was based on inadvertent discovery;

(ii) The requirements of the subsection are otherwise met; and

(iii) The person is otherwise in compliance with applicable law.

(3) The coroner must make a determination whether the skeletal human remains are forensic or nonforensic within five business days of receiving notification of a finding of such remains provided that there is sufficient evidence to make such a determination within that time period. The coroner will retain jurisdiction over forensic remains.

(a) Upon determination that the remains are nonforensic, the coroner must notify the department of archaeology and historic preservation within two business days. The department will have jurisdiction over such remains until provenance of the remains is established. A determination that remains are nonforensic does not create a presumption of removal or nonremoval.

(b) Upon receiving notice from a coroner of a finding of nonforensic skeletal human remains, the department must notify the appropriate local cemeteries, and all affected Indian tribes via certified mail to the head of the appropriate tribal government, and contact the appropriate tribal cultural resources staff within two business days of the finding. The determination of what are appropriate local cemeteries to be notified is at the discretion of the department. A notification to tribes of a finding of such nonforensic skeletal human remains does not create a presumption that the remains are Indian.

(c) The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains within two business days of notification of a finding of such nonforensic remains. If the remains are determined to be Indian, the department must notify all affected Indian tribes via certified mail to the head of the appropriate tribal government within two business days and contact the appropriate tribal cultural resources staff.

(d) The affected tribes have five business days to respond via telephone or writing to the department as to their interest in the remains.

(4) For the purposes of this section:

(a) "Affected tribes" are:

(i) Those federally recognized tribes with usual and accustomed areas in the jurisdiction where the remains were found;

(ii) Those federally recognized tribes that submit to the department maps that reflect the tribe's geographical area of cultural affiliation; and

(iii) Other tribes with historical and cultural affiliation in the jurisdiction where the remains were found.

(b) "Forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW 68.50.010.

(c) "Inadvertent discovery" has the same meaning as used in RCW 27.44.040.

(5) Nothing in this section constitutes, advocates, or otherwise grants, confers, or implies federal or state recognition of those tribes that are not federally recognized pursuant to 25 C.F.R. part 83, procedures for establishing that an American Indian group exists as an Indian tribe. [2008 c 275 § 3.]

Reporting requirements—2008 c 275: See note following RCW 68.50.645.

68.60.060 Violations—Civil liability. Any person who violates any provision of this chapter is liable in a civil action by and in the name of the state cemetery board to pay all damages occasioned by their unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed and to the care fund if one is established. [1990 c 92 § 5.]

Chapter 68.64 RCW

UNIFORM ANATOMICAL GIFT ACT

Sections

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

(1) "Adult" means an individual who is at least eighteen years old.

(2) "Agent" means an individual:

(a) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(b) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift.

(5) "Disinterested witness" means a witness other than the spouse or state registered domestic partner, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift. The term does not include a person to which an anatomical gift could pass under RCW 68.64.100.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(7) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(9) "Driver's license" means a license or permit issued by the department of licensing to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) "Identification card" means an identification card issued by the department of licensing.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is less than eighteen years old.

(16) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathic medicine and surgery under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual whose death is imminent and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. "Pro-

spective donor" does not include an individual who has made a refusal.

(23) "Reasonable costs" include: (a) Programming and software installation and upgrades; (b) employee training that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; (c) literature that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; and (d) hardware upgrades or other issues important to the organ and tissue donor registry or the donation program created in RCW 46.12.510 that have been mutually agreed upon in advance by the department of licensing and the Washington state organ procurement organizations.

(24) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(25) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(26) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) "Refusal" means a record created under RCW 68.64.060 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(28) "Sign" means, with the present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(29) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(30) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(31) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(32) "Tissue bank" means a person that is licensed to conduct business in this state, accredited, and regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(33) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(34) "Washington state organ procurement organization" means an organ procurement organization that has been designated by the United States department of health and human services to coordinate organ procurement activities for any portion of Washington state. [2008 c 139 § 2.]

68.64.020 Scope. This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made. [2008 c 139 § 3.]

68.64.030 Persons authorized to make an anatomical gift—During life of donor. Subject to RCW 68.64.070, an anatomical gift of a donor's body or part may be made during the life of the donor in the manner provided in RCW 68.64.040 by:

(1) The donor, if the donor is an adult or if the donor is a minor and is:

(a) Emancipated; or

(b) Authorized under state law to apply for a driver's license because the donor is at least fifteen and one-half years old;

(2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) A parent of the donor, if the donor is an unemancipated minor; provided, however, that an anatomical gift made pursuant to this subsection shall cease to be valid once the donor becomes either an emancipated minor or an adult; or

(4) The donor's guardian. [2008 c 139 § 4.]

68.64.040 Manner in which an anatomical gift may be made. (1) A donor may make an anatomical gift:

(a) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(b) In a will;

(c) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(d) As provided in subsection (2) of this section.

(2) A donor or other person authorized to make an anatomical gift under RCW 68.64.030 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) Revocation, suspension, expiration, or cancellation of a driver's license or identification card through which an anatomical gift has been made does not invalidate the gift.

(4) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift. [2008 c 139 § 5.]

68.64.050 Amending or revoking an anatomical gift.

(1) Subject to RCW 68.64.070, a donor or other person authorized to make an anatomical gift under RCW 68.64.030 may amend or revoke an anatomical gift by:

(a) A record signed by:

(i) The donor;

(ii) The other person; or

(iii) Subject to subsection (2) of this section, another individual acting at the direction of the donor or the other per-

son if the donor or other person is physically unable to sign; or

(b) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(2) A record signed pursuant to subsection (1)(a)(iii) of this section must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) Subject to RCW 68.64.070, a donor or other person authorized to make an anatomical gift under RCW 68.64.030 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift. The donor or other person shall notify the Washington organ procurement organization of the destruction or cancellation of the document of gift for the purpose of removing the individual's name from the organ and tissue donor registry created in RCW 68.64.200. If the Washington state organ procurement organization that is notified does not maintain a registry for Washington residents, it shall notify all Washington state procurement organizations that do maintain such a registry.

(4) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (1) of this section. [2008 c 139 § 6.]

68.64.060 Refusal to make an anatomical gift. (1) An individual may refuse to make an anatomical gift of the individual's body or part by:

(a) A record signed by:

(i) The individual; or

(ii) Subject to subsection (2) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(b) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(c) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(2) A record signed pursuant to subsection (1)(a)(ii) of this section must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) An individual who has made a refusal may amend or revoke the refusal:

(a) In the manner provided in subsection (1) of this section for making a refusal;

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(b) By subsequently making an anatomical gift pursuant to RCW 68.64.040 that is inconsistent with the refusal; or

(c) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(4) Except as otherwise provided in RCW 68.64.070(8), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part. [2008 c 139 § 7.]

68.64.070 Making, amending, or revoking a gift by a person other than donor—Making additional gifts. (1)

Except as otherwise provided in subsection (7) of this section and subject to subsection (6) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under RCW 68.64.040 or an amendment to an anatomical gift of the donor's body or part under RCW 68.64.050.

(2) A donor's revocation of an anatomical gift of the donor's body or part under RCW 68.64.050 is not a refusal and does not bar another person specified in RCW 68.64.030 or 68.64.080 from making an anatomical gift of the donor's body or part under RCW 68.64.040 or 68.64.090.

(3) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under RCW 68.64.040 or an amendment to an anatomical gift of the donor's body or part under RCW 68.64.050, another person may not make, amend, or revoke the gift of the donor's body or part under RCW 68.64.090.

(4) A revocation of an anatomical gift of a donor's body or part under RCW 68.64.050 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under RCW 68.64.040 or 68.64.090.

(5) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under RCW 68.64.030, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(6) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under RCW 68.64.030, an anatomical gift of a part for one or more of the permitted purposes is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under RCW 68.64.040 or 68.64.090.

(7) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(8) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal. [2008 c 139 § 8.]

68.64.080 Persons authorized to make an anatomical gift—After donor's death. (1) Subject to subsections (2)

and (3) of this section and unless barred by RCW 68.64.060 or 68.64.070, an anatomical gift of a decedent's body or part may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(a) An agent of the decedent at the time of death who could have made an anatomical gift under RCW 68.64.030(2) immediately before the decedent's death;

(b) The spouse, or domestic partner registered as required by state law, of the decedent;

(c) Adult children of the decedent;

(d) Parents of the decedent;

(e) Adult siblings of the decedent;

(f) Adult grandchildren of the decedent;

(g) Grandparents of the decedent;

(h) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(i) Any other person having the authority under applicable law to dispose of the decedent's body.

(2) If there is more than one member of a class listed in subsection (1)(a), (c), (d), (e), (f), (g), or (h) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under RCW 68.64.100 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(3) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift. [2008 c 139 § 9.]

68.64.090 Manner in which an anatomical gift may be made—After donor's death. (1) A person authorized to make an anatomical gift under RCW 68.64.080 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(2) Subject to subsection (3) of this section, an anatomical gift by a person authorized under RCW 68.64.080 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under RCW 68.64.080 may be:

(a) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(b) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(3) A revocation under subsection (2) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before transplant procedures have begun on the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation. [2008 c 139 § 10.]

68.64.100 Persons to whom an anatomical gift may be made. (1) An anatomical gift may be made to the following persons named in the document of gift:

(a) For research or education: A hospital; an accredited medical school, dental school, college, or university; or an organ procurement organization;

(b) Subject to subsection (2) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(c) An eye bank or tissue bank.

(2) If an anatomical gift to an individual under subsection (1)(b) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (7) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(4) For the purpose of subsection (3) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (1) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(7) For purposes of subsections (2), (5), and (6) of this section the following rules apply:

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b)

of this section, passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under RCW 68.64.040 or 68.64.090 or if the person knows that the decedent made a refusal under RCW 68.64.060 that was not revoked. For purposes of this subsection (10), if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in subsection (1)(b) of this section, nothing in this chapter affects the allocation of organs for transplantation or therapy. [2008 c 139 § 11.]

68.64.105 Document of gift—Validity requirements.

(1) A document of gift is valid if executed in accordance with:

- (a) This chapter;
- (b) The laws of the state or country where it was executed; or
- (c) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(2) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(3) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked. [2008 c 139 § 19.]

68.64.110 Document of gift or refusal—Examination and copying. (1) A document of gift need not be delivered during the donor's lifetime to be effective.

(2) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under RCW 68.64.100. [2008 c 139 § 12.]

68.64.120 Procurement organizations—Reasonable examinations—Donee's rights—Physician removal of donated part. (1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the department of licensing and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization must be allowed reasonable access to information in the records of the department of

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licensing to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under RCW 68.64.100 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(5) Unless prohibited by law other than this chapter, an examination under subsection (3) or (4) of this section may include an examination of all medical records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in RCW 68.64.080 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to RCW 68.64.100(9), 68.64.190, and 68.64.901, the rights of the person to which a part passes under RCW 68.64.100 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under RCW 68.64.100, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(10) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove. [2008 c 139 § 13.]

68.64.130 Nonnative English speakers—Interpreter services and translations. When English is not the first language of the person or persons making, amending, revoking, or refusing anatomical gifts as defined in chapter 139, Laws of 2008, organ procurement organizations are responsible for providing, at no cost, appropriate interpreter services or

translations to such persons for the purpose of making such decisions. [2008 c 139 § 14.]

68.64.140 Hospitals—Agreements or affiliations with procurement organizations required. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. [2008 c 139 § 15.]

68.64.150 Illegal purchases or sales—Felony. (1) Except as otherwise provided in subsection (2) of this section, a person who, for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death is guilty of a class C felony under RCW 9A.20.010.

(2) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part. [2008 c 139 § 16.]

68.64.160 Illegal financial gain—Altering a document, amendment, or revocation of gift—Felony. A person who, in order to obtain financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal is guilty of a class C felony under RCW 9A.20.010. [2008 c 139 § 17.]

68.64.170 Liability. (1) A person who acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(2) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(3) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in RCW 68.64.080(1) (b) through (g) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue. [2008 c 139 § 18.]

68.64.180 Declarations or advance health care directives—Conflicts with medical suitability measures. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Advance health care directive" means a power of attorney for health care or a "directive" as defined in RCW 70.122.020.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision made regarding the health care of the prospective donor.

(2) If a prospective donor has a declaration or advance health care directive, and the terms of the declaration or directive and the express or implied terms of a potential ana-

tomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and the prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than this chapter to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under RCW 68.64.080. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care. [2008 c 139 § 20.]

68.64.190 Coroner or medical examiner—Duties. (1)(a) A coroner or medical examiner shall cooperate with procurement organizations, to the extent that such cooperation does not prevent, hinder, or impede the timely investigation of death, to facilitate the opportunity to recover anatomical gifts for the purpose of transplantation or therapy. However, a coroner or medical examiner may limit the number of procurement organizations with which he or she cooperates.

(b) The coroner or medical examiner may release the initial investigative information to the tissue or organ procurement organization for the purpose of determining the suitability of the potential donor by those organizations. The information released for this purpose shall remain confidential. The coroner or medical examiner is not liable for any release of confidential information by the procurement organization.

(2)(a) Procurement organizations shall cooperate with the coroner or medical examiner to ensure the preservation of and timely transfer to the coroner or medical examiner any physical or biological evidence from a prospective donor that the procurement organization may have contact with or access to that is required by the coroner or medical examiner for the investigation of death.

(b) If the coroner or medical examiner or a designee releases a part for donation under subsection (4) of this section, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the coroner or medical examiner with a record describing the condition of the part, biopsies, residual tissue, photographs, and any other information and observations requested by the coroner or medical examiner that would assist in the investigation of death.

(3) A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift, and has been released by the coroner or medical examiner. The body of a decedent under the jurisdiction of the coroner or medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or medical examiner from

performing the medicolegal investigation upon the body or relevant parts of a decedent under the jurisdiction of the coroner or medical examiner.

(4) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner or medical examiner has been or might be made, but the coroner or medical examiner initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the collection of evidence, or the description, documentation, or interpretation of injuries on the body, the coroner or medical examiner may consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner or medical examiner may release the part for recovery. [2008 c 139 § 21.]

68.64.200 Organ and tissue donor registry. (1) The department of licensing shall electronically transfer all information that appears on the front of a driver's license or identicard including the name, gender, date of birth, and most recent address of any person who obtains a driver's license or identicard and volunteers to donate organs or tissue upon death to any Washington state organ procurement organization that intends to establish a statewide organ and tissue donor registry as provided under subsection (2) of this section. All subsequent electronic transfers of donor information shall be at no charge to this Washington state organ procurement organization.

(2) Information obtained by a Washington state organ procurement organization under subsection (1) of this section shall be used for the purpose of establishing a statewide organ and tissue donor registry accessible to in-state recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Washington state resident is a donor of an anatomical gift and is not located in this state at the time of death or immediately before the death of the donor. Any registry created using information acquired under subsection (1) of this section must include all residents of Washington state regardless of their residence within the service area designated by the federal government.

(3) No organ or tissue donation organization may obtain information from the organ and tissue donor registry for the purposes of fund raising. Organ and tissue donor registry information may not be further disseminated unless authorized in this section or by federal law. Dissemination of organ and tissue donor registry information may be made by a Washington state organ procurement organization to another Washington state organ procurement organization, a recognized in-state procurement agency for other tissue recovery, or an out-of-state federally designated organ procurement organization that has been designated by the United States department of health and human services to serve an area outside Washington.

(4) A Washington state organ procurement organization may acquire donor information from sources other than the department of licensing.

(5) All reasonable costs associated with the creation of an organ and tissue donor registry shall be paid by the Washington state organ procurement organization that has requested the information. The reasonable costs associated

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with the initial installation and setup for electronic transfer of the donor information at the department of licensing shall be paid by the Washington state organ procurement organization that requested the information.

(6) An individual does not need to participate in the organ and tissue donor registry to be a donor of organs or tissue. The registry is to facilitate organ and tissue donations and not inhibit persons from being donors upon death. [2003 c 94 § 3. Formerly RCW 68.50.635.]

Findings—2003 c 94: "The legislature finds that the use of anatomical gifts, including the donation of organ[s] or tissue, for the purpose of transplantation is of great interest to the citizens of Washington state and may save or prolong the life or improve the health of extremely ill and dying persons.

The legislation further finds that more than eighty thousand people are currently waiting for life-saving organ transplants on the national transplant waiting list. More than one thousand two hundred of these people are listed at Washington state transplant centers. Nationally, seventeen people die each day as a result of the shortage of donated organs.

The creation of a statewide organ and tissue donor registry is crucial to facilitate timely and successful organ and tissue procurement. The legislature further finds that continuing education as to the existence and maintenance of a statewide organ and tissue donor registry is in the best interest of the people of the state of Washington." [2003 c 94 § 1.]

68.64.210 Organ and tissue donation awareness account. (1) The organ and tissue donation awareness account is created in the custody of the state treasurer. All receipts from donations made under RCW 46.12.510, and other contributions and appropriations specifically made for the purposes of organ and tissue donor awareness, shall be deposited into the account. Except as provided in subsection (2) of this section, expenditures from the account may be authorized by the director of the department of licensing or the director's designee and do not require an appropriation.

(2) The department of licensing shall submit a funding request to the legislature covering the reasonable costs associated with the ongoing maintenance associated with the electronic transfer of the donor information to the organ and tissue donor registry and the donation program established in RCW 46.12.510. The legislature shall appropriate to the department of licensing an amount it deems reasonable from the organ and tissue donation awareness account to the department of licensing for these purposes.

(3) At least quarterly, the department of licensing shall transmit any remaining moneys in the organ and tissue donation awareness account to the foundation established in RCW 46.12.510 for the costs associated with educating the public about the organ and tissue donor registry and related organ and tissue donation education programs.

(4) Funding for donation awareness programs must be proportional across the state regardless of which Washington state organ procurement organization may be designated by the United States department of health and human services to serve a particular geographic area. No funds from the account may be used to fund activities outside Washington state. [2003 c 94 § 7. Formerly RCW 68.50.640.]

Findings—2003 c 94: See note following RCW 68.64.200.

68.64.900 Short title. This chapter may be cited as the revised uniform anatomical gift act. [2008 c 139 § 1.]

68.64.901 Applicable state laws. This chapter is subject to the laws of this state governing the jurisdiction of the coroner or medical examiner. [2008 c 139 § 22.]

68.64.902 Uniformity of application and construction—2008 c 139. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2008 c 139 § 23.]

68.64.903 Supersedes, in part, the federal electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.) with respect to electronic signatures and anatomical gifts, but does not modify, limit, or supersede section 101(a) of that act (15 U.S.C. Sec. 7001), or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. Sec. 7003(b)). [2008 c 139 § 24.]

Title 69

FOOD, DRUGS, COSMETICS, AND POISONS

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Chapter 69.04 RCW

INTRASTATE COMMERCE IN FOOD, DRUGS, AND COSMETICS

(Formerly: Food, drug, and cosmetic act)

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69.04.001 Statement of purpose. This chapter is intended to enact state legislation (1) which safeguards the public health and promotes the public welfare by protecting the consuming public from (a) potential injury by product use; (b) products that are adulterated; or (c) products that have been produced under unsanitary conditions, and the purchasing public from injury by merchandising deceit flowing from intrastate commerce in food, drugs, devices, and cosmetics; and (2) which is uniform, as provided in this chapter, with the federal food, drug, and cosmetic act; and with the federal trade commission act, to the extent it expressly outlaws the false advertisement of food, drugs, devices, and cosmetics; and (3) which thus promotes uniformity of such law and its administration and enforcement, in and throughout the United States. [1991 c 162 § 1; 1945 c 257 § 2; Rem. Supp. 1945 § 6163-51.]

Conformity with federal regulations: RCW 69.04.190 and 69.04.200.

69.04.002 Introductory. For the purposes of this chapter, terms shall apply as herein defined unless the context clearly indicates otherwise. [1945 c 257 § 3; Rem. Supp. 1945 § 6163-52.]

69.04.003 "Federal act" defined. The term "federal act" means the federal food, drug, and cosmetic act, approved on June 25, 1938. (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.) [1945 c 257 § 4; Rem. Supp. 1945 § 6163-53.]

69.04.004 "Intrastate commerce." The term "intrastate commerce" means any and all commerce within the state of Washington and subject to the jurisdiction thereof; and includes the operation of any business or service establishment. [1945 c 257 § 5; Rem. Supp. 1945 § 6163-54.]

69.04.005 "Sale." The term "sale" means any and every sale and includes (1) manufacture, processing, packing, canning, bottling, or any other production, preparation, or putting up; (2) exposure, offer, or any other proffer; (3) holding, storing, or any other possessing; (4) dispensing, giving, delivering, serving, or any other supplying; and (5) applying, administering, or any other using. [1945 c 257 § 6; Rem. Supp. 1945 § 6163-55.]

69.04.006 "Director." The term "director" means the director of the department of agriculture of the state of Washington and his duly authorized representatives. [1945 c 257 § 7; Rem. Supp. 1945 § 6163-56.]

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69.04.007 "Person." The term "person" includes individual, partnership, corporation, and association. [1945 c 257 § 8; Rem. Supp. 1945 § 6163-57.]

69.04.008 "Food." The term "food" means (1) articles used for food or drink for people or other animals, (2) bottled water, (3) chewing gum, and (4) articles used for components of any such article. [1992 c 34 § 2; 1945 c 257 § 9; Rem. Supp. 1945 § 6163-58.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.04.009 "Drugs." The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories. [1945 c 257 § 10; Rem. Supp. 1945 § 6163-59. Prior: 1907 c 211 § 2.]

69.04.010 "Device." The term "device" (except when used in RCW 69.04.016 and in RCW 69.04.040(10), 69.04.270, 69.04.690, and in RCW 69.04.470 as used in the sentence "(as compared with other words, statements, designs, or devices, in the labeling)") means instruments, apparatus, and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals. [1945 c 257 § 11; Rem. Supp. 1945 § 6163-60.]

69.04.011 "Cosmetic." The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap. [1945 c 257 § 12; Rem. Supp. 1945 § 6163-61.]

69.04.012 "Official compendium." The term "official compendium" mean the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them. [1945 c 257 § 13; Rem. Supp. 1945 § 6163-62.]

69.04.013 "Label." The term "label" means a display of written, printed, or graphic matter upon the immediate

container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper. [1945 c 257 § 14; Rem. Supp. 1945 § 6163-63.]

69.04.014 "Immediate container." The term "immediate container" does not include package liners. [1945 c 257 § 15; Rem. Supp. 1945 § 6163-64.]

69.04.015 "Labeling." The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1945 c 257 § 16; Rem. Supp. 1945 § 6163-65.]

Crimes relating to labeling: Chapter 9.16 RCW, RCW 69.40.055.

69.04.016 "Misleading labeling or advertisement, how determined." If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. [1945 c 257 § 17; Rem. Supp. 1945 § 6163-66.]

Crimes relating to advertising: Chapter 9.04 RCW.

69.04.017 "Antiseptic" as germicide. The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body. [1945 c 257 § 18; Rem. Supp. 1945 § 6163-67.]

69.04.018 "New drug" defined. The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions: PROVIDED, That no drug in use on the *effective date of this chapter shall be regarded as a new drug. [1945 c 257 § 19; Rem. Supp. 1945 § 6163-68.]

*Effective date—1945 c 257: See RCW 69.04.860.

69.04.019 "Advertisement." The term "advertisement" means all representations, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics. [1945 c 257 § 20; Rem. Supp. 1945 § 6163-69.]

69.04.020 "Contaminated with filth." The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations. [1945 c 257 § 21; Rem. Supp. 1945 § 6163-70.]

69.04.021 "Package." The word "package" shall include, and be construed to include, wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. [1963 c 198 § 8.]

69.04.022 "Pesticide chemical." The term "pesticide chemical" means any substance defined as an economic poison and/or agricultural pesticide in Title 15 RCW as now enacted or hereafter amended. [1963 c 198 § 9.]

69.04.023 "Raw agricultural commodity." The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing. [1963 c 198 § 10.]

69.04.024 "Food additive," "safe." (1) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance generally is recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958; through either scientific procedures or experience based on common use in food) to be unsafe under the conditions of its intended use; except that such term does not include; (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (c) a color additive.

(2) The term "safe" as used in the food additive definition has reference to the health of man or animal. [1963 c 198 § 11.]

69.04.025 "Color additive," "color." (1) The term "color additive" means a material which (a) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vege-

table, animal, mineral, or other source, and (b) when added or applied to a food is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which the director, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

(3) Nothing in subsection (1) hereof shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest. [1963 c 198 § 12.]

69.04.040 Prohibited acts. The following acts and the causing thereof are hereby prohibited:

(1) The sale in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic in intrastate commerce.

(3) The receipt in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the sale thereof in such commerce for pay or otherwise.

(4) The introduction or delivery for introduction into intrastate commerce of (a) any food in violation of RCW 69.04.350; or (b) any new drug in violation of RCW 69.04.570.

(5) The dissemination within this state, in any manner or by any means or through any medium, of any false advertisement.

(6) The refusal to permit (a) entry and the taking of a sample or specimen or the making of any investigation or examination as authorized by RCW 69.04.780; or (b) access to or copying of any record as authorized by RCW 69.04.810.

(7) The refusal to permit entry or inspection as authorized by RCW 69.04.820.

(8) The removal, mutilation, or violation of an embargo notice as authorized by RCW 69.04.110.

(9) The giving of a guaranty or undertaking in intrastate commerce, referred to in RCW 69.04.080, that is false.

(10) The forging, counterfeiting, simulating, or falsely representing, or without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under RCW 69.04.350.

(11) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a food, drug, device, or cosmetic, or the doing of any other act with respect to a food, drug, device, or cosmetic, or the labeling or advertisement thereof, which results in a violation of this chapter.

(12) The using in intrastate commerce, in the labeling or advertisement of any drug, of any representation or suggestion that an application with respect to such drug is effective under section 505 of the federal act or under RCW 69.04.570, or that such drug complies with the provisions of either such section. [1945 c 257 § 22; Rem. Supp. 1945 § 6163-71. Prior: 1917 c 168 § 1; 1907 c 211 § 1; 1901 c 94 § 1.]

69.04.050 Remedy by injunction. (1) In addition to the remedies hereinafter provided the director is hereby authorized to apply to the superior court of Thurston county for, and such court shall have jurisdiction upon prompt hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of RCW 69.04.040; without proof that an adequate remedy at law does not exist.

(2) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals (a) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (b) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction. [1945 c 257 § 23; Rem. Supp. 1945 § 6163-72.]

Injunctions, generally: Chapter 7.40 RCW.

69.04.060 Criminal penalty for violations. Any person who violates any provision of RCW 69.04.040 is guilty of a misdemeanor and shall on conviction thereof be subject to the following penalties:

(1) A fine of not more than two hundred dollars; or

(2) If the violation is committed after a conviction of such person under this section has become final, imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and fine. [2003 c 53 § 314; 1945 c 257 § 24; Rem. Supp. 1945 § 6163-73. Prior: 1907 c 211 § 12; 1901 c 94 § 11.]

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

69.04.070 Additional penalty. Notwithstanding the provisions of RCW 69.04.060, a person who violates RCW 69.04.040 with intent to defraud or mislead is guilty of a misdemeanor and the penalty shall be imprisonment for not more than ninety days, or a fine of not more than one thousand dollars, or both such imprisonment and fine. [2003 c 53 § 315; 1945 c 257 § 25; Rem. Supp. 1945 § 6163-74.]

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

69.04.080 Avoidance of penalty. No person shall be subject to the penalties of RCW 69.04.060:

(1) For having violated RCW 69.04.040(3), if he establishes that he received and sold such article in good faith, unless he refuses on request of the director to furnish the name and address of the person in the state of Washington from whom he received such article and copies of all available documents pertaining to his receipt thereof; or

(2) For having violated RCW 69.04.040 (1), (3), or (4), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such article in good

faith, to the effect that such article complies with this chapter; or

(3) For having violated RCW 69.04.040(5), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such advertisement in good faith, to the effect that such advertisement complies with this chapter; or

(4) For having violated RCW 69.04.040(9), if he establishes that he gave such guaranty or undertaking in good faith and in reliance on a guaranty or undertaking to him, which guaranty or undertaking was to the same effect and was signed by, and contained the name and address of, a person in the state of Washington. [1945 c 257 § 26; Rem. Supp. 1945 § 6163-75.]

69.04.090 Liability of disseminator of advertisement.

No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 69.04.060 by reason of his dissemination of any false advertisement, unless he has refused on the request of the director to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency in the state of Washington, who caused him to disseminate such false advertisement. [1945 c 257 § 27; Rem. Supp. 1945 § 6163-76.]

69.04.100 Condemnation of adulterated or misbranded article.

Whenever the director shall find in intrastate commerce an article subject to this chapter which is so adulterated or misbranded that it is unfit or unsafe for human use and its immediate condemnation is required to protect the public health, such article is hereby declared to be a nuisance and the director is hereby authorized forthwith to destroy such article or to render it unsalable for human use. [1945 c 257 § 28; Rem. Supp. 1945 § 6163-77.]

69.04.110 Embargo of articles. Whenever the director shall find, or shall have probable cause to believe, that an article subject to this chapter is in intrastate commerce in violation of this chapter, and that its embargo under this section is required to protect the consuming or purchasing public, due to its being adulterated or misbranded, or to otherwise protect the public from injury, or possible injury, he or she is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate commerce, without permission given under this chapter. But if, after such article has been so embargoed, the director shall find that such article does not involve a violation of this chapter, such embargo shall be forthwith removed. [1991 c 162 § 3; 1975 1st ex.s. c 7 § 25; 1945 c 257 § 29; Rem. Supp. 1945 § 6163-78.]

Purpose of section: See RCW 69.04.398.

69.04.120 Procedure on embargo. When the director has embargoed an article, he or she shall, forthwith and without delay and in no event later than thirty days after the affixing of notice of its embargo, petition the superior court for an order affirming the embargo. The court then has jurisdiction,

for cause shown and after prompt hearing to any claimant of the embargoed article, to issue an order which directs the removal of the embargo or the destruction or the correction and release of the article. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for a bond as the court finds indicated in the circumstances. [1991 c 162 § 4; 1983 c 95 § 8; 1945 c 257 § 30; Rem. Supp. 1945 § 6163-79.]

69.04.123 Exception to petition requirement under RCW 69.04.120. The director need not petition the superior court as provided for in RCW 69.04.120 if the owner or claimant of such food or food products agrees in writing to the disposition of such food or food products as the director may order. [1995 c 374 § 20.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.04.130 Petitions may be consolidated. Two or more petitions under RCW 69.04.120, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1945 c 257 § 31; Rem. Supp. 1945 § 6163-80.]

69.04.140 Claimant entitled to sample. The claimant in any proceeding by petition under RCW 69.04.120 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1945 c 257 § 32; Rem. Supp. 1945 § 6163-81.]

69.04.150 Damages not recoverable if probable cause existed. No state court shall allow the recovery of damages from administrative action for condemnation under RCW 69.04.100 or for embargo under RCW 69.04.110, if the court finds that there was probable cause for such action. [1945 c 257 § 33; Rem. Supp. 1945 § 6163-82.]

69.04.160 Prosecutions. (1) It shall be the duty of each state attorney, county attorney, or city attorney to whom the director reports any violation of this chapter, or regulations promulgated under it, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law.

(2) Before any violation of this chapter is reported by the director to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views to the director, either orally or in writing, with regard to such contemplated proceeding. [1945 c 257 § 34; Rem. Supp. 1945 § 6163-83.]

69.04.170 Minor infractions. Nothing in this chapter shall be construed as requiring the director to report for the

institution of proceedings under this chapter, minor violations of this chapter, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. [1945 c 257 § 35; Rem. Supp. 1945 § 6163-84.]

69.04.180 Proceedings to be in name of state. All such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the state of Washington. [1945 c 257 § 36; Rem. Supp. 1945 § 6163-85.]

69.04.190 Standards may be prescribed by regulations. Whenever in the judgment of the director such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container. In prescribing any standard of fill of container, consideration shall be given to and due allowance shall be made for product or volume shrinkage or expansion unavoidable in good commercial practice, and need for packing and protective material. In prescribing any standard of quality for any canned fruit or canned vegetable, consideration shall be given to and due allowance shall be made for the differing characteristics of the several varieties thereof. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the director shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. [1945 c 257 § 37; Rem. Supp. 1945 § 6163-86. Prior: 1917 c 168 § 2.]

69.04.200 Conformance with federal standards. The definitions and standards of identity, the standards of quality and fill of container, and the label requirements prescribed by regulations promulgated under *this section shall conform, insofar as practicable, with those prescribed by regulations promulgated under section 401 of the federal act and to the definitions and standards promulgated under the meat inspection act approved March 4, 1907, as amended. [1945 c 257 § 38; Rem. Supp. 1945 § 6163-87.]

***Reviser's note:** The language "this section" appears in 1945 c 257 § 38 but apparently refers to 1945 c 257 § 37 codified as RCW 69.04.190.

69.04.205 Bacon—Packaging at retail to reveal quality and leanness. All packaged bacon other than that packaged in cans shall be offered and exposed for sale and sold, within the state of Washington only at retail in packages which permit the buyer to readily view the quality and degree of leanness of the product. [1971 c 49 § 1.]

69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal. The director of the department of agriculture is hereby authorized to promulgate rules, regulations, and standards for the implementation of RCW 69.04.205 through 69.04.207. If the director has reason to

believe that any packaging method, package, or container in use or proposed for use with respect to the marketing of bacon is false or misleading in any particular, or does not meet the requirements of RCW 69.04.205, he may direct that such use be withheld unless the packaging method, package, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the packaging method, package, or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the packaging method, package, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to a court of proper jurisdiction. [1971 c 49 § 2.]

69.04.207 Bacon—Effective date. RCW 69.04.205 through 69.04.207 shall take effect on January 1, 1972. [1971 c 49 § 3.]

69.04.210 Food—Adulteration by poisonous or deleterious substance. A food shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2)(a) If it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive, or (iii) a color additive) which is unsafe within the meaning of RCW 69.04.390, or (b) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, or (c) if it is, or it bears or contains, any food additive which is unsafe within the meaning of RCW 69.04.394: PROVIDED, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under RCW 69.04.392 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of RCW 69.04.390 and 69.04.394, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or

(3) If it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(4) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become

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contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) If it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter or which has been fed on the uncooked offal from a slaughterhouse; or

(6) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394. [1963 c 198 § 1; 1945 c 257 § 39; Rem. Supp. 1945 § 6163-88. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.220 Food—Adulteration by abstraction, addition, substitution, etc. A food shall be deemed to be adulterated (1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is. [1945 c 257 § 40; Rem. Supp. 1945 § 6163-89.]

69.04.231 Food—Adulteration by color additive. A food shall be deemed to be adulterated if it is, or it bears or contains a color additive which is unsafe within the meaning of RCW 69.04.396. [1963 c 198 § 5.]

69.04.240 Confectionery—Adulteration. A food shall be deemed to be adulterated if it is confectionery and it bears or contains any alcohol from natural or artificial alcohol flavoring in excess of one percent of the weight of the confection or any nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, natural gum, and pectin. This section shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances, or to any confection permitted to be sold by an endorsement from the liquor control board under RCW 66.24.360. [2007 c 226 § 3; 1984 c 78 § 2; 1945 c 257 § 42; Rem. Supp. 1945 § 6163-91. Prior: 1923 c 36 § 1, part; 1907 c 211 § 3, part.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

69.04.245 Poultry—Improper use of state's geographic outline. Uncooked poultry is deemed to be misbranded if it is produced outside of this state but the label for the poultry contains the geographic outline of this state. [1989 c 257 § 2.]

Legislative findings—1989 c 257: "The legislature finds that: Poultry produced in this state is known throughout the state for its high quality; and one of the sources of that quality is the proximity of production centers to retail outlets in the state. The legislature also finds that labeling which misrepresents poultry produced elsewhere as being a product of this state may lead consumers to purchase products which they would not otherwise purchase. The legislature further finds that the presence of the geographic outline of this state on a label for poultry produced outside of the state misrepresents the product as having been produced in this state." [1989 c 257 § 1.]

69.04.250 Food—Misbranding by false label, etc. A food shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if it is offered for sale under the name of another food; or (3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; or (4) if its container is so made, formed or filled as to be misleading. [1945 c 257 § 43; Rem. Supp. 1945 § 6163-92. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.260 Packaged food—Misbranding. If a food is in package form, it shall be deemed to be misbranded, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 44; Rem. Supp. 1945 § 6163-93.]

69.04.270 Food—Misbranding by lack of prominent label. A food shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 45; Rem. Supp. 1945 § 6163-94.]

69.04.280 Food—Misbranding for nonconformity with standard of identity. If a food purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by RCW 69.04.190, it shall be deemed to be misbranded unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food. [1945 c 257 § 46; Rem. Supp. 1945 § 6163-95.]

69.04.290 Food—Misbranding for nonconformity with standard of quality. If a food purports to be or is represented as a food for which a standard of quality has been prescribed by regulations as provided by RCW 69.04.190, and its quality falls below such standard, it shall be deemed to be misbranded unless its label bears in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 47; Rem. Supp. 1945 § 6163-96.]

69.04.300 Food—Misbranding for nonconformity with standard of fill. If a food purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations as provided by RCW 69.04.190, and it falls below the standard of fill of con-

tainer applicable thereto, it shall be deemed to be misbranded unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 48; Rem. Supp. 1945 § 6163-97.]

69.04.310 Food—Misbranding by failure to show usual name and ingredients. If a food is not subject to the provisions of RCW 69.04.280, it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: PROVIDED, That, to the extent that compliance with the requirements of clause (2) of this section is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 49; Rem. Supp. 1945 § 6163-98.]

69.04.315 Halibut—Misbranding by failure to show proper name. No person shall label or offer for sale any food fish product designated as halibut, with or without additional descriptive words unless such food fish product is Hippoglossus Hippoglossus or Hippoglossus Stenolepsis. Any person violating the provisions of this section shall be guilty of misbranding under the provisions of this chapter. [1967 ex.s. c 79 § 1.]

69.04.320 Food—Misbranding by failure to show dietary properties. If a food purports to be or is represented for special dietary uses, it shall be deemed to be misbranded, unless its label bears such information concerning its vitamin, mineral and other dietary properties as is necessary in order to fully inform purchasers as to its value for such uses, as provided by regulations promulgated by the director, such regulations to conform insofar as practicable with regulations under section 403(j) of the federal act. [1945 c 257 § 50; Rem. Supp. 1945 § 6163-99.]

69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc. If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservative, it shall be deemed to be misbranded unless it bears labeling stating that fact: PROVIDED, That to the extent that compliance with the requirements of this section is impracticable, exemptions shall be established by regulations promulgated by the director. The provisions of this section and of RCW 69.04.280 and 69.04.310, with respect to artificial coloring, shall not apply in the case of butter, cheese, or ice cream. [1945 c 257 § 51; Rem. Supp. 1945 § 6163-100.]

69.04.331 Popcorn sold by theaters or commercial food service establishments—Misbranded if the use of butter or ingredients of butter-like flavoring not disclosed. (1) If a theater or other commercial food service establishment prepares and sells popcorn for human consumption, the establishment, at the point of sale, shall disclose by posting a sign in a conspicuous manner to prospective consumers a statement as to whether the butter or butter-

like flavoring added to or attributed to the popcorn offered for sale is butter as defined in *RCW 15.32.010 or is some other product. If the flavoring is some other product, the establishment shall also disclose the ingredients of the product.

The director of agriculture shall adopt rules prescribing the size and content of the sign upon which the disclosure is to be made. Any popcorn sold by or offered for sale by such an establishment to a consumer in violation of this section or the rules of the director implementing this section shall be deemed to be misbranded for the purposes of this chapter.

(2) The provisions of subsection (1) of this section do not apply to packaged popcorn labeled so as to disclose ingredients as required by law for prepackaged foods. [1986 c 203 § 17.]

***Reviser's note:** RCW 15.32.010 was recodified as RCW 15.36.012 pursuant to 1994 c 143 § 514.

Severability—1986 c 203: See note following RCW 15.17.230.

69.04.333 Poultry and poultry products—Label to indicate if product frozen. It shall be unlawful for any person to sell at retail or display for sale at retail any poultry and poultry products, including turkey, which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such poultry or poultry product shall be sold unless in such a package or container bearing said label. [1969 ex.s. c 194 § 1.]

69.04.334 Turkeys—Label requirement as to grading. No person shall advertise for sale, sell, offer for sale or hold for sale in intrastate commerce any turkey that does not bear a label. Such label shall be properly displayed on the package if such turkey is prepackaged, or attached to the turkey if not prepackaged. Such label shall, if the turkey has been graded, state the name of the governmental agency, whether federal or state, and the grade. No turkey which has been graded may be labeled as being ungraded. Any advertisement in any media concerning the sale of turkeys shall state or set forth whether a turkey is ungraded or graded and the specific grade if graded. [1969 ex.s. c 194 § 2.]

69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter. The provisions of this chapter shall be applicable to the enforcement of RCW 69.04.333 and 69.04.334 and any person violating the provisions of RCW 69.04.333 and 69.04.334 shall be subject to the applicable civil and criminal penalties for such violations as provided for in this chapter. [1969 ex.s. c 194 § 3.]

69.04.340 Natural vitamin, mineral, or dietary properties need not be shown. Nothing in this chapter shall be construed to require the labeling or advertising to indicate the natural vitamin, natural mineral, or other natural dietary properties of dairy products or other agricultural products when sold as food. [1945 c 257 § 52; Rem. Supp. 1945 § 6163-101.]

69.04.350 Permits to manufacture or process certain foods. Whenever the director finds after investigation that

the distribution in intrastate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered intrastate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into intrastate commerce, any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the director as provided by such regulations. Insofar as practicable such regulations shall conform with, shall specify the conditions prescribed by, and shall remain in effect only so long as those promulgated under section 404(a) of the federal act. [1945 c 257 § 53; Rem. Supp. 1945 § 6163-102.]

69.04.360 Suspension of permit. The director is authorized to suspend immediately upon notice any permit issued under authority of *this section, if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director shall, immediately after prompt hearing and an inspection of the factory or establishment, reinstate such permit, if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. [1945 c 257 § 54; Rem. Supp. 1945 § 6163-103.]

***Reviser's note:** The language "this section" appears in 1945 c 257 § 54 but apparently refers to 1945 c 257 § 53 codified as RCW 69.04.350.

69.04.370 Right of access for inspection. Any officer or employee duly designated by the director shall have access to any factory or establishment, the operator of which holds a permit from the director, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. [1945 c 257 § 55; Rem. Supp. 1945 § 6163-104.]

69.04.380 Food exempt if in transit for completion purposes. Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 56; Rem. Supp. 1945 § 6163-105.]

69.04.390 Regulations permitting tolerance of harmful matter. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210; but when such substance is so required or cannot be so avoided, the director shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210. In determining the quantity of such added substance to be tolerated in or on different articles of food, the director shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. [1963 c 198 § 2; 1945 c 257 § 57; Rem. Supp. 1945 § 6163-106.]

69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities. (1) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which generally is recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as unsafe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purpose of the application of clause (2) of RCW 69.04.210 unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed pursuant to subsection (2) hereof and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance pursuant to subsection (2) hereof.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 408 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, setting forth the tolerances for pesticide chemicals in or on any raw agricultural commodity, are hereby adopted as the regulations for tolerances applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to such federal regulations for tolerances, including exemption from tolerance and zero tolerances, to the extent necessary to protect the public health. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein tolerances for pesticides, exemptions, and zero tolerances, upon

his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such regulation.

(3) In adopting any new or amended tolerances by regulation issued pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the necessity for the production of an adequate, wholesome, and economical food supply; (c) the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (d) the opinion of experts qualified by scientific training and experience to determine the proper tolerance to be allowed for any pesticide chemical. [1975 1st ex.s. c 7 § 26; 1963 c 198 § 3.]

Purpose of section: See RCW 69.04.398.

69.04.394 Regulations permitting tolerance of harmful matter—Food additives. (1) A food additive shall, with respect to any particular use or intended use of such additives, be deemed unsafe for the purpose of the application of clause (2)(c) of RCW 69.04.210, unless:

(a) It and its use or intended use conform to the terms of an exemption granted, pursuant to a regulation under subsection (2) hereof providing for the exemption from the requirements of this section for any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in the director's opinion such exemption is consistent with the public health; or

(b) There is in effect, and it and its use or intended use are in conformity with a regulation issued or effective under subsection (2) hereof prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 409 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the conditions under which such food additive may be safely used, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe the conditions under which a food additive may be safely used and exemptions where such food additive is to be used solely for investigational purposes; either upon his own motion or upon the petition of any inter-

ested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect of such additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and (d) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data. [1975 1st ex.s. c 7 § 27; 1963 c 198 § 4.]

Purpose of section: See RCW 69.04.398.

69.04.396 Regulations permitting tolerance of harmful matter—Color additives. (1) A color additive shall, with respect to any particular use (for which it is being used or intended to be used or is represented as suitable) in or on food, be deemed unsafe for the purpose of the application of RCW 69.04.231, unless:

(a) There is in effect, and such color additive and such use are in conformity with, a regulation issued under this section listing such additive for such use, including any provision of such regulation prescribing the conditions under which such additive may be safely used;

(b) Such additive and such use thereof conform to the terms of an exemption for experimental use which is in effect pursuant to regulation under this section.

While there are in effect regulations under this section relating to a color additive or an exemption with respect to such additive a food shall not, by reason of bearing or containing such additive in all respects in accordance with such regulations or such exemption, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 706 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the use or limited use of such color additive, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein the conditions under which a color additive may be safely used including exemptions for experimental purposes. Such a regulation may be issued either upon the director's own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be

incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect, if any, of such additive in the diet of man or animals, taking into account the same or any chemically or pharmacologically related substance or substances in such diet; (d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of color additives for the use or uses for which the additive is proposed to be listed, are generally recognized as appropriate for the use of animal experimentation data; (e) the availability of any needed practicable methods of analysis for determining the identity and quantity of (i) the pure dye and all intermediates and other impurities contained in such color additives, (ii) such additive in or on any article of food, and (iii) any substance formed in or on such article because of the use of such additive; and (f) the conformity by the manufacturer with the established standards in the industry relating to the proper formation of such color additive so as to result in a finished product safe for use as a color additive. [1975 1st ex.s. c 7 § 28; 1963 c 198 § 6.]

Purpose of section: See RCW 69.04.398.

Food—Adulteration by color additive: RCW 69.04.231.

69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations—Application to production of kosher food products—Adoption of rules. (1) The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 is to promote uniformity of state legislation and rules with the Federal Food, Drug and Cosmetic Act 21 USC 301 et seq. and regulations adopted thereunder. In accord with such declared purpose any regulation adopted under said federal food, drug and cosmetic act concerning food in effect on July 1, 1975, and not adopted under any other specific provision of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 are hereby deemed to have been adopted under the provision hereof. Further, to promote such uniformity any regulation adopted hereafter under the provisions of the federal food, drug and cosmetic act concerning food and published in the federal register shall be deemed to have been adopted under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 in accord with chapter 34.05 RCW as enacted or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal food, drug and cosmetic act give public notice that a hearing will be held to determine if such regula-

tion shall not be applicable under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such hearing shall be in accord with the requirements of chapter 34.05 RCW as enacted or hereafter amended.

(2) The provisions of subsection (1) of this section do not apply to rules adopted by the director as necessary to permit the production of kosher food products as defined in RCW 69.90.010.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section the director may adopt rules necessary to carry out the provisions of this chapter. [1991 c 162 § 5; 1986 c 203 § 18; 1975 1st ex.s. c 7 § 36.]

Severability—1986 c 203: See note following RCW 15.17.230.

69.04.399 Civil penalty for violations of standards for component parts of fluid dairy products adopted under RCW 69.04.398. See RCW 15.36.471.

69.04.400 Conformance with federal regulations. The regulations promulgated under RCW 69.04.390 shall conform, insofar as practicable, with those promulgated under section 406 of the federal act. [1963 c 198 § 7; 1945 c 257 § 58; Rem. Supp. 1945 § 6163-107.]

69.04.410 Drugs—Adulteration by harmful substances. A drug or device shall be deemed to be adulterated (1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one that is harmless and suitable for use in drugs for such purposes, as provided by regulations promulgated under section 504 of the federal act. [1945 c 257 § 59; Rem. Supp. 1945 § 6163-108. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.420 Drugs—Adulteration for failure to comply with compendium standard. If a drug or device purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium, it shall be deemed to be adulterated. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or prescribed by regulations promulgated under section 501(b) of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this section because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which

case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia. [1945 c 257 § 60; Rem. Supp. 1945 § 6163-109.]

69.04.430 Drugs—Adulteration for lack of represented purity or quality. If a drug or device is not subject to the provisions of RCW 69.04.420 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess, it shall be deemed to be adulterated. [1945 c 257 § 61; Rem. Supp. 1945 § 6163-110.]

69.04.440 Drugs—Adulteration by admixture or substitution of ingredients. A drug shall be deemed to be adulterated if any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor. [1945 c 257 § 62; Rem. Supp. 1945 § 6163-111.]

69.04.450 Drugs—Misbranding by false labeling. A drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular. [1945 c 257 § 63; Rem. Supp. 1945 § 6163-112. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.460 Packaged drugs—Misbranding. If a drug or device is in package form, it shall be deemed to be misbranded unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 64; Rem. Supp. 1945 § 6163-113. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.470 Drugs—Misbranding by lack of prominent label. A drug or device shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 65; Rem. Supp. 1945 § 6163-114. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.480 Drugs—Misbranding for failure to state content of habit forming drug. A drug or device shall be deemed to be misbranded if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, beta eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which derivative has been designated as habit forming by regulations promulgated under section 502(d) of the federal act; unless its label bears the name and quantity or proportion of such substance

or derivative and in juxtaposition therewith the statement "Warning—May be habit forming." [1945 c 257 § 66; Rem. Supp. 1945 § 6163-115. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.490 Drugs—Misbranding by failure to show usual name and ingredients. If a drug is not designated solely by a name recognized in an official compendium it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: PROVIDED, That to the extent that compliance with the requirements of clause (2) of this section is impracticable, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 67; Rem. Supp. 1945 § 6163-116. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.500 Drugs—Misbranding by failure to give directions for use and warnings. A drug or device shall be deemed to be misbranded unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: PROVIDED, That where any requirement of clause (1) of this section as applied to any drug or device, is not necessary for the protection of the public health, the director shall promulgate regulations exempting such drug or device from such requirements. Such regulations shall include the exemptions prescribed under section 502(f)(1) of the federal act, insofar as such exemptions are applicable hereunder. [1945 c 257 § 68; Rem. Supp. 1945 § 6163-117. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.510 Drugs—Misbranding for improper packaging and labeling. A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: PROVIDED, That the method of packing may be modified with the consent of the director, as permitted under section 502(g) of the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia. [1945 c 257 § 69; Rem. Supp. 1945 § 6163-118. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

(2008 Ed.)

69.04.520 Drugs—Misbranding for failure to show possibility of deterioration. If a drug or device has been found by the secretary of agriculture of the United States to be a drug liable to deterioration, it shall be deemed to be misbranded unless it is packaged in such form and manner, and its label bears a statement of such precautions, as required in an official compendium or by regulations promulgated under section 502(h) of the federal act for the protection of the public health. [1945 c 257 § 70; Rem. Supp. 1945 § 6163-119. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.530 Drugs—Misbranding by misleading representation. A drug shall be deemed to be misbranded if (1) its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug; or (4) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof. [1945 c 257 § 71; Rem. Supp. 1945 § 6163-120. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it. A drug or device shall be deemed to be misbranded if it is a drug which by label provides, or which the federal act or any applicable law requires by label to provide, in effect, that it shall be used only upon the prescription of a physician, dentist, or veterinarian, unless it is dispensed at retail on a written prescription signed by a physician, dentist, or veterinarian, who is licensed by law to administer such a drug. [1945 c 257 § 72; Rem. Supp. 1945 § 6163-121. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.550 Drugs exempt if in transit for completion purposes. A drug or device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling and packaging requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 73; Rem. Supp. 1945 § 6163-122.]

69.04.560 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the requirements of RCW 69.04.450 through 69.04.540. [1945 c 257 § 74; Rem. Supp. 1945 § 6163-123.]

69.04.565 DMSO (dimethyl sulfoxide) authorized. Notwithstanding any other provision of state law, DMSO

(dimethyl sulfoxide) may be introduced into intrastate commerce as long as (1) it is manufactured or distributed by persons licensed pursuant to chapter 18.64 RCW or chapter 18.92 RCW, and (2) it is used, or intended to be used, in the treatment of human beings or animals for any ailment or adverse condition: PROVIDED, That DMSO intended for topical application, consistent with rules governing purity and labeling promulgated by the state board of pharmacy, shall not be considered a legend drug and may be sold by any retailer. [1981 c 50 § 1.]

DMSO use by health facilities, physicians: RCW 70.54.190.

69.04.570 Introduction of new drug. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the federal act unless an application with respect to such drug has become effective thereunder. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is not subject to section 505 of the federal act, unless (1) it has been found, by appropriate tests, that such drug is not unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; and (2) an application has been filed under this section of this chapter with respect to such drug: PROVIDED, That the requirement of clause (2) shall not apply to any drug introduced into intrastate commerce at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act: PROVIDED FURTHER, That if the director finds that the requirement of clause (2) as applied to any drug or class of drugs, is not necessary for the protection of the public health, he shall promulgate regulations of exemption accordingly. [1945 c 257 § 75; Rem. Supp. 1945 § 6163-124.]

69.04.580 Application for introduction. An application under RCW 69.04.570 shall be filed with the director, and subject to any waiver by the director, shall include (1) full reports of investigations which have been made to show whether or not the drug, subject to the application, is safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the director may require; and (6) specimens of the labeling proposed to be used for such drug. [1945 c 257 § 76; Rem. Supp. 1945 § 6163-125.]

69.04.590 Effective date of application. An application filed under RCW 69.04.570 shall become effective on the sixtieth day after the filing thereof, unless the director (1) makes such application effective prior to such day; or (2) issues an order with respect to such application pursuant to RCW 69.04.600. [1945 c 257 § 77; Rem. Supp. 1945 § 6163-126.]

69.04.600 Denial of application. If the director finds, upon the basis of the information before him and after due

notice and opportunity for hearing to the applicant, that the drug, subject to the application, is not safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, he shall, prior to such effective date, issue an order refusing to permit such application to become effective and stating the findings upon which it is based. [1945 c 257 § 78; Rem. Supp. 1945 § 6163-127.]

69.04.610 Revocation of denial. An order refusing to permit an application under RCW 69.04.570 to become effective may be suspended or revoked by the director, for cause and by order stating the findings upon which it is based. [1945 c 257 § 79; Rem. Supp. 1945 § 6163-128.]

69.04.620 Service of order of denial. Orders of the director issued under RCW 69.04.600 shall be served (1) in person by a duly authorized representative of the director or (2) by mailing the order by registered mail addressed to the applicant or respondent at his address last known to the director. [1945 c 257 § 80; Rem. Supp. 1945 § 6163-129.]

69.04.630 Drug for investigational use exempt. A drug shall be exempt from the operation of RCW 69.04.570 which is intended, and introduced or delivered for introduction into intrastate commerce, solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs and which is plainly labeled "For investigational use only." [1945 c 257 § 81; Rem. Supp. 1945 § 6163-130.]

69.04.640 Court review of denial. The superior court of Thurston county shall have jurisdiction to review and to affirm, modify, or set aside any order issued under RCW 69.04.600, upon petition seasonably made by the person to whom the order is addressed and after prompt hearing upon due notice to both parties. [1945 c 257 § 82; Rem. Supp. 1945 § 6163-131.]

69.04.650 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the operation of RCW 69.04.570 through 69.04.640. [1945 c 257 § 83; Rem. Supp. 1945 § 6163-132.]

69.04.660 Federally licensed drugs exempt. The provisions of RCW 69.04.570 shall not apply to any drug which is licensed under the federal virus, serum, and toxin act of July 1, 1902; or under the federal virus, serums, toxins, anti-toxins, and analogous products act of March 4, 1913. [1945 c 257 § 84; Rem. Supp. 1945 § 6163-133.]

69.04.670 Cosmetics—Adulteration by injurious substances. A cosmetic shall be deemed to be adulterated

(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual: PROVIDED, That this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes; or (2) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (3) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (4) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (5) if it is not a hair dye and it bears or contains a coal tar color other than one that is harmless and suitable for use in cosmetics, as provided by regulations promulgated under section 604 of the federal act. [1945 c 257 § 85; Rem. Supp. 1945 § 6163-134.]

69.04.680 Cosmetics—Misbranding by false label, etc. A cosmetic shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if in package form, unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (b) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the director. [1945 c 257 § 86; Rem. Supp. 1945 § 6163-135.]

69.04.690 Cosmetics—Misbranding by lack of prominent label. A cosmetic shall be deemed to be misbranded (1) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or (2) if its container is so made, formed, or filled as to be misleading. [1945 c 257 § 87; Rem. Supp. 1945 § 6163-136.]

69.04.700 Cosmetics exempt if in transit for completion purposes. A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good

faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 88; Rem. Supp. 1945 § 6163-137.]

69.04.710 Advertisement, when deemed false. An advertisement of a food, drug, device, or cosmetic shall be deemed to be false, if it is false or misleading in any particular. [1945 c 257 § 89; Rem. Supp. 1945 § 6163-138.]

69.04.720 Advertising of cure of certain diseases deemed false. The advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, *venereal disease, shall also be deemed to be false; except that no advertisement not in violation of RCW 69.04.710 shall be deemed to be false under this section if it is disseminated only to members of the medical, veterinary, dental, pharmaceutical, and other legally recognized professions dealing with the healing arts, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: PROVIDED, That whenever the director determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the director shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the director may deem necessary in the interest of public health: PROVIDED FURTHER, That this section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. [1945 c 257 § 90; Rem. Supp. 1945 § 6163-139.]

*Reviser's note: The term "venereal disease" was changed to "sexually transmitted disease" by 1988 c 206.

69.04.730 Enforcement, where vested—Regulations. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director: PROVIDED, HOWEVER, That the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1945 c 257 § 91 (vetoed); 1947 c 25 (passed notwithstanding veto); Rem. Supp. 1947 § 6163-139a.]

69.04.740 Regulations to conform with federal regulations. The purpose of this chapter being to promote uniformity of state legislation with the federal act, the director is hereby authorized (1) to adopt, insofar as applicable, the regulations from time to time promulgated under the federal act; and (2) to make the regulations promulgated under this chapter conform, insofar as practicable, with those promulgated

under the federal act. [1945 c 257 § 92; Rem. Supp. 1945 § 6163-140.]

69.04.750 Hearings. Hearings authorized or required by this chapter shall be conducted by the director or his duly authorized representative designated for the purpose. [1945 c 257 § 93; Rem. Supp. 1945 § 6163-141.]

69.04.761 Hearing on proposed regulation—Procedure. The director shall hold a public hearing upon a proposal to promulgate any new or amended regulation under this chapter. The procedure to be followed concerning such hearings shall comply in all respects with chapter 34.05 RCW (Administrative Procedure Act) as now enacted or hereafter amended. [1963 c 198 § 13.]

69.04.770 Review on petition prior to effective date. The director shall have jurisdiction to review and to affirm, modify, or set aside any order issued under *RCW 69.04.760, promulgating a new or amended regulation under this chapter, upon petition made at any time prior to the effective date of such regulation, by any person adversely affected by such order. [1945 c 257 § 95; Rem. Supp. 1945 § 6163-143.]

*Reviser's note: RCW 69.04.760 was repealed by 1963 c 198 § 15. Later enactment, see RCW 69.04.761.

69.04.780 Investigations—Samples—Right of entry—Verified statements. The director shall cause the investigation and examination of food, drugs, devices, and cosmetics subject to this chapter. The director shall have the right (1) to take a sample or specimen of any such article, for examination under this chapter, upon tendering the market price therefor to the person having such article in custody; and (2) to enter any place or establishment within this state, at reasonable times, for the purpose of taking a sample or specimen of any such article, for such examination.

The director and the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. Such department personnel are empowered to administer oaths of verification on the statements. [1991 c 162 § 6; 1945 c 257 § 96; Rem. Supp. 1945 § 6163-144.]

69.04.790 Owner may obtain part of sample. Where a sample or specimen of any such article is taken for examination under this chapter the director shall, upon request, provide a part thereof for examination by any person named on the label of such article, or the owner thereof, or his attorney or agent; except that the director is authorized, by regulation, to make such reasonable exceptions from, and to impose such reasonable terms and conditions relating to, the operation of this section as he finds necessary for the proper administration of the provisions of this chapter. [1945 c 257 § 97; Rem. Supp. 1945 § 6163-145.]

69.04.800 Access to records of other agencies. For the purpose of enforcing the provisions of this chapter, pertinent records of any administrative agency of the state government

shall be open to inspection by the director. [1945 c 257 § 98; Rem. Supp. 1945 § 6163-146.]

69.04.810 Access to records of intrastate carriers. For the purpose of enforcing the provisions of this chapter, carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding such articles so received, shall, upon the request of the director, permit the director at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and the copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: PROVIDED, That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: PROVIDED FURTHER, That except for violations of RCW 69.04.955, penalties levied under RCW 69.04.980, the requirements of RCW 69.04.950 through 69.04.980, and the requirements of this section, carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers. [1990 c 202 § 9; 1945 c 257 § 99; Rem. Supp. 1945 § 6163-147.]

69.04.820 Right of entry to factories, warehouses, vehicles, etc. For the purpose of enforcing the provisions of this chapter, the director is authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment subject to this chapter, or to enter any vehicle being used to transport or hold food, drugs, devices, or cosmetics in intrastate commerce; and (2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, labeling, and advertisements therein. [1945 c 257 § 100; Rem. Supp. 1945 § 6163-148.]

69.04.830 Publication of reports of judgments, orders and decrees. The director may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof. [1945 c 257 § 101; Rem. Supp. 1945 § 6163-149.]

69.04.840 Dissemination of information. The director may cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving, in the opinion of the director, imminent danger to health or gross deception of, or fraud upon, the consumer. Nothing in this section shall be construed to prohibit the director from collecting, reporting, and illustrating the results of his examinations and investigations under this chapter. [1945 c 257 § 102; Rem. Supp. 1945 § 6163-150.]

69.04.845 Severability—1945 c 257. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1945 c 257 § 103; Rem. Supp. 1945 § 6163-151.]

69.04.850 Construction—1945 c 257. This chapter and the regulations promulgated hereunder shall be so interpreted and construed as to effectuate its general purpose to secure uniformity with federal acts and regulations relating to adulterating, misbranding and false advertising of food, drugs, devices, and cosmetics. [1945 c 257 § 104; Rem. Supp. 1945 § 6163-152.]

69.04.860 Effective date of chapter—1945 c 257. This chapter shall take effect ninety days after the date of its enactment, and all state laws or parts of laws in conflict with this chapter are then repealed: PROVIDED, That the provisions of section 91 shall become effective on the enactment of this chapter, and thereafter the director is hereby authorized to conduct hearings and to promulgate regulations which shall become effective on or after the effective date of this chapter as the director shall direct: PROVIDED FURTHER, That all other provisions of this chapter to the extent that they may relate to the enforcement of such sections, shall take effect on the date of the enactment of this chapter. [1945 c 257 § 105; Rem. Supp. 1945 § 6163-153.]

Reviser's note: 1945 c 257 § 91 referred to herein was vetoed by the governor but was subsequently reenacted as 1947 c 25 notwithstanding the veto. Section 91 is codified as RCW 69.04.730. For effective date of section 91 see preface 1947 session laws.

69.04.870 Short title. This chapter may be cited as the Uniform Washington Food, Drug, and Cosmetic Act. [1945 c 257 § 1; Rem. Supp. 1945 § 6163-50.]

69.04.880 Civil penalty. Whenever the director finds that a person has committed a violation of a provision of this chapter, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each and every such violation shall be a separate and distinct offense. Imposition of the civil penalty shall be subject to a hearing in conformance with chapter 34.05 RCW. [1991 c 162 § 2.]

69.04.900 Perishable packaged food—Pull date labeling—Definitions. For the purpose of RCW 69.04.900 through 69.04.920:

(1) "Perishable packaged food goods" means and includes all foods and beverages, except alcoholic beverages, frozen foods, fresh meat, poultry and fish and a raw agricultural commodity as defined in this chapter, intended for human consumption which are canned, bottled, or packaged other than at the time and point of retail sale, which have a high risk of spoilage within a period of thirty days, and as determined by the director of the department of agriculture by rule and regulation to be perishable.

(2) "Pull date" means the latest date a packaged food product shall be offered for sale to the public.

(3) "Shelf life" means the length of time during which a packaged food product will retain its safe consumption quality if stored under proper temperature conditions.

(4) "Fish" as used in subsection (1) of this section shall mean any water breathing animals, including, but not limited to, shellfish such as lobster, clams, crab, or other mollusca which are prepared, processed, sold, or intended or offered for sale. [1974 ex.s. c 57 § 1; 1973 1st ex.s. c 112 § 1.]

69.04.905 Perishable packaged food—Pull date labeling—Required. All perishable packaged food goods with a projected shelf life of thirty days or less, which are offered for sale to the public after January 1, 1974 shall state on the package the pull date. The pull date must be stated in day, and month and be in a style and format that is readily decipherable by consumers: PROVIDED, That the director of the department of agriculture may exclude the monthly requirement on the pull date for perishable packaged food goods which have a shelf life of seven days or less. No perishable packaged food goods shall be offered for sale after the pull date, except as provided in RCW 69.04.910. [1974 ex.s. c 57 § 2; 1973 1st ex.s. c 112 § 2.]

69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception. No person shall sell, trade or barter any perishable packaged food goods beyond the pull date appearing thereon, nor shall any person rewrap or repackage any packaged perishable food goods with the intention of placing a pull date thereon which is different from the original: PROVIDED, HOWEVER, That those packaged perishable food goods whose pull dates have expired may be sold if they are still wholesome and are without danger to health, and are clearly identified as having passed the pull date. [1973 1st ex.s. c 112 § 3.]

69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations. The director of the department of agriculture shall by rule and regulation establish uniform standards for pull date labeling, and optimum storage conditions of perishable packaged food goods. In addition to his other duties the director, in consultation with the secretary of the department of health where appropriate, may promulgate such other rules and regulations as may be necessary to carry out the purposes of RCW 69.04.900 through 69.04.920. [1989 1st ex.s. c 9 § 225; 1973 1st ex.s. c 112 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.04.920 Perishable packaged food—Pull date labeling—Penalties. Any person convicted of a violation of RCW 69.04.905 or 69.04.910 shall be punishable by a fine not to exceed five hundred dollars. [1973 1st ex.s. c 112 § 5.]

69.04.928 Seafood labeling requirements—Pamphlet—Direct retail endorsement. The department of agriculture must develop a pamphlet that generally describes the labeling requirements for seafood, as set forth in this chapter, and provide an adequate quantity of the pamphlets to the

department of fish and wildlife to distribute with the issuance of a direct retail endorsement under RCW 77.65.510. [2002 c 301 § 11.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

69.04.930 Frozen fish and meat—Labeling requirements—Exceptions. It shall be unlawful for any person to sell at retail or display for sale at retail any food fish as defined in RCW 77.08.022 or shellfish as defined in RCW 77.08.010, any meat, or any meat food product which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such food fish or shellfish, meat or meat food product shall be sold unless in such a package or container bearing said label: PROVIDED, That this section shall not include any of the aforementioned food or food products that have been frozen prior to being smoked, cured, cooked or subjected to the heat of commercial sterilization. [2003 c 39 § 28; 1999 c 291 § 32; 1988 c 254 § 8; 1983 1st ex.s. c 46 § 179; 1975 c 39 § 1.]

69.04.932 Salmon labeling—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 69.04.933 through 69.04.935.

(1) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

SCIENTIFIC NAME	COMMON NAME
<i>Oncorhynchus tshawytscha</i>	Chinook salmon or king salmon
<i>Oncorhynchus kisutch</i>	Coho salmon or silver salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon
<i>Salmo salar</i> (in other than its landlocked form)	Atlantic salmon

(2) "Commercially caught" means salmon harvested by commercial fishers. [1993 c 282 § 2.]

Finding—1993 c 282: "The legislature finds that salmon consumers in Washington benefit from knowing the species and origin of the salmon they purchase. The accurate identification of such species, as well as knowledge of the country or state of origin and of whether they were caught commercially or were farm-raised, is important to consumers." [1993 c 282 § 1.]

69.04.933 Salmon labeling—Identification of species—Exceptions—Penalty. With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen salmon food fish or cultured aquatic salmon without identifying the species of salmon by its common name to the buyer at the point of sale such that the buyer can make an informed decision in purchasing. A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about the species of salmon and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded. [1993 c 282 § 3.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty. With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen:

- (1) Private sector cultured aquatic salmon without identifying the product as farm-raised salmon; or
- (2) Commercially caught salmon designated as food fish under Title 77 RCW without identifying the product as commercially caught salmon.

Identification of the products under subsections (1) and (2) of this section shall be made to the buyer at the point of sale such that the buyer can make an informed decision in purchasing.

A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about whether the salmon is farm-raised or commercially caught, and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded. [2003 c 39 § 29; 1993 c 282 § 4.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.935 Salmon labeling—Rules for identification and enforcement. To promote honesty and fair dealing for consumers, the director, in consultation with the director of the department of fish and wildlife, shall adopt rules:

- (1) Fixing and establishing a reasonable definition and standard of identity for salmon for purposes of identifying and selling salmon;
- (2) Enforcing RCW 69.04.933 and 69.04.934. [1994 c 264 § 39; 1993 c 282 § 5.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.940 Imported lamb products—Labeling requirements. All retail sales of fresh or frozen lamb products which are imported from another country shall be labelled with the country of origin. For the purposes of this section "imported lamb products" shall include but not be limited to, live lambs imported from another country but slaughtered in the United States. [1987 c 393 § 25.]

69.04.950 Transport of bulk foods—Definitions. The definitions in this section apply throughout RCW 69.04.950 through 69.04.980:

- (1) "Food" means: (a) Any article used for food or drink for humans or used as a component of such an article; or (b) a food grade substance.
- (2) "Food grade substance" means a substance which satisfies the requirements of the federal food, drug, and cosmetic act, meat inspection act, and poultry products act and rules promulgated thereunder as materials approved by the federal food and drug administration, United States department of agriculture, or United States environmental protection agency for use: (a) As an additive in food or drink for human consumption, (b) in sanitizing food or drink for human consumption, (c) in processing food or drink for human consumption, or (d) in maintaining equipment with food contact surfaces during which maintenance the sub-

stance is expected to come in contact with food or drink for human consumption.

(3) "In bulk form" means a food or substance which is not packaged or contained by anything other than the cargo carrying portion of the vehicle or vessel.

(4) "Vehicle or vessel" means a commercial vehicle or commercial vessel which has a gross weight of more than ten thousand pounds, is used to transport property, and is a motor vehicle, motor truck, trailer, railroad car, or vessel. [1990 c 202 § 1.]

Advisory committee—Report—1990 c 202: "The director of agriculture and the secretary of health shall examine, in consultation with an industry advisory committee, the potential hazards that may be posed to the public health by the transportation of food in other than bulk form in intrastate commerce. The director and secretary shall report the findings to the legislature by January 1, 1992, concerning the extent of the potential hazards, the frequency of mixed shipments of packaged food and nonfood items, the manner in which mixed shipments of packaged food and nonfood items are transported, and the incidents of food contamination in Washington state within the past five years. The findings shall include recommendations, if any, for regulating the transportation of food in other than bulk form.

The director and the secretary shall establish an industry advisory committee to provide advice regarding the examination required by this section. The director and the secretary shall jointly appoint not less than nine persons to the committee. These persons shall be representatives from the manufacturing, processing, wholesaling, distributing, and retailing sectors of the food industry." [1990 c 202 § 8.]

69.04.955 Transport of bulk foods—Prohibitions—

Exemption. (1) Except as provided in RCW 69.04.965 and 69.04.975, no person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel that has been used for transporting in bulk form a cargo other than food.

(2) No person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel unless the vehicle or vessel is marked "Food or Food Compatible Only" in conformance with rules adopted under RCW 69.04.960.

(3) No person may transport in intrastate commerce a substance in bulk form other than food or a substance on a list adopted under RCW 69.04.960 in the cargo carrying portion of a vehicle or vessel marked "Food or Food Compatible Only."

(4) This section does not apply to the transportation of a raw agricultural commodity from the point of its production to the facility at which the commodity is first processed or packaged. [1990 c 202 § 2.]

69.04.960 Transport of bulk foods—Compatible substances—Cleaning vehicle or vessel—Vehicle or vessel marking. (1) The director of agriculture and the secretary of health shall jointly adopt by rule:

(a) A list of food compatible substances other than food that may be transported in bulk form as cargo in a vehicle or vessel that is also used, on separate occasions, to transport food in bulk form as cargo. The list shall contain those substances that the director and the secretary determine will not pose a health hazard if food in bulk form were transported in the vehicle or vessel after it transported the substance. In making this determination, the director and the secretary shall assume that some residual portion of the substance will remain in the cargo carrying portion of the vehicle or vessel when the food is transported;

(b) The procedures to be used to clean the vehicle or vessel after transporting the substance and prior to transporting the food;

(c) The form of the certificates to be used under RCW 69.04.965; and

(d) Requirements for the "Food or Food Compatible Only" marking which must be borne by a vehicle or vessel under RCW 69.04.955 or 69.04.965.

(2) In developing and adopting rules under this section and RCW 69.04.970, the director and the secretary shall consult with the secretary of transportation, the chief of the state patrol, the chair of the utilities and transportation commission, and representatives of the vehicle and vessel transportation industries, food processors, and agricultural commodity organizations. [1990 c 202 § 3.]

69.04.965 Transport of bulk foods—Transports not constituting violations. Transporting food as cargo in bulk form in intrastate commerce in a vehicle or vessel that has previously been used to transport in bulk form a cargo other than food does not constitute a violation of RCW 69.04.955 if:

(1) The cargo is a food compatible substance contained on the list adopted by the director and secretary under RCW 69.04.960;

(2) The vehicle or vessel has been cleaned as required by the rules adopted under RCW 69.04.960;

(3) The vehicle or vessel is marked "Food or Food Compatible" in conformance with rules adopted under RCW 69.04.960; and

(4) A certificate accompanies the vehicle or vessel when the food is transported by other than railroad car which attests, under penalty of perjury, to the fact that the vehicle or vessel has been cleaned as required by those rules and is dated and signed by the party responsible for that cleaning. Such certificates shall be maintained by the owner of the vehicle or vessel for not less than three years and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. The director of agriculture and the secretary of health shall jointly adopt rules requiring such certificates for the transportation of food under this section by railroad car and requiring such certificates to be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture. [1990 c 202 § 4.]

69.04.970 Transport of bulk foods—Substances rendering vehicle or vessel permanently unsuitable for bulk food transport—Procedures to rehabilitate vehicles and vessels. The director of agriculture and the secretary of health shall jointly adopt by rule:

(1) A list of substances which, if transported in bulk form in the cargo carrying portion of a vehicle or vessel, render the vehicle or vessel permanently unsuitable for use in transporting food in bulk form because the prospect that any residue might be present in the vehicle or vessel when it transports food poses a hazard to the public health; and

(2) Procedures to be used to rehabilitate a vehicle or vessel that has been used to transport a substance other than a substance contained on a list adopted under RCW 69.04.960

or under subsection (1) of this section. The procedures shall ensure that transporting food in the cargo carrying portion of the vehicle or vessel after its rehabilitation will not pose a health hazard. [1990 c 202 § 5.]

69.04.975 Transport of bulk foods—Rehabilitation of vehicles and vessels—Inspection—Certification—Marking—Costs. A vehicle or vessel that has been used to transport a substance other than food or a substance contained on the lists adopted by the director and secretary under RCW 69.04.960 and 69.04.970, may be rehabilitated and used to transport food only if:

(1) The vehicle or vessel is rehabilitated in accordance with the procedures established by the director and secretary in RCW 69.04.970;

(2) The vehicle or vessel is inspected by the department of agriculture, and the department determines that transporting food in the cargo carrying portion of the vehicle or vessel will not pose a health hazard;

(3) A certificate accompanies the vehicle or vessel certifying that the vehicle or vessel has been rehabilitated and inspected and is authorized to transport food, and is dated and signed by the director of agriculture, or an authorized agent of the director. Such certificates shall be maintained for the life of the vehicle by the owner of the vehicle or vessel, and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture; and

(4) The vehicle or vessel is marked as required by RCW 69.04.955 or is marked and satisfies the requirements of RCW 69.04.965 which are not inconsistent with the rehabilitation authorized by this section.

No vehicle or vessel that has transported in bulk form a substance contained on the list adopted under RCW 69.04.970 qualifies for rehabilitation.

The cost of rehabilitation shall be borne by the vehicle or vessel owner. The director shall determine a reasonable fee to be imposed on the vehicle or vessel owner based on inspection, laboratory, and administrative costs incurred by the department in rehabilitating the vehicle or vessel. [1990 c 202 § 6.]

69.04.980 Transport of bulk foods—Penalties. A person who knowingly transports a cargo in violation of RCW 69.04.955 or who knowingly causes a cargo to be transported in violation of RCW 69.04.955 is subject to a civil penalty, as determined by the director of agriculture, for each such violation as follows:

(1) For a person's first violation or first violation in a period of five years, not more than five thousand dollars;

(2) For a person's second or subsequent violation within five years of a previous violation, not more than ten thousand dollars.

The director shall impose the penalty by an order which is subject to the provisions of chapter 34.05 RCW.

The director shall, wherever practical, secure the assistance of other public agencies, including but not limited to the department of health, the utilities and transportation commission, and the state patrol, in identifying and investigating potential violations of RCW 69.04.955. [1990 c 202 § 7.]

Chapter 69.06 RCW

FOOD AND BEVERAGE ESTABLISHMENT WORKERS' PERMITS

Sections

69.06.010	Food and beverage service worker's permit—Filing, duration—Minimum training requirements.
69.06.020	Permit exclusive and valid throughout state—Fee.
69.06.030	Diseased persons—May not work—Employer may not hire.
69.06.040	Application of chapter to retail food establishments.
69.06.045	Application of chapter to temporary food service establishments.
69.06.050	Permit to be secured within fourteen days from time of employment.
69.06.060	Penalty.
69.06.070	Limited duty permit.
69.06.080	Chapter not applicable to persons who meet requirements of RCW 70.128.250.

69.06.010 Food and beverage service worker's permit—Filing, duration—Minimum training requirements. It shall be unlawful for any person to be employed in the handling of unwrapped or unpackaged food unless he or she shall furnish and place on file with the person in charge of such establishment, a food and beverage service worker's permit, as prescribed by the state board of health. Such permit shall be kept on file by the employer or kept by the employee on his or her person and open for inspection at all reasonable hours by authorized public health officials. Such permit shall be returned to the employee upon termination of employment. Initial permits, including limited duty permits, shall be valid for two years from the date of issuance. Subsequent renewal permits shall be valid for three years from the date of issuance, except an employee may be granted a renewal permit that is valid for five years from the date of issuance if the employee demonstrates that he or she has obtained additional food safety training prior to renewal of the permit. Rules establishing minimum training requirements must be adopted by the state board of health and developed by the department of health in conjunction with local health jurisdictions and representatives of the food service industry. [1998 c 136 § 1; 1987 c 223 § 5; 1957 c 197 § 1.]

Effective date—1998 c 136 § 1: "Section 1 of this act takes effect July 1, 1999." [1998 c 136 § 6.]

69.06.020 Permit exclusive and valid throughout state—Fee. The permit provided in RCW 69.06.010 or 69.06.070 shall be valid in every city, town and county in the state, for the period for which it is issued, and no other health certificate shall be required of such employees by any municipal corporation or political subdivision of the state. The cost of the permit shall be uniform throughout the state and shall be in that amount set by the state board of health. The cost of the permit shall reflect actual costs of food worker training and education, administration of the program, and testing of applicants. The state board of health shall periodically review the costs associated with the permit program and adjust the fee accordingly. The board shall also ensure that the fee is not set at an amount that would prohibit low-income persons from obtaining permits. [1998 c 136 § 3; 1987 c 223 § 6; 1957 c 197 § 2.]

69.06.030 Diseased persons—May not work—Employer may not hire. It shall be unlawful for any person

afflicted with any contagious or infectious disease that may be transmitted by food or beverage to work in or about any place where unwrapped or unpackaged food and/or beverage products are prepared or sold, or offered for sale for human consumption and it shall be unlawful for any person knowingly to employ a person so afflicted. Nothing in this section eliminates any authority or requirement to control or suppress communicable diseases pursuant to chapter 70.05 RCW and RCW 43.20.050(2)(e). [1998 c 136 § 4; 1957 c 197 § 3.]

69.06.040 Application of chapter to retail food establishments. This chapter shall apply to any retail establishment engaged in the business of food handling or food service. [1987 c 223 § 7; 1957 c 197 § 4.]

69.06.045 Application of chapter to temporary food service establishments. As used in this section, "temporary food service establishment" means a food service establishment operating at a fixed location for a period of time of not more than twenty-one consecutive days in conjunction with a single event or celebration. This chapter applies to temporary food service establishments with the following exceptions:

(1) Only the operator or person in charge of a temporary food service establishment shall be required to secure a food and beverage service workers' permit; and

(2) The operator or person in charge of a temporary food service establishment shall secure a valid food and beverage service workers' permit before commencing the food handling operation. [1987 c 223 § 8.]

69.06.050 Permit to be secured within fourteen days from time of employment. Individuals under this chapter must obtain a food and beverage service workers' permit within fourteen days from commencement of employment. Individuals under this chapter may work for up to fourteen calendar days without a food and beverage service workers' permit, provided that they receive information or training regarding safe food handling practices from the employer prior to commencement of employment. Documentation that the information or training has been provided to the individual must be kept on file by the employer. [1998 c 136 § 5; 1957 c 197 § 5.]

69.06.060 Penalty. Any violation of the provisions of this chapter shall be a misdemeanor. [1957 c 197 § 6.]

69.06.070 Limited duty permit. The local health officer may issue a limited duty permit when necessary to reasonably accommodate a person with a disability. The limited duty permit must specify the activities that the permit holder may perform, and must include only activities having low public health risk. [1998 c 136 § 2.]

69.06.080 Chapter not applicable to persons who meet requirements of RCW 70.128.250. Except for the food safety training standards adopted by the state board of health under RCW 69.06.010, the provisions of this chapter do not apply to persons who work in adult family homes and successfully complete training and continuing education as required by RCW 70.128.250. [2005 c 505 § 7.]

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Chapter 69.07 RCW

WASHINGTON FOOD PROCESSING ACT

Sections

69.07.005	Legislative declaration.
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69.07.040	Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee.
69.07.050	Renewal of license—Additional fee, when.
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69.07.065	Suspension of license summarily—Reinstatement.
69.07.070	Rules and regulations, hearings subject to Administrative Procedure Act.
69.07.080	Inspections by department—Access—When.
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69.07.095	Authority of director and personnel.
69.07.100	Establishments exempted from provisions of chapter.
69.07.103	Chickens—Slaughter, preparation, sale—One thousand or fewer—Special, temporary permit—Rules—Fee.
69.07.110	Enforcement of chapter.
69.07.120	Disposition of money into food processing inspection account.
69.07.135	Unlawful to sell or distribute food from unlicensed processor.
69.07.140	Violations—Warning notice.
69.07.150	Violations—Penalties.
69.07.160	Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW.
69.07.170	Definitions.
69.07.180	Bottled water labeling standards.
69.07.190	Bottled soft drinks, soda, or seltzer exempt from bottled water labeling requirements.
69.07.900	Chapter is cumulative and nonexclusive.
69.07.910	Severability—1967 ex.s. c 121.
69.07.920	Short title.

69.07.005 Legislative declaration. The processing of food intended for public consumption is important and vital to the health and welfare both immediate and future and is hereby declared to be a business affected with the public interest. The provisions of this chapter [1991 c 137] are enacted to safeguard the consuming public from unsafe, adulterated, or misbranded food by requiring licensing of all food processing plants as defined in this chapter and setting forth the requirements for such licensing. [1991 c 137 § 1.]

69.07.010 Definitions. For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means the director of the department;

(3) "Food" means any substance used for food or drink by any person, including ice, bottled water, and any ingredient used for components of any such substance regardless of the quantity of such component;

(4) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media;

(5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: PROVIDED, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;

(6) "Food processing plant" includes but is not limited to any premises, plant, establishment, building, room, area, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for distribution or sale for resale by retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: PROVIDED, That, as set forth herein, estab-

lishments processing foods in any manner for resale shall be considered a food processing plant as to such processing;

(7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants;

(8) "Person" means an individual, partnership, corporation, or association. [1992 c 34 § 3; 1991 c 137 § 2; 1967 ex.s. c 121 § 1.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.07.020 Enforcement—Rules—Adoption—Contents—Standards. (1) The department shall enforce and carry out the provisions of this chapter, and may adopt the necessary rules to carry out its purposes.

(2) Such rules may include:

(a) Standards for temperature controls in the storage of foods, so as to provide proper refrigeration.

(b) Standards for temperatures at which low acid foods must be processed and the length of time such temperatures must be applied and at what pressure in the processing of such low acid foods.

(c) Standards and types of recording devices that must be used in providing records of the processing of low acid foods, and how they shall be made available to the department of agriculture for inspection.

(d) Requirements for the keeping of records of the temperatures, times and pressures at which foods were processed, or for the temperatures at which refrigerated products were stored by the licensee and the furnishing of such records to the department.

(e) Standards that must be used to establish the temperature and purity of water used in the processing of foods. [1969 c 68 § 1; 1967 ex.s. c 121 § 2.]

69.07.040 Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee. It shall be unlawful for any person to operate a food processing plant or process foods in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by the license fee. The license fee is determined

by computing the gross annual sales for the accounting year immediately preceding the license year. If the license is for a new operator, the license fee shall be based on an estimated gross annual sales for the initial license period.

If gross annual sales are:	The license fee is:
\$0 to \$50,000	\$ 55.00
\$50,001 to \$500,000	\$110.00
\$500,001 to \$1,000,000	\$220.00
\$1,000,001 to \$5,000,000	\$385.00
\$5,000,001 to \$10,000,000	\$550.00
Greater than \$10,000,000	\$825.00

Such application shall include the full name of the applicant for the license and the location of the food processing plant he or she intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant. The application shall also specify the type of food to be processed and the method or nature of processing operation or preservation of that food and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. Wherever a license holder wishes to engage in processing a type of food product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities or has a high potential for harm, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of food product only after the amendment has been approved by the department.

If upon investigation by the director, it is determined that a person is processing food for retail sale and is not under permit, license, or inspection by a local health authority, then that person may be considered a food processor and subject to the provisions of this chapter. The director may waive the licensure requirements of this chapter for a person's operations at a facility if the person has obtained a milk processing plant license under chapter 15.36 RCW to conduct the same or a similar operation at the facility. [1995 c 374 § 21. Prior: 1993 sp.s. c 19 § 11; 1993 c 212 § 2; 1992 c 160 § 3; 1991 c 137 § 3; 1988 c 5 § 1; 1969 c 68 § 2; 1967 ex.s. c 121 § 4.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.050 Renewal of license—Additional fee, when. If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license shall be assessed and added

to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he or she has not operated a food processing plant or processed foods subsequent to the expiration of his or her license. [1992 c 160 § 4; 1991 c 137 § 4; 1988 c 5 § 2; 1967 ex.s. c 121 § 5.]

69.07.060 Denial, suspension or revocation of license—Grounds. The director may, subsequent to a hearing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter.

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington Food, Drug, and Cosmetic Act, or any regulations adopted thereunder.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.07.065. [1991 c 137 § 5; 1979 c 154 § 19; 1967 ex.s. c 121 § 6.]

Severability—1979 c 154: See note following RCW 15.49.330.

69.07.065 Suspension of license summarily—Reinstatement. (1) Whenever the director finds an establishment operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an onsite inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food processing operations shall immediately cease. However, the director may reinstate the license when the condition that caused the suspension has been abated to the director's satisfaction. [1991 c 137 § 6.]

69.07.070 Rules and regulations, hearings subject to Administrative Procedure Act. The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.05 RCW,

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the Administrative Procedure Act, as enacted or hereafter amended. [1967 ex.s. c 121 § 7.]

69.07.080 Inspections by department—Access—When. For purpose of determining whether the rules adopted pursuant to RCW 69.07.020, as now or hereafter amended are complied with, the department shall have access for inspection purposes to any part, portion or area of a food processing plant, and any records required to be kept under the provisions of this chapter or rules and regulations adopted hereunder. Such inspection shall, when possible, be made during regular business hours or during any working shift of said food processing plant. The department may, however, inspect such food processing plant at any time when it has received information that an emergency affecting the public health has arisen and such food processing plant is or may be involved in the matters causing such emergency. [1969 c 68 § 3; 1967 ex.s. c 121 § 8.]

69.07.085 Sanitary certificates—Fee. The department may issue sanitary certificates to food processors under this chapter subject to such requirements as it may establish by rule. The fee for issuance shall be fifty dollars per certificate. Fees collected under this section shall be deposited in the agricultural local fund. [1995 c 374 § 23; 1988 c 254 § 9.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.095 Authority of director and personnel. The director or the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement. [1991 c 137 § 7.]

69.07.100 Establishments exempted from provisions of chapter. The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

- (1) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;
- (2) Chapter 69.28 RCW, the Washington state honey act;
- (3) Chapter 16.49 RCW, the Meat inspection act;
- (4) Chapter 77.65 RCW, relating to the direct retail endorsement for wild-caught seafood;
- (5) Title 66 RCW, relating to alcoholic beverage control; and
- (6) Chapter 69.30 RCW, the Sanitary control of shellfish act. However, if any such establishments process foods not specifically provided for in the above entitled acts, such establishments shall be subject to the provisions of this chapter.

The provisions of this chapter shall not apply to restaurants or food service establishments. [2002 c 301 § 10; 1995 c 374 § 22; 1988 c 5 § 4; 1983 c 3 § 168; 1967 ex.s. c 121 § 10.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.103 Chickens—Slaughter, preparation, sale—One thousand or fewer—Special, temporary permit—Rules—Fee. (1) A special, temporary permit issued by the department under this section is required for the slaughter and preparation of one thousand or fewer pastured chickens in a calendar year by the agricultural producer of the chickens for the sale of whole raw chickens by the producer directly to the ultimate consumer at the producer's farm, and for such sale. Such activities shall not be conducted without the permit. However, if the activities are conducted under such a permit, the activities are exempted from any other licensing requirements of this chapter.

(2)(a) The department must adopt by rule requirements for a special, temporary permit for the activities described in subsection (1) of this section. The requirements must be generally patterned after those established by WAC 246-215-190 as it exists on July 27, 2003, for temporary food service establishments, but must be tailored specifically to these slaughter, preparation, and sale activities. The requirements must include, but are not limited to, those for: Cooling procedures, when applicable; sanitary facilities, equipment, and utensils; clean water; washing and other hygienic practices; and waste and wastewater disposal.

(b) The rules must also identify the length of time such a permit is valid. In determining the length of time, the department must take care to ensure that it is adequate to accommodate the seasonal nature of the permitted activities. In adopting any rule under this section, the department must also carefully consider the economic constraints on the regulated activity.

(3) The department shall conduct such inspections of the activities permitted under this section as are reasonably necessary to ensure compliance with permit requirements.

(4) The fee for a special permit issued under this section is seventy-five dollars.

(5) For the purposes of this section, "chicken" means the species *Gallus domesticus*. [2003 c 397 § 2.]

69.07.110 Enforcement of chapter. The department may use all the civil remedies provided for in chapter 69.04 RCW (The Uniform Washington Food, Drug, and Cosmetic Act) in carrying out and enforcing the provisions of this chapter. [1967 ex.s. c 121 § 11.]

69.07.120 Disposition of money into food processing inspection account. All moneys received by the department under the provisions of this chapter shall be paid into the food processing inspection account hereby created within the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out the provisions of this chapter and chapter 69.04 RCW. [1992 c 160 § 5; 1967 ex.s. c 121 § 12.]

69.07.135 Unlawful to sell or distribute food from unlicensed processor. It shall be unlawful to resell, to offer for resale, or to distribute for resale in intrastate commerce any food processed in a food processing plant, which has not obtained a license, as provided for in this chapter, once notification by the director has been given to the person or persons reselling, offering, or distributing food for resale, that said food is from an unlicensed processing operation. [1991 c 137 § 8.]

69.07.140 Violations—Warning notice. Nothing in this chapter shall be construed as requiring the department to report for prosecution violations of this chapter when it believes that the public interest will best be served by a suitable notice of warning in writing. [1967 ex.s. c 121 § 14.]

69.07.150 Violations—Penalties. (1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule or regulation adopted hereunder is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense. [2003 c 53 § 316; 1991 c 137 § 9; 1967 ex.s. c 121 § 15.]

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

69.07.160 Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW. The authority granted to the director and to the department under the provisions of the Uniform Washington Food, Drug, and Cosmetic Act (chapter 69.04 RCW), as now or hereafter amended, shall not be deemed to be reduced or otherwise impaired as a result of any provision or provisions of the Washington Food Processing Act (chapter 69.07 RCW). [1969 c 68 § 4.]

69.07.170 Definitions. As used in RCW 69.07.180 and 69.07.190:

(1) "Artesian water" means bottled water from a well tapping a confined aquifer in which the water level stands above the water table. "Artesian water" shall meet the requirements of "natural water."

(2) "Bottled water" means water that is placed in a sealed container or package and is offered for sale for human consumption or other consumer uses.

(3) "Carbonated water" or "sparkling water" means bottled water containing carbon dioxide.

(4) "Department" means the department of agriculture.

(5) "Distilled water" means bottled water that has been produced by a process of distillation and meets the definition of purified water in the most recent edition of the United States Pharmacopeia.

(6) "Drinking water" means bottled water obtained from an approved source that has at minimum undergone treatment consisting of filtration, activated carbon or particulate, and ozonation or an equivalent disinfection process, or that meets the requirements of the federal safe drinking water act of 1974 as amended and complies with all department of health rules regarding drinking water.

(7) "Mineral water" means bottled water that contains not less than five hundred parts per million total dissolved solids. "Natural mineral water" shall meet the requirements of "natural water."

(8) "Natural water" means bottled spring, mineral, artesian, or well water that is derived from an underground formation and may be derived from a public water system as defined in RCW 70.119A.020 only if that supply has a single source such as an actual spring, artesian well, or pumped well, and has not undergone any treatment that changes its original chemical makeup except ozonization or an equivalent disinfection process.

(9) "Plant operator" means a person who owns or operates a bottled water plant.

(10) "Purified water" means bottled water produced by distillation, deionization, reverse osmosis, or other suitable process and that meets the definition of purified water in the most recent edition of the United States Pharmacopeia. Water that meets this definition and is vaporized, then condensed, may be labeled "distilled water."

(11) "Spring water" means water derived from an underground formation from which water flows naturally to the surface of the earth. "Spring water" shall meet the requirements of "natural water."

(12) "Water dealer" means a person who imports bottled water or causes bulk water to be transported for bottling for human consumption or other consumer uses.

(13) "Well water" means water from a hole bored, drilled, or otherwise constructed in the ground that taps the water of an aquifer. "Well water" shall meet the requirements of "natural water." [1992 c 34 § 1.]

Severability—1992 c 34: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 34 § 9.]

69.07.180 Bottled water labeling standards. All bottled water must conform to applicable federal and state labeling laws and be labeled in compliance with the following standards:

(1) Mineral water may be labeled "mineral water." Bottled water to which minerals are added shall be labeled so as to disclose that minerals are added, and may not be labeled "natural mineral water."

(2) Spring water may be labeled "spring water" or "natural spring water."

(3) Water containing carbon dioxide that emerges from the source and is bottled directly with its entrapped gas or from which the gas is mechanically separated and later reintroduced at a level not higher than naturally occurring in the water may bear on its label the words "naturally carbonated" or "naturally sparkling."

(4) Bottled water that contains carbon dioxide other than that naturally occurring in the source of the product shall be labeled with the words "carbonated," "carbonation added," or "sparkling" if the carbonation is obtained from a natural or manufactured source.

(5) Well water may be labeled "well water" or "natural well water."

(6) Artesian water may be labeled "artesian water" or "natural artesian water."

(7) Purified water may be labeled "purified water" and the method of preparation shall be stated on the label, except that purified water produced by distillation may be labeled as "distilled water."

(8) Drinking water may be labeled "drinking water."

(9) The use of the word "spring," or any derivative of "spring" other than in a trademark, trade name, or company name, to describe water that is not spring water is prohibited.

(10) A product meeting more than one of the definitions in RCW 69.07.170 may be identified by any of the applicable product types defined in RCW 69.07.170, except where otherwise specifically prohibited.

(11) Supplemental printed information and graphics may appear on the label but shall not imply properties of the product or preparation methods that are not factual. [1992 c 34 § 6.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.07.190 Bottled soft drinks, soda, or seltzer exempt from bottled water labeling requirements. Bottled soft drinks, soda, or seltzer products commonly recognized as soft drinks and identified on the product identity panel with a common or usual name other than one of those specified in RCW 69.07.170 are exempt from the requirements of RCW 69.07.180. Water that is not in compliance with the requirements of RCW 69.07.180 may not be identified, labeled, or advertised as "artesian water," "bottled water," "distilled water," "natural water," "purified water," "spring water," or "well water." [1992 c 34 § 7.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.07.900 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1967 ex.s. c 121 § 16.]

69.07.910 Severability—1967 ex.s. c 121. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 121 § 17.]

69.07.920 Short title. This chapter shall be known and designated as the Washington food processing act. [1967 ex.s. c 121 § 18.]

Chapter 69.10 RCW

FOOD STORAGE WAREHOUSES

Sections

69.10.005	Definitions.
69.10.010	Inspection of food storage warehouses—Powers of director.
69.10.015	Annual license required—Director's duties—Fee—Application—Renewal.
69.10.020	Exemption from licensure—Independent inspection—Report to department.
69.10.025	Application for renewal of license after expiration date—Additional fee.
69.10.030	Director may deny, suspend, or revoke license—Actions by applicant—Hearing required.
69.10.035	Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license.
69.10.040	Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce.
69.10.045	Disposition of moneys received under this chapter.
69.10.050	Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses.
69.10.055	Rules.

- 69.10.060 Director and deputies, assistants, and inspectors authorized to act—May take verified statements.
 69.10.900 Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68.

69.10.005 Definitions. For the purpose of this chapter:

(1) "Food storage warehouse" means any premises, establishment, building, room area, facility, or place, in whole or in part, where food is stored, kept, or held for wholesale distribution to other wholesalers or to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer. Food storage warehouses include, but are not limited to, facilities where food is kept or held refrigerated or frozen and include facilities where food is stored to the account of another firm and/or is owned by the food storage warehouse. "Food storage warehouse" does not include grain elevators or fruit and vegetable storage and packing houses that store, pack, and ship fresh fruit and vegetables even though they may use refrigerated or controlled atmosphere storage practices in their operation. However, this chapter applies to multiple food storage operations that also distribute or ripen fruits and vegetables.

(2) "Department" means the Washington department of agriculture.

(3) "Director" means the director of the Washington department of agriculture.

(4) "Food" means the same as defined in RCW 69.04.008.

(5) "Independent sanitation consultant" means an individual, partnership, cooperative, or corporation that by reason of education, certification, and experience has satisfactorily demonstrated expertise in food and dairy sanitation and is approved by the director to advise on such areas including, but not limited to: Principles of cleaning and sanitizing food processing plants and equipment; rodent, insect, bird, and other pest control; principals [principles] of hazard analysis critical control point; basic food product labeling; principles of proper food storage and protection; proper personnel work practices and attire; sanitary design, construction, and installation of food plant facilities, equipment, and utensils; and other pertinent food safety issues. [1995 c 374 § 8.]

69.10.010 Inspection of food storage warehouses—Powers of director. The director or his or her representative may inspect food storage warehouses for compliance with the provisions of chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW as deemed necessary by the director. Any food storage warehouse found to not be in substantial compliance with chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW will be reinspected as deemed necessary by the director to determine compliance. This does not preclude the director from using any other remedies as provided under chapter 69.04 RCW to gain compliance or to embargo products as provided under RCW 69.04.110 to protect the public from adulterated foods. [1995 c 374 § 9.]

69.10.015 Annual license required—Director's duties—Fee—Application—Renewal. Except as provided in this section and RCW 69.10.020, it shall be unlawful for any person to operate a food storage warehouse in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the

director. Application for a license or license renewal shall be on a form prescribed by the director and accompanied by the license fee. The license fee is fifty dollars.

For a food storage warehouse that has been inspected on at least an annual basis for compliance with the provisions of the current good manufacturing practices (Title 21 C.F.R. part 110) by a federal agency or by a state agency acting on behalf of and under contract with a federal agency and that is not exempted from licensure by RCW 69.10.020, the annual license fee for the warehouse is twenty-five dollars.

The application shall include the full name of the applicant for the license and the location of the food storage warehouse he or she intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation must be given on the application. The application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted under this chapter by the department, the applicant shall be issued a license or renewal thereof. The director shall waive licensure under this chapter for firms that are licensed under the provisions of chapter 69.07 or 15.36 RCW. [1995 c 374 § 10.]

69.10.020 Exemption from licensure—Independent inspection—Report to department. A food storage warehouse that is inspected for compliance with the current good manufacturing practices (Title 21 C.F.R. part 110) on at least an annual basis by an independent sanitation consultant approved by the department shall be exempted from licensure under this chapter.

A report identifying the inspector and the inspecting entity, the date of the inspection, and any violations noted on such inspection shall be forwarded to the department by the food storage warehouse within sixty days of the completion of the inspection. An inspection shall be conducted and an inspection report for a food storage warehouse shall be filed with the department at least once every twelve months or the warehouse shall be licensed under this chapter and inspected by the department for a period of two years. [1995 c 374 § 11.]

69.10.025 Application for renewal of license after expiration date—Additional fee. If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license shall be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued. [1995 c 374 § 12.]

69.10.030 Director may deny, suspend, or revoke license—Actions by applicant—Hearing required. The director may, subsequent to a hearing thereon, deny, suspend, or revoke any license provided for in this chapter if he or she

determines that an applicant has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules adopted under this chapter, or any lawful order of the director;

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make such records available if requested pursuant to the provisions of this chapter;

(3) Refused the department access to any portion or area of the food storage warehouse for the purpose of carrying out the provisions of this chapter;

(4) Refused the department access to any records required to be kept under the provisions of this chapter;

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington food, drug, and cosmetic act, or any rules adopted under chapter 69.04 RCW.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.10.035. [1995 c 374 § 13.]

69.10.035 Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license. (1) Whenever the director finds a food storage warehouse operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an on-site inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food distribution operations shall immediately cease. However, the director may reinstate the license if the condition that caused the suspension has been abated to the director's satisfaction. [1995 c 374 § 14.]

69.10.040 Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce. It is unlawful to sell, offer for sale, or distribute in intrastate commerce food from or stored in a food storage warehouse that is required to be licensed under this chapter but that has not obtained a license, once notification by the director has been given to the persons selling, offering, or distributing food for sale, that the food is in or from such an unlicensed food storage warehouse. [1995 c 374 § 15.]

69.10.045 Disposition of moneys received under this chapter. All moneys received by the department under provisions of this chapter, except moneys collected for civil penalties levied under this chapter, shall be paid into an account created in the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out provisions of this chapter and chapter 69.04 RCW. All moneys collected

for civil penalties levied under this chapter shall be deposited in the state general fund. [1995 c 374 § 16.]

69.10.050 Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses. (1) Except as provided in subsection (2) of this section, the department may use all the civil remedies provided under chapter 69.04 RCW in carrying out and enforcing the provisions of this chapter.

(2) Civil penalties are intended to be used to obtain compliance and shall not be collected if a warehouse successfully completes a mutually agreed upon compliance agreement with the department. A warehouse that enters into a compliance agreement with the department shall pay only for inspections conducted by the department and any laboratory analyses as required by the inspections as outlined and agreed to in the compliance agreement. In no event shall the fee for these inspections and analyses exceed four hundred dollars per inspection or one thousand dollars in total. [1995 c 374 § 17.]

69.10.055 Rules. (1) The department shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose.

(2) The adoption of rules under the provisions of this chapter are subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act. [1995 c 374 § 18.]

69.10.060 Director and deputies, assistants, and inspectors authorized to act—May take verified statements. The director or director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement. [1995 c 374 § 19.]

69.10.900 Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68. See note following RCW 15.36.012.

Chapter 69.25 RCW

WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

Sections

69.25.010	Legislative finding.
69.25.020	Definitions.
69.25.030	Purpose—Certain federal rules adopted by reference—Hearing, notice by director—Adoption of rules by director.
69.25.040	Application of administrative procedure act.
69.25.050	Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure.
69.25.060	Egg handler's or dealer's license—Late renewal fee.
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69.25.080	Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers.
69.25.090	Sanitary operation of official plants—Inspection refused if requirements not met.
69.25.100	Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal.

69.25.110	Prohibited acts and practices.
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69.25.270	Assessment—Monthly payment—Audit—Failure to pay, penalty.
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69.25.300	Transfer of moneys in state egg account.
69.25.310	Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another handler's or dealer's permanent number—Penalty.
69.25.320	Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation.
69.25.900	Savings.
69.25.910	Chapter is cumulative and nonexclusive.
69.25.920	Severability—1975 1st ex.s. c 201.
69.25.930	Short title.

69.25.010 Legislative finding. Eggs and egg products are an important source of the state's total supply of food, and are used in food in various forms. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential, in the public interest, that the health and welfare of consumers be protected by the adoption of measures prescribed herein for assuring that eggs and egg products distributed to them and used in products consumed by them are wholesome, otherwise not adulterated, and properly labeled and packaged. Lack of effective regulation for the handling or disposition of unwholesome, otherwise adulterated, or improperly labeled or packaged egg products and certain qualities of eggs is injurious to the public welfare and destroys markets for wholesome, unadulterated, and properly labeled and packaged eggs and egg products and results in sundry losses to producers and processors, as well as injury to consumers. Unwholesome, otherwise adulterated, or improperly labeled or packaged products can be sold at lower prices and compete unfairly with the wholesome, unadulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that all egg products and the qualities of eggs which are regulated under this chapter are either in intrastate commerce, or substantially affect such commerce, and that regulation by the director, as contemplated by this chapter, is appropriate to protect the health and welfare of consumers. [1975 1st ex.s. c 201 § 2.]

69.25.020 Definitions. When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396, as enacted or hereafter amended: PROVIDED, That an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs;

(h) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(l) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any sub-

stance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer: PROVIDED, That for the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other species of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg con-

tents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaur-

rant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(38) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(39) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs. [1995 c 374 § 25; 1982 c 182 § 42; 1975 1st ex.s. c 201 § 3.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1982 c 182: See RCW 19.02.901.

69.25.030 Purpose—Certain federal rules adopted by reference—Hearing, notice by director—Adoption of rules by director. The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal egg products inspection act, 21 U.S.C. sec. 1031, et seq., and regulations adopted thereunder. In accord with such declared purpose, any regulations adopted under the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), in effect on July 1, 1975, are hereby deemed to have been adopted under the provisions hereof. Further, to promote such uniformity, any regulations adopted hereafter under the provisions of the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), and published in the federal register, shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.05 RCW, as now or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal egg products inspection act, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.05 RCW, as now or hereafter amended.

The director, in addition to the foregoing, may adopt any rule and regulation necessary to carry out the purpose and provisions of this chapter. [1975 1st ex.s. c 201 § 4.]

69.25.040 Application of administrative procedure act. The adoption, amendment, modification, or revocation of any rules or regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued or denied under the provisions of this chapter, shall be subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act, as now or hereafter amended. [1975 1st ex.s. c 201 § 5.]

69.25.050 Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure. No person shall act as an egg handler or dealer without first obtaining an annual license and permanent

dealer's number from the department; such license shall expire on the master license expiration date. Application for an egg dealer license or egg dealer branch license, shall be made through the master license system. The annual egg dealer license fee shall be thirty dollars and the annual egg dealer branch license fee shall be fifteen dollars. A copy of the master license shall be posted at each location where such licensee operates. Such application shall include the full name of the applicant for the license and the location of each facility he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director. Upon the approval of the application and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. Such license and permanent egg handler or dealer's number shall be non-transferable. [1995 c 374 § 26; 1982 c 182 § 43; 1975 1st ex.s. c 201 § 6.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1982 c 182: See RCW 19.02.901.

Master license—Expiration date: RCW 19.02.090.

Master license system

definition: RCW 69.25.020(38).

existing licenses or permits registered under, when: RCW 19.02.810.

to include additional licenses: RCW 19.02.110.

69.25.060 Egg handler's or dealer's license—Late renewal fee. If the application for the renewal of an egg handler's or dealer's license is not filed before the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 44; 1975 1st ex.s. c 201 § 7.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system—Existing licenses or permits registered under, when: RCW 19.02.810.

69.25.070 Egg handler's or dealer's license—Denial, suspension, revocation, or conditional issuance. The department may deny, suspend, revoke, or issue a license or a conditional license if it determines that an applicant or licensee has committed any of the following acts:

(1) That the applicant or licensee is violating or has violated any of the provisions of this chapter or rules and regulations adopted thereunder.

(2) That the application contains any materially false or misleading statement or involves any misrepresentation by any officer, agent, or employee of the applicant.

(3) That the applicant or licensee has concealed or withheld any facts regarding any violation of this chapter by any

officer, agent, or employee of the applicant or licensee. [1975 1st ex.s. c 201 § 8.]

69.25.080 Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers. (1) For the purpose of preventing the entry into or movement in intrastate commerce of any egg product which is capable of use as human food and is misbranded or adulterated, the director shall, whenever processing operations are being conducted, unless under inspection by the United States department of agriculture, cause continuous inspection to be made, in accordance with the regulations promulgated under this chapter, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under RCW 69.25.170. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of RCW 69.25.170(1)(a) in the preparation of any articles for human food, shall be deemed to be a plant processing egg products, with respect to such operations.

(2) The director, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

(3) Eggs and egg products found to be adulterated at official plants shall be condemned, and if no appeal be taken from such determination or condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: PROVIDED, That articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the director determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

(4) The director shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under RCW 69.25.140, as he deems appropriate (and in the case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of RCW 69.25.140, except that the director shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of the director shall be afforded access to all such places of business for purposes of making the inspections provided for in this chapter. [1975 1st ex.s. c 201 § 9.]

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69.25.090 Sanitary operation of official plants—Inspection refused if requirements not met. (1) The operator of each official plant shall operate such plant in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the director to effectuate the purposes of this chapter, including requirements for segregation and disposition of restricted eggs.

(2) The director shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. [1975 1st ex.s. c 201 § 10.]

69.25.100 Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal. (1) Egg products inspected at any official plant under the authority of this chapter and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the director, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations of the director, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the director may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

(2) No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the director. If the director has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the director, such person may request a hearing, but the use of the labeling or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business. [1975 1st ex.s. c 201 § 11.]

69.25.110 Prohibited acts and practices. (1) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in any business in intrastate commerce any restricted eggs, capable of use as human food, except as authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(2) No egg handler shall possess with intent to use, or use, any restricted eggs in the preparation of human food for intrastate commerce except that such eggs may be so possessed and used when authorized by regulations of the direc-

tor under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(3) No person shall process any egg products for intrastate commerce at any plant except in compliance with the requirements of this chapter.

(4) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in intrastate commerce any egg products required to be inspected under this chapter unless they have been so inspected and are labeled and packaged in accordance with the requirements of RCW 69.25.100.

(5) No operator of any official plant shall allow any egg products to be moved from such plant if they are adulterated or misbranded and capable of use as human food.

(6) No person shall:

(a) Manufacture, cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director;

(b) Forge or alter any official device, mark, or certificate;

(c) Without authorization from the director, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark; or use any labeling or container ordered to be withheld from use under RCW 69.25.100 after final judicial affirmance of such order or expiration of the time for appeal if no appeal is taken under said section;

(d) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(e) Knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;

(f) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director;

(g) Knowingly represent that any article has been inspected or exempted, under this chapter when in fact it has not been so inspected or exempted; and

(h) Refuse access, at any reasonable time, to any representative of the director, to any plant or other place of business subject to inspection under any provisions of this chapter.

(7) No person, while an official or employee of the state or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States government or the state in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which the originator or relator of such information claims to be entitled to protection as a trade secret. [1975 1st ex.s. c 201 § 12.]

69.25.120 Director to cooperate with other agencies—May conduct examinations. The director shall, whenever he determines that it would effectuate the purposes of this chapter, cooperate with any state, federal or other gov-

ernmental agencies in carrying out any provisions of this chapter. In carrying out the provisions of this chapter, the director may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose. [1975 1st ex.s. c 201 § 13.]

69.25.130 Eggs or egg products not intended for use as human food—Identification or denaturing required.

Inspection shall not be provided under this chapter at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in intrastate commerce, shall be denatured or identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in intrastate commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or identified as required by the regulations of the director. [1975 1st ex.s. c 201 § 14.]

69.25.140 Records required, access to and copying of.

For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in intrastate commerce or in interstate commerce, or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner, as the director may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of the director, permit him at reasonable times to have access to and to copy all such records. [1975 1st ex.s. c 201 § 15.]

69.25.150 Penalties—Liability of employer—Defense. (1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

(3) When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of the person's employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(4) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation

of RCW 69.25.140, or 69.25.155, by reason of his or her receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he or she received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman. [2003 c 53 § 317; 1995 c 374 § 27; 1992 c 7 § 47; 1975 1st ex.s. c 201 § 16.]

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

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.155 Interference with person performing official duties. (1) Notwithstanding any other provision of law, any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his or her official duties under this chapter is guilty of a class C felony and shall be punished by a fine of not more than five thousand dollars or imprisonment in a state correctional facility for not more than three years, or both.

(2) Whoever, in the commission of any act described in subsection (1) of this section, uses a deadly or dangerous weapon is guilty of a class B felony and shall be punished by a fine of not more than ten thousand dollars or by imprisonment in a state correctional facility for not more than ten years, or both. [2003 c 53 § 318.]

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

69.25.160 Notice of violation—May take place of prosecution. Before any violation of this chapter, other than RCW 69.25.155, is reported by the director to any prosecuting attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his or her views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violation of this chapter whenever he or she believes that the public interest will be adequately served and compliance with this chapter obtained by a suitable written notice of warning. [2003 c 53 § 319; 1975 1st ex.s. c 201 § 17.]

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

69.25.170 Exemptions permitted by rule of director. (1) The director may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter:

(a) The sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the

tolerance in the official state standards for consumer grades for shell eggs;

(b) The processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the director, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of the state consumer grades for shell eggs, and the egg products processed at such plant;

(c) The sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(d) The sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(e) The sale of eggs by any egg producer with an annual egg production from a flock of three thousand hens or less.

(2) The director may modify or revoke any regulation granting exemption under this chapter whenever he deems such action appropriate to effectuate the purposes of this chapter. [1995 c 374 § 28; 1975 1st ex.s. c 201 § 18.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.180 Limiting entry of eggs and egg products into official plants. The director may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may prescribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this chapter. [1975 1st ex.s. c 201 § 19.]

69.25.190 Embargo of eggs or egg products in violation of this chapter—Time limit—Removal of official marks. Whenever any eggs or egg products subject to this chapter are found by any authorized representative of the director upon any premises and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this chapter, or that they are in any other way in violation of this chapter, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the director, such articles may be embargoed by such representative for a reasonable period but not to exceed twenty days, pending action under RCW 69.25.200 or notification of any federal or other governmental authorities having jurisdiction over such articles, and shall not be moved by any person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the director that the articles are eligible to retain such marks. [1975 1st ex.s. c 201 § 20.]

69.25.200 Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required. When the director has embargoed any eggs or egg products, he shall petition the superior court of the county in which the eggs or egg products are located for an order affirming such embargo. Such court shall have jurisdiction for cause shown and after a prompt hearing to any claimant of eggs or egg products, shall issue an order which directs the removal of such embargo or the destruction or correction and release of such eggs and egg products. An order for destruction or the correction and release of such eggs and egg products shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond as the court finds indicated in the circumstance. [1975 1st ex.s. c 201 § 21.]

69.25.210 Embargo—Order affirming not required, when. The director need not petition the superior court as provided for in RCW 69.25.200 if the owner or claimant of such eggs or egg products agrees in writing to the disposition of such eggs or egg products as the director may order. [1975 1st ex.s. c 201 § 22.]

69.25.220 Embargo—Consolidation of petitions. Two or more petitions under RCW 69.25.200 which pend at the same time and which present the same issue and claimant hereunder may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or claimant. [1975 1st ex.s. c 201 § 23.]

69.25.230 Embargo—Sampling of article. The claimant in any proceeding by petition under RCW 69.25.200 shall be entitled to receive a representative sample of the article subject to such proceedings upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 201 § 24.]

69.25.240 Condemnation—Recovery of damages restricted. No state court shall allow the recovery of damages for administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 201 § 25.]

69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency. There is hereby levied an assessment not to exceed three mills per dozen eggs entering intrastate commerce, as prescribed by rules and regulations issued by the director. Such assessment shall be applicable to all eggs entering intrastate commerce except as provided in RCW 69.25.170 and 69.25.290. Such assessment shall be paid to the director on a monthly basis on or before the tenth day following the month such eggs enter intrastate commerce. The director may require reports by egg handlers or dealers along with the payment of the assessment fee. Such reports may include any and all pertinent information necessary to carry out the purposes of this chapter. The

director may, by regulations, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's permanent number. [1995 c 374 § 29; 1993 sp.s. c 19 § 12; 1975 1st ex.s. c 201 § 26.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.260 Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers or labels. Any egg handler or dealer may prepay the assessment provided for in RCW 69.25.250 by purchasing Washington state egg seals from the director to be placed on egg containers showing that the proper assessment has been paid. Any carton manufacturer or printer may apply to the director for a permit to place reasonable facsimiles of the Washington state egg seals to be imprinted on egg containers or on the identification labels which show egg grade and size and the name of the egg handler or dealer. The director shall, from time to time, prescribe rules and regulations governing the affixing of seals and he is authorized to cancel any such permit issued pursuant to this chapter, whenever he finds that a violation of the terms under which the permit has been granted has been violated. [1979 ex.s. c 238 § 10; 1975 1st ex.s. c 201 § 27.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

69.25.270 Assessment—Monthly payment—Audit—Failure to pay, penalty. Every egg handler or dealer who pays assessments required under the provisions of this chapter on a monthly basis in lieu of seals shall be subject to audit by the director at such frequency as is deemed necessary by the director. The cost to the director for performing such audit shall be chargeable to and payable by the egg handler or dealer subject to audit. Failure to pay assessments when due or refusal to pay for audit costs may be cause for a summary suspension of an egg handler's or dealer's license and a charge of one percent per month, or fraction thereof shall be added to the sum due the director, for each remittance not received by the director when due. The conditions and charges applicable to egg handlers and dealers set forth herein shall also be applicable to payments due the director for facsimiles of seals placed on egg containers. [1987 c 393 § 16; 1975 1st ex.s. c 201 § 28.]

69.25.280 Assessment—Use of proceeds. The proceeds from assessment fees paid to the director shall be retained for the inspection of eggs and carrying out the provisions of this chapter relating to eggs. [1975 1st ex.s. c 201 § 29.]

69.25.290 Assessment—Exclusions. The assessments provided in this chapter shall not apply to:

- (1) Sale and shipment to points outside of this state;
- (2) Sale to the United States government and its instrumentalities;
- (3) Sale to breaking plants for processing into egg products;
- (4) Sale between egg dealers. [1975 1st ex.s. c 201 § 30.]

69.25.300 Transfer of moneys in state egg account.

All moneys in the state egg account, created by *RCW 69.24.450, at the time of July 1, 1975, shall be transferred to the director and shall be retained and expended for administering and carrying out the purposes of this chapter. [1975 1st ex.s. c 201 § 31.]

*Reviser's note: RCW 69.24.450 was repealed by 1975 1st ex.s. c 201 § 40.

69.25.310 Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another handler's or dealer's permanent number—Penalty.

(1) All containers used by an egg handler or dealer to package eggs shall bear the name and address or the permanent number issued by the director to said egg handler or dealer. Such permanent number shall be displayed in a size and location prescribed by the director. It shall be a violation for any egg handler or dealer to use a container that bears the permanent number of another egg handler or dealer unless such number is totally obliterated prior to use. The director may in addition require the obliteration of any or all markings that may be on any container which will be used for eggs by an egg handler or dealer.

(2) Notwithstanding subsection (1) of this section and following written notice to the director, licensed egg handlers and dealers may use new containers bearing another handler's or dealer's permanent number on a temporary basis, in any event not longer than one year, with the consent of such other handler or dealer for the purpose of using up existing container stocks. Sale of container stock shall constitute agreement by the parties to use the permanent number. [1995 c 374 § 30; 1975 1st ex.s. c 201 § 32.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.320 Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation.

(1) In addition to any other records required to be kept and furnished the director under the provisions of this chapter, the director may require any person who sells to any retailer, or to any restaurant, hotel, boarding house, bakery, or any institution or concern which purchases eggs for serving to guests or patrons thereof or for its use in preparation of any food product for human consumption, candled or graded eggs other than those of his own production sold and delivered on the premises where produced, to furnish that retailer or other purchaser with an invoice covering each such sale, showing the exact grade or quality, and the size or weight of the eggs sold, according to the standards prescribed by the director, together with the name and address of the person by whom the eggs were sold. The person selling and the retailer or other purchaser shall keep a copy of said invoice on file at his place of business for a period of thirty days, during which time the copy shall be available for inspection at all reasonable times by the director: PROVIDED, That no retailer or other purchaser shall be guilty of a violation of this chapter if he can establish a guarantee from the person from whom the eggs were purchased to the effect that they, at the time of purchase, conformed to the information required by the director

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on such invoice: PROVIDED FURTHER, That if the retailer or other purchaser having labeled any such eggs in accordance with the invoice keeps them for such a time after they are purchased as to cause them to deteriorate to a lower grade or standard, and sells them under the label of the invoice grade or standard, he shall be guilty of a violation of this chapter.

(2) Each retailer and each distributor shall store shell eggs awaiting sale or display eggs under clean and sanitary conditions in areas free from rodents and insects. Shell eggs must be stored up off the floor away from strong odors, pesticides, and cleaners.

(3) After being received at the point of first purchase, all graded shell eggs packed in containers for the purpose of sale to consumers shall be held and transported under refrigeration at ambient temperatures no greater than forty-five degrees Fahrenheit (seven and two-tenths degrees Celsius). This provision shall apply without limitation to retailers, institutional users, dealer/wholesalers, food handlers, transportation firms, or any person who handles eggs after the point of first purchase.

(4) No invoice shall be required on eggs when packed for sale to the United States department of defense, or a component thereof, if labeled with grades promulgated by the United States secretary of agriculture. [1995 c 374 § 31; 1975 1st ex.s. c 201 § 33.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.900 Savings. The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1975. [1975 1st ex.s. c 201 § 35.]

69.25.910 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy at law. [1975 1st ex.s. c 201 § 37.]

69.25.920 Severability—1975 1st ex.s. c 201. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 201 § 38.]

69.25.930 Short title. This act may be known and cited as the "Washington wholesome eggs and egg products act". [1975 1st ex.s. c 201 § 39.]

Chapter 69.28 RCW**HONEY**

Sections

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69.28.450	Recovery of damages barred if probable cause for embargo.
69.28.900	Severability—1939 c 199.
69.28.910	Short title.

Bees and apiaries: Chapter 15.60 RCW.

Commission merchants, agricultural products: Title 20 RCW.

69.28.020 Enforcement power and duty of director and agents. The director is hereby empowered, through his duly authorized agents, to enforce all provisions of this chapter. The director shall have the power to define, promulgate and enforce such reasonable regulations as he may deem necessary in carrying out the provisions of this chapter. [1939 c 199 § 29; RRS § 6163-29. FORMER PART OF SECTION: 1939 c 199 § 44 now codified as RCW 69.28.025.]

69.28.025 Rules and regulations have force of law. Any rules or regulations promulgated and published by the director under the provisions of this chapter shall have the force and effect of law. [1939 c 199 § 44; RRS § 6163-44. Formerly RCW 69.28.020, part.]

69.28.030 Rules prescribing standards. The director is hereby authorized, and it shall be his duty, upon the taking effect of this chapter and from time to time thereafter, to adopt, establish and promulgate reasonable rules and regulations specifying grades or standards of quality governing the sale of honey: PROVIDED, That, in the interest of uniformity, such grades and standards of quality shall conform as nearly to those established by the United States department of agriculture as local conditions will permit. [1939 c 199 § 24; RRS § 6163-24.]

69.28.040 Right to enter, inspect, and take samples.

The director or any of his duly authorized agents shall have the power to enter and inspect at reasonable times every place, vehicle, plant or other place where honey is being produced, stored, packed, transported, exposed, or offered for sale, and to inspect all such honey and the containers thereof and to take for inspection such samples of said honey as may be necessary. [1939 c 199 § 28; RRS § 6163-28.]

69.28.050 Containers to be labeled. It shall be unlawful to deliver for shipment, ship, transport, sell, expose or offer for sale any containers or subcontainers of honey within this state unless they shall be conspicuously marked with the name and address of the producer or distributor, the net weight of the honey, the grade of the honey, and, if imported from any foreign country, the name of the country or territory from which the said honey was imported, or if a blend of honey, any part of which is foreign honey, the container must be labeled with the name of the country or territory where such honey was produced and the proportion of each foreign honey used in the blend. [1939 c 199 § 32; RRS § 6163-32.]

69.28.060 Requisites of markings. When any markings are used or required to be used under this chapter on any container of honey to identify the container or describe the contents thereof, such markings must be plainly and conspicuously marked, stamped, stenciled, printed, labeled or branded in the English language, in letters large enough to be discernible by any person, on the front, side or top of any container. [1939 c 199 § 35; RRS § 6163-35.]

69.28.070 "Marked" defined—When honey need not be marked. The term "marked" shall mean printed in the English language on the top, front or side of any container containing honey: PROVIDED, That it shall not be necessary to mark honey sold by the producer thereof to any distributor, packer or manufacturer with the net weight, color or grade if the honey is to be used in the manufacture of honey products or is to be graded and packaged by the distributor or packer for resale. [1939 c 199 § 21; RRS § 6163-21.]

69.28.080 Purchaser to be advised of standards—Exceptions. It shall be unlawful for any person to deliver, sell, offer, or expose for sale any honey for human consumption within the state without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality of such honey, according to the standards prescribed by the director, by stamping or printing on the container of any such honey such grade or quality: PROVIDED, This section shall not apply to honey while it is in transit in intrastate commerce from one establishment to the other, to be processed, labeled, or repacked. [1961 c 60 § 1; 1957 c 103 § 1; 1949 c 105 § 6; 1939 c 199 § 39; Rem. Supp. 1949 § 6163-39.]

69.28.090 Forgery, simulation, etc., of marks, labels, etc., unlawful. It shall be unlawful to forge, counterfeit, simulate, falsely represent or alter without proper authority any mark, stamp, tab, label, seal, sticker or other identification device provided by this chapter. [1961 c 60 § 2; 1939 c 199

§ 40; RRS § 6163-40. FORMER PART OF SECTION: 1939 c 199 § 41 now codified as RCW 69.28.095.]

69.28.095 Unlawful mutilation or removal of seals, marks, etc., used by director. It shall be unlawful to mutilate, destroy, obliterate, or remove without proper authority, any mark, stamp, tag, label, seal, sticker or other identification device used by the director under the provisions of this chapter. [1939 c 199 § 41; RRS § 6163-41. Formerly RCW 69.28.090, part.]

69.28.100 Marks for "slack-filled" container. Any slack-filled container shall be conspicuously marked "slack-filled". [1939 c 199 § 36; RRS § 6163-36. FORMER PART OF SECTION: 1939 c 199 § 10 now codified as RCW 69.28.270.]

69.28.110 Use of used containers. It shall be unlawful to sell, offer, or expose for sale to the consumer any honey in any secondhand or used containers which formerly contained honey, unless all markings as to grade, name and weight have been obliterated, removed or erased. [1939 c 199 § 37; RRS § 6163-37.]

69.28.120 Floral source labels. Any honey which is a blend of two or more floral types of honey shall not be labeled as a honey product from any one particular floral source alone. [1939 c 199 § 34; RRS § 6163-34.]

69.28.130 Adulterated honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any adulterated honey as honey. [1939 c 199 § 26; RRS § 6163-26. FORMER PART OF SECTION: 1939 c 199 §§ 27 and 33 now codified as RCW 69.28.133 and 69.28.135.]

69.28.133 Nonconforming honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any honey which does not conform to the provisions of this chapter or any regulation promulgated by the director under this chapter. [1939 c 199 § 27; RRS § 6163-27. Formerly RCW 69.28.130, part.]

69.28.135 Warning-tagged honey—Movement prohibited. It shall be unlawful to move any honey or containers of honey to which any warning tag or notice has been affixed except under authority from the director. [1939 c 199 § 33; RRS § 6163-33. Formerly RCW 69.28.130, part.]

69.28.140 Possession of unlawful honey as evidence. Possession by any person, of any honey which is sold, exposed or offered for sale in violation of this chapter shall be prima facie evidence that the same is kept or shipped to the said person, in violation of the provisions of this chapter. [1939 c 199 § 30; RRS § 6163-30.]

69.28.170 Inspectors—Prosecutions. It shall be the duty of the director to enforce this chapter and to appoint and employment [employ] such inspectors as may be necessary therefor. The director shall notify the prosecuting attorneys

for the counties of the state of violations of this chapter occurring in their respective counties, and it shall be the duty of the respective prosecuting attorneys immediately to institute and prosecute proceeding in their respective counties and to enforce the penalties provided for by this chapter. [1939 c 199 § 43; RRS § 6163-43.]

69.28.180 Violation of rules and regulations unlawful. It shall be unlawful for any person to violate any rule or regulation promulgated by the director under the provisions of this chapter. [1939 c 199 § 25; RRS § 6163-25. FORMER PART OF SECTION: 1939 c 199 § 44 now codified in RCW 69.28.185.]

69.28.185 Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon violation thereof shall be punishable by a fine of not more than five hundred dollars or imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment. [1939 c 199 § 42; RRS § 6163-42. Formerly RCW 69.28.180, part.]

69.28.190 "Director" defined. The term "director" means the director of agriculture of the state of Washington or his duly authorized representative. [1939 c 199 § 2; RRS § 6163-2. Formerly RCW 69.28.010, part.]

69.28.200 "Container" defined. The term "container" shall mean any box, crate, chest, carton, barrel, keg, bottle, jar, can or any other receptacle containing honey. [1939 c 199 § 3; RRS § 6163-3.]

69.28.210 "Subcontainer" defined. The term "subcontainer" shall mean any section box or other receptacle used within a container. [1939 c 199 § 4; RRS § 6163-4.]

69.28.220 "Section box" defined. The term "section box" shall mean the wood or other frame in which bees have built a small comb of honey. [1939 c 199 § 5; RRS § 6163-5.]

69.28.230 "Clean and sound containers" defined. The term "clean and sound containers" shall mean containers which are virtually free from rust, stains or leaks. [1939 c 199 § 6; RRS § 6163-6.]

69.28.240 "Pack", "packing", or "packed" defined. The term "pack", "packing", or "packed" shall mean the arrangement of all or part of the subcontainers in any container. [1939 c 199 § 7; RRS § 6163-7.]

69.28.250 "Label" defined. The term "label" shall mean a display of written, printed or graphic matter upon the immediate container of any article. [1939 c 199 § 8; RRS § 6163-8.]

69.28.260 "Person" defined. The term "person" includes individual, partnership, corporation and/or association. [1939 c 199 § 9; RRS § 6163-9.]

69.28.270 "Slack-filled" defined. The term "slack-filled" shall mean that the contents of any container occupy less than ninety-five percent of the volume of the closed container. [1939 c 199 § 10; RRS § 6163-10. Formerly RCW 69.28.100, part.]

69.28.280 "Deceptive arrangement" defined. The term "deceptive arrangement" shall mean any lot or load, arrangement or display of honey which has in any exposed surface, honey which is so superior in quality, appearance or condition, or in any other respects, to any of that which is concealed or unexposed as to materially misrepresent any part of the lot, load, arrangement or display. [1939 c 199 § 11; RRS § 6163-11.]

69.28.290 "Mislabeled" defined. The term "mislabeled" shall mean the placing or presence of any false or misleading statement, design or device upon, or in connection with, any container or lot of honey, or upon the label, lining or wrapper of any such container, or any placard used in connection therewith, and having reference to such honey. A statement, design or device is false and misleading when the honey to which it refers does not conform in every respect to such statement. [1939 c 199 § 12; RRS § 6163-12.]

69.28.300 "Placard" defined. The term "placard" means any sign, label or designation, other than an oral designation, used with any honey as a description or identification thereof. [1939 c 199 § 13; RRS § 6163-13.]

69.28.310 "Honey" defined. The term "honey" as used herein is the nectar of floral exudations of plants, gathered and stored in the comb by honey bees (*apis mellifica*). It is laevo-rotatory, contains not more than twenty-five percent of water, not more than twenty-five one-hundredths of one percent of ash, not more than eight percent of sucrose, its specific gravity is 1.412, its weight not less than eleven pounds twelve ounces per standard gallon of 231 cubic inches at sixty-eight degrees Fahrenheit. [1939 c 199 § 14; RRS § 6163-14. Formerly RCW 69.28.010, part.]

69.28.320 "Comb-honey" defined. The term "comb-honey" means honey which has not been extracted from the comb. [1939 c 199 § 15; RRS § 6163-15.]

69.28.330 "Extracted honey" defined. The term "extracted honey" means honey which has been removed from the comb. [1939 c 199 § 16; RRS § 6163-16.]

69.28.340 "Crystallized honey" defined. The term "crystallized honey" means honey which has assumed a solid form due to the crystallization of one or more of the natural sugars therein. [1939 c 199 § 17; RRS § 6163-17.]

69.28.350 "Honeydew" defined. The term "honeydew" is the saccharine exudation of plants, other than nectarous exudations, gathered and stored in the comb by honey bees (*apis mellifica*) and is dextrorotatory. [1939 c 199 § 18; RRS § 6163-18. Formerly RCW 69.28.010, part.]

69.28.360 "Foreign material" defined. The term "foreign material" means pollen, wax particles, insects, or materials not deposited by bees. [1937 c 199 § 19; RRS § 6163-19.]

69.28.370 "Foreign honey" defined. The term "foreign honey" means any honey not produced within the continental United States. [1939 c 199 § 20; RRS § 6163-20.]

69.28.380 "Adulterated honey" defined. The term "adulterated honey" means any honey to which has been added honeydew, glucose, dextrose, molasses, sugar, sugar syrup, invert sugar, or any other similar product or products, other than the nectar of floral exudations of plants gathered and stored in the comb by honey bees. [1939 c 199 § 22; RRS § 6163-22. Formerly RCW 69.28.010, part.]

69.28.390 "Serious damage" defined. The term "serious damage" means any injury or defect that seriously affects the edibility or shipping quality of the honey. [1939 c 199 § 23; RRS § 6163-23.]

69.28.400 Labeling requirements for artificial honey or mixtures containing honey. (1) No person shall sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey branded exclusively as "honey", "liquid or extracted honey", "strained honey" or "pure honey".

(2) No person, firm, association, company or corporation shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled exclusively as honey which shall be made up of honey mixed with any other substance or ingredient.

(3) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed in imitation or semblance of honey, the product shall be labeled with the word "artificial" or "imitation" in the same type size and style as the word "honey";

(4) Whenever any substance or commodity is to be marketed in imitation or semblance of honey, but contains no honey, the product shall not be branded or labeled with the word "honey" and/or depict thereon a picture or drawing of a bee, bee hive, or honeycomb;

(5) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed, there shall be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are the other ingredients; nor shall such compound or mixture be branded or labeled exclusively with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled exclusively with the word "honey", unless such article is pure honey. [1975 1st ex.s. c 283 § 1.]

69.28.410 Embargo on honey or product—Notice by director—Removal. Whenever the director shall find, or shall have probable cause to believe, that any honey or prod-

uct subject to the provisions of this chapter, as now or hereafter amended, is in intrastate commerce, which was introduced into such intrastate commerce in violation of the provisions of this chapter, as now or hereafter amended, he is hereby authorized to affix to such honey or product a notice placing an embargo on such honey or product, and prohibiting its sale in intrastate commerce, and no person shall move or sell such honey or product without first receiving permission from the director to move or sell such honey or product. But if, after such honey or product has been embargoed, the director shall find that such honey or product does not involve a violation of this chapter, as now or hereafter amended, such embargo shall be forthwith removed. [1975 1st ex.s. c 283 § 3.]

69.28.420 Embargo on honey or product—Court order affirming, required—Order for destruction or correction and release—Bond. When the director has embargoed any honey or product he shall, no later than twenty days after the affixing of notice of its embargo, petition the superior court for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such honey or product, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such honey or product. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the court finds indicated in the circumstances. [1975 1st ex.s. c 283 § 4.]

69.28.430 Consolidation of petitions presenting same issue and claimant. Two or more petitions under this chapter, as now or hereafter amended, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1975 1st ex.s. c 283 § 5.]

69.28.440 Sample of honey or product may be obtained—Procedure. The claimant in any proceeding by petition under this chapter, as now or hereafter amended, shall be entitled to receive a representative sample of the honey or product subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 283 § 6.]

69.28.450 Recovery of damages barred if probable cause for embargo. No state court shall allow the recovery of damages for embargo under this chapter, as now or hereafter amended, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 283 § 7.]

69.28.900 Severability—1939 c 199. If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circum-

stances, shall not be affected thereby. If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses and phrases be declared unconstitutional. [1939 c 199 § 45; RRS § 6163-45.]

69.28.910 Short title. This chapter may be known and cited as the Washington state honey act. [1939 c 199 § 1; RRS § 6163-1.]

Chapter 69.30 RCW

SANITARY CONTROL OF SHELLFISH

Sections

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Shellfish: Chapter 77.60 RCW.

69.30.005 Purpose. The purpose of this chapter is to provide for the sanitary control of shellfish. Protection of the public health requires assurances that commercial shellfish are harvested only from approved growing areas and that processing of shellfish is conducted in a safe and sanitary manner. [1989 c 200 § 2.]

69.30.010 Definitions. When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters, mussels, clams, and scallops, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shell-

fish in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

(6) "Department" means the state department of health.

(7) "Secretary" means the secretary of health or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen horse clams; (d) six geoducks; (e) fifty pounds of hard or soft shell clams; or (f) fifty pounds of scallops. The poundage in this subsection (8) constitutes weight with the shell.

(9) "Fish and wildlife officer" means a fish and wildlife officer as defined in RCW 77.08.010.

(10) "Ex officio fish and wildlife officer" means an ex officio fish and wildlife officer as defined in RCW 77.08.010. [2001 c 253 § 5; 1995 c 147 § 1; 1991 c 3 § 303; 1989 c 200 § 1; 1985 c 51 § 1; 1979 c 141 § 70; 1955 c 144 § 1.]

69.30.020 Certificate of compliance required for sale.

Only shellfish bearing a certificate of compliance with the sanitary requirements of this state or a state, territory, province or country of origin whose requirements are equal or comparable to those established pursuant to this chapter may be sold or offered for sale in the state of Washington. [1955 c 144 § 2.]

69.30.030 Rules and regulations—Duties of state board of health. The state board of health shall cause such investigations to be made as are necessary to determine reasonable requirements governing the sanitation of shellfish, shellfish growing areas, and shellfish plant facilities and operations, in order to protect public health and carry out the provisions of this chapter; and shall adopt such requirements as rules and regulations of the state board of health. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish, the identification of containers, and the handling, maintenance, and storage of permits, certificates, and records regarding shellfish taken under this chapter. [1995 c 147 § 2; 1955 c 144 § 3.]

69.30.050 Certificates of approval—Shellfish growing areas. Shellfish growing areas, from which shellfish are removed in a commercial quantity or for sale for human consumption shall meet the requirements of this chapter and the state board of health; and such shellfish growing areas shall be so certified by the department. Any person desiring to remove shellfish in a commercial quantity or for sale for human consumption from a growing area in the state of Washington shall first apply to the department for a certificate of approval of the growing area. The department shall

cause the shellfish growing area to be inspected and if the area meets the requirements of this chapter and the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and may be revoked at any time the area is found not to be in compliance with the requirements of this chapter and the state board of health.

Shellfish growing areas from which shellfish are removed in a commercial quantity for purposes other than human consumption including but not limited to bait or seed, shall be readily subject to monitoring and inspections, and shall otherwise be of a character ensuring that shellfish harvested from such areas are not diverted for use as food. A certificate of approval issued by the department for shellfish growing areas from which shellfish are to be removed for purposes other than human consumption shall specify the date or dates and time of harvest and all applicable conditions of harvest, identification by tagging, dyeing, or other means, transportation, processing, sale, and other factors to ensure that shellfish harvested from such areas are not diverted for use as food. [1995 c 147 § 3; 1985 c 51 § 2; 1955 c 144 § 5.]

69.30.060 Certificates of approval—Culling, shucking, packing establishments. No person shall cull, shuck, or pack shellfish in the state of Washington in a commercial quantity or for sale for human consumption unless the establishment in which such operations are conducted has been certified by the department as meeting the requirements of the state board of health. Any person desiring to cull, shuck, or pack shellfish within the state of Washington in a commercial quantity or for sale for human consumption, shall apply to the department for a certificate of approval for the establishment in which such operations will be done. The department shall cause such establishment to be inspected, and if the establishment meets the sanitary requirements of the state board of health, the department shall issue a certificate of approval. Such certificates of approval shall be issued for a period not to exceed twelve months, and may be revoked at any time the establishment or the operations are found not to be in compliance with the sanitary requirements of the state board of health. [1985 c 51 § 3; 1955 c 144 § 6.]

69.30.070 Certificates of approval—Compliance with other laws and rules required. Any certificate of approval issued under the provisions of this chapter shall not relieve any person from complying with the laws, rules and/or regulations of the department of fish and wildlife, relative to shellfish. [1994 c 264 § 40; 1955 c 144 § 7.]

69.30.080 Certificates of approval—Denial, revocation, suspension, modification—Procedure. The department may deny, revoke, suspend, or modify a certificate of approval, license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this chapter or rules adopted under it. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 304; 1989 c 175 § 125; 1979 c 141 § 71; 1955 c 144 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

69.30.085 License, certificate of approval—Denial, revocation, suspension—Prohibited acts. (1) A person whose license or certificate of approval is denied, revoked, or suspended as a result of violations of this chapter or rules adopted under this chapter may not:

(a) Serve as the person in charge of, be employed by, manage, or otherwise participate to any degree in a shellfish operation licensed or certified under this chapter or rules adopted under this chapter; or

(b) Participate in the harvesting, shucking, packing, or shipping of shellfish in commercial quantities or for sale for human consumption.

(2) This section applies to a person only during the period of time in which that person's license or certificate of approval is denied, revoked, or suspended. [1998 c 44 § 1.]

69.30.110 Possession or sale in violation of chapter—Enforcement—Seizure—Disposal. It is unlawful for any person to possess a commercial quantity of shellfish or to sell or offer to sell shellfish in the state which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter. Failure of a shellfish grower to display immediately a certificate of approval issued under RCW 69.30.050 to an authorized representative of the department, a fish and wildlife officer, or an ex officio fish and wildlife officer subjects the grower to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Failure of a shellfish processor to display a certificate of approval issued under RCW 69.30.060 to an authorized representative of the department, a fish and wildlife officer, or an ex officio fish and wildlife officer subjects the processor to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Shellfish seized under this section shall be subject to prompt disposal by the representative or officer and may not be used for human consumption. The state board of health shall develop by rule procedures for the disposal of the seized shellfish. [2001 c 253 § 6; 1995 c 147 § 4; 1985 c 51 § 4; 1979 c 141 § 74; 1955 c 144 § 11.]

69.30.120 Inspection by department—Access to regulated business or entity—Administrative inspection warrant. The department may enter and inspect any shellfish growing area or establishment for the purposes of determining compliance with this chapter and rules adopted under this chapter. The department may inspect all shellfish, all permits, all certificates of approval and all records.

During such inspections the department shall have free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities, vehicles, and other places reasonably considered to be or to have been part of the regulated business or entity, to all ledgers, books, accounts, memorandums, or records required to be compiled or maintained under this chapter or under rules adopted pursuant to this chapter, and to any products, components, or other materials reasonably believed to be or to have been used, processed, or produced by or in connection with the regulated business or activity. In connection with such inspections the department may take such samples or specimens as may be

reasonably necessary to determine whether there exists a violation of this chapter or rules adopted under this chapter.

Inspection of establishments may be conducted between eight a.m. and five p.m. on any weekday that is not a legal holiday, during any time the regulated business or entity has established as its usual business hours, at any time the regulated business or entity is open for business or is otherwise in operation, and at any other time with the consent of the owner or authorized agent of the regulated business or entity.

The department may apply for an administrative inspection warrant to a court of competent jurisdiction and an administrative inspection warrant may issue where:

(1) The department has attempted an inspection under this chapter and access to all or part of the regulated business or entity has been actually or constructively denied; or

(2) There is reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred. [1995 c 147 § 5; 1985 c 51 § 5; 1955 c 144 § 12.]

69.30.130 Water pollution laws and rules applicable. All existing laws and rules and regulations governing the pollution of waters of the state shall apply in the control of pollution of shellfish growing areas. [1955 c 144 § 13.]

69.30.140 Penalties. Any person convicted of violating any of the provisions of this chapter shall be guilty of a gross misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a conviction for purposes of license revocation and suspension of privileges under *RCW 77.15.700(5). [2001 c 253 § 7; 1995 c 147 § 6; 1985 c 51 § 6; 1955 c 144 § 14.]

*Reviser's note: RCW 77.15.700 was amended by 2003 c 386 § 2, deleting subsection (5).

69.30.145 Civil penalties. As limited by RCW 69.30.150, the department may impose civil penalties for violations of standards set forth in this chapter or rules adopted under RCW 69.30.030. [1989 c 200 § 3.]

69.30.150 Civil penalties—General provisions. (1) In addition to any other penalty provided by law, every person who violates standards set forth in this chapter or rules adopted under RCW 69.30.030 is subject to a penalty of not more than five hundred dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, every day's continuance is a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil action

or in a manner which shows proof of receipt. Any penalty imposed by this section shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of the penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department deems proper, giving consideration to the degree of hazard associated with the violation. The department may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred pursuant to this section becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(5) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(6) The attorney general may bring an action in the name of the department in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter.

(7) All penalties imposed under this section shall be paid to the state treasury and credited to the general fund. [1989 c 200 § 4.]

69.30.900 Severability—1955 c 144. If any provision of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of the application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1955 c 144 § 15.]

Chapter 69.36 RCW

WASHINGTON CAUSTIC POISON ACT OF 1929

Sections

69.36.010	Definitions.
69.36.020	Misbranded sales, etc., prohibited—Exceptions.
69.36.030	Condemnation of misbranded packages.
69.36.040	Enforcement—Approval of labels.
69.36.050	Duty to prosecute.
69.36.060	Penalty.
69.36.070	Short title.

Highway transportation of poisons, corrosives, etc.: RCW 46.48.170 through 46.48.180.

69.36.010 Definitions. In this chapter, unless the context or subject matter otherwise requires,

(1) The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percent or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H₂SO₄) in concentration of ten percent or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO₃) in a concentration of five percent or more; (d) carboic acid (C₆H₅OH), otherwise known as phenol, and any preparation containing carboic acid in a concentration of five percent or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H₂C₂O₄) in a concentration of ten percent or more; (f) any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percent or more; (g) acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC₂H₃O₂) in a concentration of twenty percent or more; (h) hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percent or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percent or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten percent or more; (k) silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO₃) in a concentration of five percent or more, and (l) ammonia water and any preparation yielding free or chemically uncombined ammonia (NH₃), including ammonium hydroxide and "hartshorn", in a concentration of five percent or more.

(2) The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "POISON", running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance; PROVIDED, That such directions need not appear on labels or stickers on parcels, packages or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use. PROVIDED FURTHER, That this chapter is not to be construed as applying to any substance subject to the chapter, sold at wholesale or retail for use by a retail druggist in filling prescriptions or in dispensing, in pursuance of a prescription

by a physician, dentist, or veterinarian; or for use by or under the direction of a physician, dentist, or veterinarian; or for use by a chemist in the practice or teaching of his profession; or for any industrial or professional use, or for use in any of the arts and sciences. [1929 c 82 § 1; RRS § 2508-1. Formerly RCW 69.36.010 and 69.36.020, part.]

69.36.020 Misbranded sales, etc., prohibited—

Exceptions. No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange, in this state any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use; PROVIDED, That household products for cleaning and washing purposes, subject to this chapter and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesale or retail; PROVIDED FURTHER, That no person shall be liable to prosecution and conviction under this chapter when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this chapter. No person in this state shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this chapter. [1929 c 82 § 2; RRS § 2508-2. FORMER PART OF SECTION: 1929 c 82 § 1 now codified in RCW 69.32.010.]

69.36.030 Condemnation of misbranded packages.

Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any superior court within the jurisdiction of which the same is found and seized for confiscation, and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the state treasurer; but such substance shall not be sold contrary to the laws of the state: PROVIDED, HOWEVER, That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in the seizure, and condemnation of substances unfit for human consumption. [1929 c 82 § 3; RRS § 2508-3.]

69.36.040 Enforcement—Approval of labels. The director of agriculture shall enforce the provisions of this chapter, and he is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this chapter as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this statute: PROVIDED, HOWEVER, That in any prosecution under this chapter the fact that any brand or label involved in said prosecution has not been sub-

mitted to said director for approval, or if submitted, has not been approved by him, shall be immaterial. [1929 c 82 § 5; RRS § 2508-5.]

69.36.050 Duty to prosecute. Every prosecuting attorney to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this chapter shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided. [1929 c 82 § 6; RRS § 2508-6.]

69.36.060 Penalty. Any person violating the provisions of this chapter shall be guilty of a misdemeanor. [1929 c 82 § 4; RRS § 2508-4.]

69.36.070 Short title. This chapter may be cited as the Washington Caustic Poison Act of 1929. [1929 c 82 § 7; RRS § 2508-7.]

Chapter 69.38 RCW

POISONS—SALES AND MANUFACTURING

Sections

69.38.010	"Poison" defined.
69.38.020	Exemptions from chapter.
69.38.030	Poison register—Identification of purchaser.
69.38.040	Inspection of poison register—Penalty for failure to maintain register.
69.38.050	False representation—Penalty.
69.38.060	Manufacturers and sellers of poisons—License required—Penalty.

69.38.010 "Poison" defined. As used in this chapter "poison" means:

- (1) Arsenic and its preparations;
- (2) Cyanide and its preparations, including hydrocyanic acid;
- (3) Strychnine; and
- (4) Any other substance designated by the state board of pharmacy which, when introduced into the human body in quantities of sixty grains or less, causes violent sickness or death. [1987 c 34 § 1.]

69.38.020 Exemptions from chapter. All substances regulated under chapters 15.58, 17.21, 69.04, 69.41, and 69.50 RCW, and chapter 69.45 RCW are exempt from the provisions of this chapter. [1987 c 34 § 2.]

69.38.030 Poison register—Identification of purchaser. It is unlawful for any person, either on the person's own behalf or while an employee of another, to sell any poison without first recording in ink in a "poison register" kept solely for this purpose the following information:

- (1) The date and hour of the sale;
- (2) The full name and home address of the purchaser;
- (3) The kind and quantity of poison sold; and
- (4) The purpose for which the poison is being purchased.

The purchaser shall present to the seller identification which contains the purchaser's photograph and signature. No sale may be made unless the seller is satisfied that the purchaser's representations are true and that the poison will be

used for a lawful purpose. Both the purchaser and the seller shall sign the poison register entry.

If a delivery of a poison will be made outside the confines of the seller's premises, the seller may require the business purchasing the poison to submit a letter of authorization as a substitute for the purchaser's photograph and signature requirements. The letter of authorization shall include the unified business identifier and address of the business, a full description of how the substance will be used, and the signature of the purchaser. Either the seller or the employee of the seller delivering or transferring the poison shall affix his or her signature to the letter as a witness to the signature and identification of the purchaser. The transaction shall be recorded in the poison register as provided in this section. Letters of authorization shall be kept with the poison register and shall be subject to the inspection and preservation requirements contained in RCW 69.38.040. [1988 c 197 § 1; 1987 c 34 § 3.]

69.38.040 Inspection of poison register—Penalty for failure to maintain register. Every poison register shall be open for inspection by law enforcement and health officials at all times and shall be preserved for at least two years after the date of the last entry. Any person failing to maintain the poison register as required in this chapter is guilty of a misdemeanor. [1987 c 34 § 4.]

69.38.050 False representation—Penalty. Any person making any false representation to a seller when purchasing a poison is guilty of a gross misdemeanor. [1987 c 34 § 5.]

69.38.060 Manufacturers and sellers of poisons—License required—Penalty. The state board of pharmacy, after consulting with the department of health, shall require and provide for the annual licensure of every person now or hereafter engaged in manufacturing or selling poisons within this state. Upon a payment of a fee as set by the department, the department shall issue a license in such form as it may prescribe to such manufacturer or seller. Such license shall be displayed in a conspicuous place in such manufacturer's or seller's place of business for which it is issued.

Any person manufacturing or selling poison within this state without a license is guilty of a misdemeanor. [1989 1st ex.s. c 9 § 440; 1987 c 34 § 6.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Chapter 69.40 RCW

POISONS AND DANGEROUS DRUGS

Sections

69.40.010	Poison in edible products.
69.40.015	Poison in edible products—Penalty.
69.40.020	Poison in milk or food products—Penalty.
69.40.025	Supplementary to existing laws—Enforcement.
69.40.030	Placing poison or other harmful object or substance in food, drinks, medicine, or water—Penalty.
69.40.055	Selling repackaged poison without labeling—Penalty.
69.40.150	Drug control assistance unit investigative assistance for enforcement of chapter.

Pharmacists: Chapter 18.64 RCW.

Poison information centers: Chapter 18.76 RCW.

[Title 69 RCW—page 44]

Poisoning animals—Strychnine sales: RCW 16.52.190 and 16.52.193.

Washington pesticide application act: Chapter 17.21 RCW.

69.40.010 Poison in edible products. It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison. [1905 c 141 § 1; RRS § 6140. FORMER PART OF SECTION: 1905 c 141 § 2 now codified as RCW 69.40.015.]

69.40.015 Poison in edible products—Penalty. Any person violating the provisions of RCW 69.40.010 shall upon conviction be punished by a fine of not less than ten dollars nor more than five hundred dollars. [1905 c 141 § 2; RRS § 6141. Formerly RCW 69.40.010, part.]

69.40.020 Poison in milk or food products—Penalty. Any person who shall sell, offer to sell, or have in his or her possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, is guilty of a class C felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one year nor more than three years. [2003 c 53 § 320; 1905 c 50 § 1; RRS § 6142. FORMER PART OF SECTION: 1905 c 50 § 2, now codified as RCW 69.40.025.]

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

69.40.025 Supplementary to existing laws—Enforcement. *This act shall be supplementary to the laws of this state now in force prohibiting the adulteration of food and fraud in the sale thereof; and the state dairy and food commissioner, the chemist of the state agricultural experiment station, the state attorney general and the prosecuting attorneys of the several counties of this state are hereby required, without additional compensation, to assist in the execution of *this act, and in the prosecution of all persons charged with the violation thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this state against the adulteration of food and fraud in the sale thereof. [1905 c 50 § 2; RRS § 6143. Formerly RCW 69.40.020, part.]

Reviser's note: *(1) "This act" appears in 1905 c 50 and the sections of the act are codified as RCW 69.40.020 and 69.40.025.

(2) The duties of the state dairy and food commissioner have devolved upon the director of agriculture through a chain of statute as follows: 1913 c 60 § 6(2); 1921 c 7 § 93(1). See RCW 43.23.090(1).

69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine, or water—Penalty. (1) Every person who willfully mingles poison or places any harmful object or substance, including but not limited to pins, tacks, needles, nails, razor blades, wire, or glass in any food, drink, medicine, or other edible substance intended or prepared for the use of a human being or who shall knowingly furnish, with intent to harm another person, any food, drink,

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medicine, or other edible substance containing such poison or harmful object or substance to another human being, and every person who willfully poisons any spring, well, or reservoir of water, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not less than five years or by a fine of not less than one thousand dollars.

(2) *This act shall not apply to the employer or employers of a person who violates this section without such employer's knowledge. [2003 c 53 § 321; 1992 c 7 § 48; 1973 c 119 § 1; 1909 c 249 § 264; RRS § 2516. Prior: Code 1881 § 802; 1873 p 185 § 27; 1869 p 202 § 25; 1854 p 79 § 25.]

*Reviser's note: "this act" refers to the 1973 c 119 § 1 amendment to this section.

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

69.40.055 Selling repackaged poison without labeling—Penalty. It shall be unlawful for any person to sell at retail or furnish any repackaged poison drug or product without affixing or causing to be affixed to the bottle, box, vessel, or package a label containing the name of the article, all labeling required by the Food and Drug Administration and other federal or state laws or regulations, and the word "poison" distinctly shown with the name and place of the business of the seller.

This section shall not apply to the dispensing of drugs or poisons on the prescription of a practitioner.

The board of pharmacy shall have the authority to promulgate rules for the enforcement and implementation of this section.

Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [1981 c 147 § 4.]

69.40.150 Drug control assistance unit investigative assistance for enforcement of chapter. See RCW 43.43.610.

Chapter 69.41 RCW

LEGEND DRUGS—PRESCRIPTION DRUGS

Sections

69.41.010	Definitions.
69.41.020	Prohibited acts—Information not privileged communication.
69.41.030	Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty.
69.41.032	Prescription of legend drugs by dialysis programs.
69.41.040	Prescription requirements—Penalty.
69.41.042	Record requirements.
69.41.044	Confidentiality.
69.41.050	Labeling requirements—Penalty.
69.41.055	Electronic communication of prescription information—Board may adopt rules.
69.41.060	Search and seizure.
69.41.062	Search and seizure at rental premises—Notification of landlord.
69.41.065	Violations—Juvenile driving privileges.
69.41.072	Violations of chapter 69.50 RCW not to be charged under chapter 69.41 RCW—Exception.
69.41.075	Rules—Availability of lists of drugs.
69.41.080	Animal control—Rules for possession and use of legend drugs.
69.41.085	Medication assistance—Community-based care setting.

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SUBSTITUTION OF PRESCRIPTION DRUGS

69.41.100	Legislative recognition and declaration.
69.41.110	Definitions.
69.41.120	Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Out-of-state prescriptions—Form—Contents—Procedure.
69.41.130	Savings in price to be passed on to purchaser.
69.41.140	Minimum manufacturing standards and practices.
69.41.150	Liability of practitioner, pharmacist.
69.41.160	Pharmacy signs as to substitution for prescribed drugs.
69.41.170	Coercion of pharmacist prohibited—Penalty.
69.41.180	Rules.
69.41.190	Preferred drug substitution—Exceptions—Notice.

IDENTIFICATION OF LEGEND DRUGS—MARKING

69.41.200	Requirements for identification of legend drugs—Marking.
69.41.210	Definitions.
69.41.220	Published lists of drug imprints—Requirements for.
69.41.230	Drugs in violation are contraband.
69.41.240	Rules—Labeling and marking.
69.41.250	Exemptions.
69.41.260	Manufacture or distribution for resale—Requirements.
69.41.280	Confidentiality.

USE OF STEROIDS

69.41.300	Definitions.
69.41.310	Rules.
69.41.320	Practitioners—Restricted use—Medical records.
69.41.330	Public warnings—School districts.
69.41.340	Student athletes—Violations—Penalty.
69.41.350	Penalties.
69.41.900	Severability—1979 c 110.

Drug nuisances—Injunctions: Chapter 7.43 RCW.

69.41.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (a) A practitioner; or
- (b) The patient or research subject at the direction of the practitioner.

(2) "Community-based care settings" include: Community residential programs for the developmentally disabled, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(4) "Department" means the department of health.

(5) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Dispenser" means a practitioner who dispenses.

(7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(8) "Distributor" means a person who distributes.

(9) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(10) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(13) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being read and understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order. A prescription must be hand printed, typewritten, or electronically generated.

(14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. A nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except prefilled insulin syringes.

(15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(16) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry

board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or, when acting under the required supervision of a dentist licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(17) "Secretary" means the secretary of health or the secretary's designee. [2006 c 8 § 115. Prior: 2003 c 257 § 2; 2003 c 140 § 11; 2000 c 8 § 2; prior: 1998 c 222 § 1; 1998 c 70 § 2; 1996 c 178 § 16; 1994 sp.s. c 9 § 736; prior: 1989 1st ex.s. c 9 § 426; 1989 c 36 § 3; 1984 c 153 § 17; 1980 c 71 § 1; 1979 ex.s. c 139 § 1; 1973 1st ex.s. c 186 § 1.]

Findings—2006 c 8: "The legislature finds that prescription drug errors occur because the pharmacist or nurse cannot read the prescription from the physician or other provider with prescriptive authority. The legislature further finds that legible prescriptions can prevent these errors." [2006 c 8 § 114.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Effective date—2003 c 140: See note following RCW 18.79.040.

Findings—Intent—2000 c 8: "The legislature finds that we have one of the finest health care systems in the world and excellent professionals to deliver that care. However, there are incidents of medication errors that are avoidable and serious mistakes that are preventable. Medical errors throughout the health care system constitute one of the nation's leading causes of death and injury resulting in over seven thousand deaths a year, according to a recent report from the institute of medicine. The majority of medical errors do not result from individual recklessness, but from basic flaws in the way the health system is organized. There is a need for a comprehensive strategy for government, industry, consumers, and health providers to reduce medical errors. The legislature declares a need to bring about greater safety for patients in this state who depend on prescription drugs.

It is the intent of the legislature to promote medical safety as a top priority for all citizens of our state." [2000 c 8 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.020 Prohibited acts—Information not privileged communication. Legend drugs shall not be sold, delivered, dispensed or administered except in accordance with this chapter.

(1) No person shall obtain or attempt to obtain a legend drug, or procure or attempt to procure the administration of a legend drug:

(a) By fraud, deceit, misrepresentation, or subterfuge; or

(b) By the forgery or alteration of a prescription or of any written order; or

(c) By the concealment of a material fact; or

(d) By the use of a false name or the giving of a false address.

(2) Information communicated to a practitioner in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall willfully make a false statement in any prescription, order, report, or record, required by this chapter.

(4) No person shall, for the purpose of obtaining a legend drug, falsely assume the title of, or represent himself or herself to be, a manufacturer, wholesaler, or any practitioner.

(5) No person shall make or utter any false or forged prescription or other written order for legend drugs.

(6) No person shall affix any false or forged label to a package or receptacle containing legend drugs.

(7) No person shall willfully fail to maintain the records required by RCW 69.41.042 and *69.41.270.

(8) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 322. Prior: 1989 1st ex.s. c 9 § 408; 1989 c 352 § 8; 1973 1st ex.s. c 186 § 2.]

***Reviser's note:** RCW 69.41.270 was repealed by 2003 c 275 § 5.

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

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty.

(1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in

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the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

(2)(a) A violation of this section involving the sale, delivery, or possession with intent to sell or deliver is a class B felony punishable according to chapter 9A.20 RCW.

(b) A violation of this section involving possession is a misdemeanor. [2003 c 142 § 3; 2003 c 53 § 323; 1996 c 178 § 17; 1994 sp.s. c 9 § 737; 1991 c 30 § 1; 1990 c 219 § 2; 1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

Reviser's note: This section was amended by 2003 c 53 § 323 and by 2003 c 142 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2003 c 142: See note following RCW 18.53.010.

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

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Finding—1990 c 219: "The legislature finds that Washington citizens in the border areas of this state are prohibited from having prescriptions from out-of-state dentists and veterinarians filled at their in-state pharmacies, and that it is in the public interest to remove this barrier for the state's citizens." [1990 c 219 § 1.]

69.41.032 Prescription of legend drugs by dialysis programs. This chapter shall not prevent a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program from selling, delivering, possessing, or dispensing directly to its dialysis patients, in case or full shelf lots, if prescribed by a physician licensed under chapter 18.57 or 18.71 RCW, those legend drugs determined by the board pursuant to rule. [1987 c 41 § 2.]

Application of pharmacy statutes to dialysis programs: RCW 18.64.257.

69.41.040 Prescription requirements—Penalty. (1) A prescription, in order to be effective in legalizing the possession of legend drugs, must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. An order purporting to be a prescription issued to a drug abuser or habitual user of legend drugs, not in the course of professional treatment, is not a prescription within the meaning and intent of this section; and the person who knows or should know that he or she is filling such an order, as well as the person issuing it, may be charged with violation of this chapter. A legitimate medical purpose shall include use in the course of a bona fide research program in conjunction with a hospital or university.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 324; 1973 1st ex.s. c 186 § 4.]

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

69.41.042 Record requirements. A pharmaceutical manufacturer, wholesaler, pharmacy, or practitioner who

purchases, dispenses, or distributes legend drugs shall maintain invoices or such other records as are necessary to account for the receipt and disposition of the legend drugs.

The records maintained pursuant to this section shall be available for inspection by the board and its authorized representatives and shall be maintained for two years. [1989 1st ex.s. c 9 § 405.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.044 Confidentiality. All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.56 RCW. [2005 c 274 § 328; 1989 1st ex.s. c 9 § 406.]

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

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.050 Labeling requirements—Penalty. (1) To every box, bottle, jar, tube or other container of a legend drug, which is dispensed by a practitioner authorized to prescribe legend drugs, there shall be affixed a label bearing the name of the prescriber, complete directions for use, the name of the drug either by the brand or generic name and strength per unit dose, name of patient and date: PROVIDED, That the practitioner may omit the name and dosage of the drug if he or she determines that his or her patient should not have this information and that, if the drug dispensed is a trial sample in its original package and which is labeled in accordance with federal law or regulation, there need be set forth additionally only the name of the issuing practitioner and the name of the patient.

(2) A violation of this section is a misdemeanor. [2003 c 53 § 325; 1980 c 83 § 8; 1973 1st ex.s. c 186 § 5.]

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

69.41.055 Electronic communication of prescription information—Board may adopt rules. (1) Information concerning an original prescription or information concerning a prescription refill for a legend drug may be electronically communicated between an authorized practitioner and a pharmacy of the patient's choice with no intervening person having access to the prescription drug order pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information and the system used for receiving electronically communicated prescription informa-

tion must be approved by the board. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section. [1998 c 222 § 2.]

69.41.060 Search and seizure. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior or district court that there is probable cause to believe that any legend drug is being used, manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any peace officer in the county, commanding the peace officer to search the premises designated and described in such complaint and warrant, and to seize all legend drugs there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing or otherwise disposing of such legend drugs and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such legend drugs, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found, or, if there be no door, then in any conspicuous place upon the premises. [1987 c 202 § 227; 1973 1st ex.s. c 186 § 6.]

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

69.41.062 Search and seizure at rental premises—Notification of landlord. Whenever a legend drug which is sold, delivered, or possessed in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known by the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 8.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.41.065 Violations—Juvenile driving privileges.

(1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 119; 1988 c 148 § 4.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

69.41.072 Violations of chapter 69.50 RCW not to be charged under chapter 69.41 RCW—Exception. Any offense which is a violation of chapter 69.50 RCW other than RCW 69.50.4012 shall not be charged under this chapter. [2003 c 53 § 327.]

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

69.41.075 Rules—Availability of lists of drugs. The state board of pharmacy may make such rules for the enforcement of this chapter as are deemed necessary or advisable. The board shall identify, by rule-making pursuant to chapter 34.05 RCW, those drugs which may be dispensed only on prescription or are restricted to use by practitioners, only. In so doing the board shall consider the toxicity or other potentiality for harmful effect of the drug, the method of its use, and any collateral safeguards necessary to its use. The board shall classify a drug as a legend drug where these consider-

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ations indicate the drug is not safe for use except under the supervision of a practitioner.

In identifying legend drugs the board may incorporate in its rules lists of drugs contained in commercial pharmaceutical publications by making specific reference to each such list and the date and edition of the commercial publication containing it. Any such lists so incorporated shall be available for public inspection at the headquarters of the department of health and shall be available on request from the department of health upon payment of a reasonable fee to be set by the department. [1989 1st ex.s. c 9 § 427; 1979 ex.s. c 139 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.080 Animal control—Rules for possession and use of legend drugs. Humane societies and animal control agencies registered with the state board of pharmacy under chapter 69.50 RCW and authorized to euthanize animals may purchase, possess, and administer approved legend drugs for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs. For the purposes of this section, "approved legend drugs" means those legend drugs designated by the board by rule as being approved for use by such societies and agencies for animal sedating or capture and does not include any substance regulated under chapter 69.50 RCW. Any society or agency so registered shall not permit persons to administer any legend drugs unless such person has demonstrated to the satisfaction of the board adequate knowledge of the potential hazards involved in and the proper techniques to be used in administering the drugs.

The board shall promulgate rules to regulate the purchase, possession, and administration of legend drugs by such societies and agencies and to insure strict compliance with the provisions of this section. Such rules shall require that the storage, inventory control, administration, and recordkeeping for approved legend drugs conform to the standards adopted by the board under chapter 69.50 RCW to regulate the use of controlled substances by such societies and agencies. The board may suspend or revoke a registration under chapter 69.50 RCW upon a determination by the board that the person administering legend drugs has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke a registration as provided by law. [1989 c 242 § 1.]

69.41.085 Medication assistance—Community-based care setting. Individuals residing in community-based care settings, such as adult family homes, boarding homes, and residential care settings for the developmentally disabled, including an individual's home, may receive medication assistance. Nothing in this chapter affects the right of an individual to refuse medication or requirements relating to informed consent. [2003 c 140 § 12; 1998 c 70 § 1.]

Effective date—2003 c 140: See note following RCW 18.79.040.

SUBSTITUTION OF PRESCRIPTION DRUGS

69.41.100 Legislative recognition and declaration. The legislature recognizes the responsibility of the state to

insure that the citizens of the state are offered a choice between generic drugs and brand name drugs and the benefit of quality pharmaceutical products at competitive prices. Advances in the drug industry resulting from research and the elimination of counterfeiting of prescription drugs should benefit the users of the drugs. Pharmacy must continue to operate with accountability and effectiveness. The legislature hereby declares it to be the policy of the state that its citizens receive safe and therapeutically effective drug products at the most reasonable cost consistent with high drug quality standards. [1986 c 52 § 1; 1977 ex.s. c 352 § 1.]

Severability—1977 ex.s. c 352: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 352 § 10.]

69.41.110 Definitions. As used in RCW 69.41.100 through 69.41.180, the following words shall have the following meanings:

(1) "Brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label, or wrapping at the time of packaging;

(2) "Generic name" means the official title of a drug or drug ingredients published in the latest edition of a nationally recognized pharmacopoeia or formulary;

(3) "Substitute" means to dispense, with the practitioner's authorization, a "therapeutically equivalent" drug product of the identical base or salt as the specific drug product prescribed: PROVIDED, That with the practitioner's prior consent, therapeutically equivalent drugs other than the identical base or salt may be dispensed;

(4) "Therapeutically equivalent" means essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen; and

(5) "Practitioner" means a physician, osteopathic physician and surgeon, dentist, veterinarian, or any other person authorized to prescribe drugs under the laws of this state. [1979 c 110 § 1; 1977 ex.s. c 352 § 2.]

69.41.120 Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Out-of-state prescriptions—Form—Contents—Procedure. Every drug prescription shall contain an instruction on whether or not a therapeutically equivalent generic drug may be substituted in its place, unless substitution is permitted under a prior-consent authorization.

If a written prescription is involved, the prescription must be legible and the form shall have two signature lines at opposite ends on the bottom of the form. Under the line at the right side shall be clearly printed the words "DISPENSE AS WRITTEN". Under the line at the left side shall be clearly printed the words "SUBSTITUTION PERMITTED". The practitioner shall communicate the instructions to the pharmacist by signing the appropriate line. No prescription shall be valid without the signature of the practitioner on one of these lines. In the case of a prescription issued by a practitioner in another state that uses a one-line prescription form or variation thereof, the pharmacist may substitute a therapeutically equivalent generic drug unless otherwise instructed by the practitioner through the use of the words "dispense as written", words of similar meaning, or some other indication.

If an oral prescription is involved, the practitioner or the practitioner's agent shall instruct the pharmacist as to whether or not a therapeutically equivalent generic drug may be substituted in its place. The pharmacist shall note the instructions on the file copy of the prescription.

The pharmacist shall note the manufacturer of the drug dispensed on the file copy of a written or oral prescription. [2000 c 8 § 3; 1990 c 218 § 1; 1979 c 110 § 2; 1977 ex.s. c 352 § 3.]

Findings—Intent—2000 c 8: See note following RCW 69.41.010.

69.41.130 Savings in price to be passed on to purchaser. Unless the brand name drug is requested by the patient or the patient's representative, the pharmacist shall substitute an equivalent drug product which he has in stock if its wholesale price to the pharmacist is less than the wholesale price of the prescribed drug product, and at least sixty percent of the savings shall be passed on to the purchaser. [1986 c 52 § 2; 1979 c 110 § 3; 1977 ex.s. c 352 § 4.]

69.41.140 Minimum manufacturing standards and practices. A pharmacist may not substitute a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices:

(1) Maintain quality control standards equal to those of the Food and Drug Administration;

(2) Comply with regulations promulgated by the Food and Drug Administration. [1979 c 110 § 4; 1977 ex.s. c 352 § 5.]

69.41.150 Liability of practitioner, pharmacist. (1) A practitioner who authorizes a prescribed drug shall not be liable for any side effects or adverse reactions caused by the manner or method by which a substituted drug product is selected or dispensed.

(2) A pharmacist who substitutes an equivalent drug product pursuant to RCW 69.41.100 through 69.41.180 as now or hereafter amended assumes no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its established name.

(3) A pharmacist who substitutes a preferred drug for a nonpreferred drug pursuant to RCW 69.41.190 assumes no greater liability for substituting the preferred drug than would be incurred in filling a prescription for the preferred drug when prescribed by name. [2003 1st sp.s. c 29 § 6; 1979 c 110 § 5; 1977 ex.s. c 352 § 6.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

69.41.160 Pharmacy signs as to substitution for prescribed drugs. Every pharmacy shall post a sign in a location at the prescription counter that is readily visible to patrons stating, "Under Washington law, an equivalent but less expensive drug may in some cases be substituted for the drug prescribed by your doctor. Such substitution, however, may only be made with the consent of your doctor. Please consult your pharmacist or physician for more information." [1979 c 110 § 6; 1977 ex.s. c 352 § 7.]

69.41.170 Coercion of pharmacist prohibited—Penalty. It shall be unlawful for any employer to coerce, within the meaning of RCW 9A.36.070, any pharmacist to dispense a generic drug or to substitute a generic drug for another drug. A violation of this section shall be punishable as a misdemeanor. [1977 ex.s. c 352 § 8.]

69.41.180 Rules. The state board of pharmacy may adopt any necessary rules under chapter 34.05 RCW for the implementation, continuation, or enforcement of RCW 69.41.100 through 69.41.180, including, but not limited to, a list of therapeutically or nontherapeutically equivalent drugs which, when adopted, shall be provided to all registered pharmacists in the state and shall be updated as necessary. [1979 c 110 § 7; 1977 ex.s. c 352 § 9.]

69.41.190 Preferred drug substitution—Exceptions—Notice. (1) Any pharmacist filling a prescription under a state purchased health care program as defined in RCW 41.05.011(2) shall substitute, where identified, a preferred drug for any nonpreferred drug in a given therapeutic class, unless the endorsing practitioner has indicated on the prescription that the nonpreferred drug must be dispensed as written, or the prescription is for a refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of a immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks, in which case the pharmacist shall dispense the prescribed nonpreferred drug.

(2) When a substitution is made under subsection (1) of this section, the dispensing pharmacist shall notify the prescribing practitioner of the specific drug and dose dispensed. [2006 c 233 § 1; 2003 1st sp.s. c 29 § 5.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

IDENTIFICATION OF LEGEND DRUGS—MARKING

69.41.200 Requirements for identification of legend drugs—Marking. (1) No legend drug in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or National Drug Code number identifying the drug and the manufacturer or distributor of such drug.

(2) No manufacturer or distributor may sell any legend drug contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or National Drug Code number identifying the drug and the manufacturer or distributor of such drug.

(3) Whenever the distributor of a legend drug does not also manufacture it, the names and places of businesses of both shall appear on the stock container or package label in words that truly distinguish each. [1980 c 83 § 1.]

69.41.210 Definitions. The terms defined in this section shall have the meanings indicated when used in RCW 69.41.200 through 69.41.260.

(1) "Distributor" means any corporation, person, or other entity which distributes for sale a legend drug under its own label even though it is not the actual manufacturer of the legend drug.

(2) "Solid dosage form" means capsules or tablets or similar legend drug products intended for administration and which could be ingested orally.

(3) "Legend drug" means any drugs which are required by state law or regulation of the board to be dispensed as prescription only or are restricted to use by prescribing practitioners only and shall include controlled substances in Schedules II through V of chapter 69.50 RCW.

(4) "Board" means the state board of pharmacy. [1980 c 83 § 2.]

69.41.220 Published lists of drug imprints—Requirements for. Each manufacturer and distributor shall publish and provide to the board by filing with the department printed material which will identify each current imprint used by the manufacturer or distributor. The board shall be notified of any change by the filing of any change with the department. This information shall be provided by the department to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms. [1989 1st ex.s. c 9 § 428; 1980 c 83 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.230 Drugs in violation are contraband. Any legend drug prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure under the provisions of RCW 69.41.060. [1980 c 83 § 4.]

69.41.240 Rules—Labeling and marking. The board shall have authority to promulgate rules and regulations for the enforcement and implementation of RCW 69.41.050 and 69.41.200 through 69.41.260. [1980 c 83 § 5.]

69.41.250 Exemptions. (1) The board, upon application of a manufacturer, may exempt a particular legend drug from the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics.

(2) The provisions of RCW 69.41.050 and 69.41.200 through 69.41.260 shall not apply to any legend drug which is prepared or manufactured by a pharmacy in this state and is for the purpose of retail sale from such pharmacy and not intended for resale. [1980 c 83 § 6.]

69.41.260 Manufacture or distribution for resale—Requirements. All legend drugs manufactured or distributed for resale to any entity in this state other than the ultimate consumer shall meet the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 from a date eighteen months after June 12, 1980. [1980 c 83 § 7.]

69.41.280 Confidentiality. All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.56 RCW. [2005 c 274 § 329; 1989 c 352 § 6.]

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

USE OF STEROIDS

69.41.300 Definitions. For the purposes of RCW 69.41.300 through 69.41.350, "steroids" shall include the following:

(1) "Anabolic steroids" means synthetic derivatives of testosterone or any isomer, ester, salt, or derivative that act in the same manner on the human body;

(2) "Androgens" means testosterone in one of its forms or a derivative, isomer, ester, or salt, that act in the same manner on the human body; and

(3) "Human growth hormones" means growth hormones, or a derivative, isomer, ester, or salt that act in the same manner on the human body. [2003 c 53 § 328; 1989 c 369 § 1.]

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

69.41.310 Rules. The state board of pharmacy shall specify by rule drugs to be classified as steroids as defined in RCW 69.41.300.

On or before December 1 of each year, the board shall inform the appropriate legislative committees of reference of the drugs that the board has added to the steroids in RCW 69.41.300. The board shall submit a statement of rationale for the changes. [1989 c 369 § 2.]

69.41.320 Practitioners—Restricted use—Medical records. (1)(a) A practitioner shall not prescribe, administer, or dispense steroids, as defined in RCW 69.41.300, or any form of autotransfusion for the purpose of manipulating hormones to increase muscle mass, strength, or weight, or for the purpose of enhancing athletic ability, without a medical necessity to do so.

(b) A person violating this subsection is guilty of a gross misdemeanor and is subject to disciplinary action under RCW 18.130.180.

(2) A practitioner shall complete and maintain patient medical records which accurately reflect the prescribing, administering, or dispensing of any substance or drug described in this section or any form of autotransfusion. Patient medical records shall indicate the diagnosis and purpose for which the substance, drug, or autotransfusion is prescribed, administered, or dispensed and any additional information upon which the diagnosis is based. [2003 c 53 § 329; 1989 c 369 § 3.]

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

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69.41.330 Public warnings—School districts. The superintendent of public instruction shall develop and distribute to all school districts signs of appropriate design and dimensions advising students of the health risks that steroids present when used solely to enhance athletic ability, and of the penalties for their unlawful possession provided by RCW 69.41.300 through 69.41.350.

School districts shall post or cause the signs to be posted in a prominent place for ease of viewing on the premises of school athletic departments. [2003 c 53 § 330; 1989 c 369 § 5.]

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

69.41.340 Student athletes—Violations—Penalty. The superintendent of public instruction, in consultation with the Washington interscholastic activity association, shall promulgate rules by January 1, 1990, regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated this chapter. The regents or trustees of each institution of higher education shall promulgate rules by January 1, 1990, regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated this chapter. [1989 c 369 § 6.]

69.41.350 Penalties. (1) A person who violates the provisions of this chapter by possessing under two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a gross misdemeanor.

(2) A person who violates the provisions of this chapter by possessing over two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a class C felony and shall be punished according to chapter 9A.20 RCW. [2003 c 53 § 326; 1989 c 369 § 4; 1983 1st ex.s. c 4 § 4; 1973 1st ex.s. c 186 § 7. Formerly RCW 69.41.070.]

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

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

69.41.900 Severability—1979 c 110. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 110 § 8.]

Chapter 69.43 RCW PRECURSOR DRUGS

Sections

69.43.010	Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties.
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- 69.43.180 Expansion of log requirements—Petition by law enforcement.
- 69.43.190 Products found at methamphetamine sites—Report.

69.43.010 Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties. (1) A report to the state board of pharmacy shall be submitted in accordance with this chapter by a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to any person any of the following substances or their salts or isomers:

- (a) Anthranilic acid;
- (b) Barbituric acid;
- (c) Chlorephedrine;
- (d) Diethyl malonate;
- (e) D-lysergic acid;
- (f) Ephedrine;
- (g) Ergotamine tartrate;
- (h) Ethylamine;
- (i) Ethyl malonate;
- (j) Ethylephedrine;
- (k) Lead acetate;
- (l) Malonic acid;
- (m) Methylamine;
- (n) Methylformamide;
- (o) Methylephedrine;
- (p) Methylpseudoephedrine;
- (q) N-acetylanthranilic acid;
- (r) Norpseudoephedrine;
- (s) Phenylacetic acid;
- (t) Phenylpropanolamine;
- (u) Piperidine;
- (v) Pseudoephedrine; and
- (w) Pyrrolidine.

(2) The state board of pharmacy shall administer this chapter and may, by rule adopted pursuant to chapter 34.05 RCW, add a substance to or remove a substance from the list in subsection (1) of this section. In determining whether to add or remove a substance, the board shall consider the following:

(a) The likelihood that the substance is useable as a precursor in the illegal production of a controlled substance as defined in chapter 69.50 RCW;

- (b) The availability of the substance;
- (c) The relative appropriateness of including the substance in this chapter or in chapter 69.50 RCW; and
- (d) The extent and nature of legitimate uses for the substance.

(3)(a) Any manufacturer, wholesaler, retailer, or other person shall, before selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section to any person, require proper identification from the purchaser.

(b) For the purposes of this subsection, "proper identification" means:

(i) A motor vehicle operator's license or other official state-issued identification of the purchaser containing a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number;

(ii) The motor vehicle license number of any motor vehicle owned or operated by the purchaser;

(iii) A letter of authorization from any business for which any substance specified in subsection (1) of this section is being furnished, which includes the business license number and address of the business;

(iv) A description of how the substance is to be used; and

(v) The signature of the purchaser.

The person selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section shall affix his or her signature as a witness to the signature and identification of the purchaser.

(c) A violation of or a failure to comply with this subsection is a misdemeanor.

(4) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance specified in subsection (1) of this section to any person shall, not less than twenty-one days before delivery of the substance, submit a report of the transaction, which includes the identification information specified in subsection (3) of this section to the state board of pharmacy. However, the state board of pharmacy may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the state board of pharmacy determines that either of the following exist:

(a) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance; or

(b) The recipient has established a record of using the substance for lawful purposes.

(5) Any person specified in subsection (4) of this section who does not submit a report as required by subsection (4) of this section is guilty of a gross misdemeanor. [2001 c 96 § 2; 1998 c 245 § 107; 1988 c 147 § 1.]

Intent—2001 c 96: "Communities all over the state of Washington have experienced an increase in the illegal manufacture of methamphetamine. Illegal methamphetamine labs create a significant threat to the health and safety of the people of the state. Some of the chemicals and compounds used to make methamphetamine, and the toxic wastes the process generates, are hazards to the public health. Increases in crime, violence, and the abuse and neglect of children present at laboratory sites are also associated with the increasing number of illegal laboratory sites. The drugs ephedrine, pseudoephedrine, and phenylpropanolamine, which are used in the illegal manu-

facture of methamphetamine, have been identified as factors in the increase in the number of illegal methamphetamine labs. Therefore, it is the intent of the legislature to place restrictions on the sale and possession of those three drugs in order to reduce the proliferation of illegal methamphetamine laboratories and the associated threats to public health and safety." [2001 c 96 § 1.]

Severability—2001 c 96: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 96 § 15.]

69.43.020 Receipt of substance from source outside state—Report—Penalty. (1) Any manufacturer, wholesaler, retailer, or other person who receives from a source outside of this state any substance specified in RCW 69.43.010(1) shall submit a report of such transaction to the state board of pharmacy under rules adopted by the board.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor. [2001 c 96 § 3; 1988 c 147 § 2.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.030 Exemptions. RCW 69.43.010 and 69.43.020 do not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a practitioner, as defined in chapter 69.41 RCW;

(2) Any practitioner who administers or furnishes a substance to his or her patients;

(3) Any manufacturer or wholesaler licensed by the state board of pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy or practitioner;

(4) Any sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished, over the counter without a prescription under chapter 69.04 or 69.41 RCW. [1988 c 147 § 3.]

69.43.035 Suspicious transactions—Report—Penalty. (1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person in a suspicious transaction shall report the transaction in writing to the state board of pharmacy.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor.

(3) For the purposes of this section, "suspicious transaction" means a sale or transfer to which any of the following applies:

(a) The circumstances of the sale or transfer would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance under chapter 69.50 RCW, based on such factors as the amount involved, the method of payment, the method of delivery, and any past dealings with any participant in the transaction. The state board of pharmacy shall adopt by rule criteria for determining whether a transaction is

suspicious, taking into consideration the recommendations in appendix A of the report to the United States attorney general by the suspicious orders task force under the federal comprehensive methamphetamine control act of 1996.

(b) The transaction involves payment for any substance specified in RCW 69.43.010(1) in cash or money orders in a total amount of more than two hundred dollars.

(4) The board of pharmacy shall transmit to the department of revenue a copy of each report of a suspicious transaction that it receives under this section. [2004 c 52 § 6; 2001 c 96 § 4.]

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.040 Reporting form. (1) The department of health, in accordance with rules developed by the state board of pharmacy shall provide a common reporting form for the substances in RCW 69.43.010 that contains at least the following information:

(a) Name of the substance;

(b) Quantity of the substance sold, transferred, or furnished;

(c) The date the substance was sold, transferred, or furnished;

(d) The name and address of the person buying or receiving the substance; and

(e) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing the substance.

(2) Monthly reports authorized under RCW 69.43.010(4) may be computer-generated in accordance with rules adopted by the department. [2001 c 96 § 7; 1989 1st ex.s. c 9 § 441; 1988 c 147 § 4.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.043 Recordkeeping requirements—Penalty. (1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person shall maintain a record of each such sale or transfer. The records must contain:

(a) The name of the substance;

(b) The quantity of the substance sold, transferred, or furnished;

(c) The date the substance was sold, transferred, or furnished;

(d) The name and address of the person buying or receiving the substance; and

(e) The method of and amount of payment for the substance.

(2) The records of sales and transfers required by this section shall be available for inspection by the state board of pharmacy and its authorized representatives and shall be maintained for two years.

(3) A violation of this section is a gross misdemeanor. [2001 c 96 § 5.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.048 Reporting and recordkeeping requirements—Submission of computer readable data, copies of federal reports. A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) and who is subject to the reporting or recordkeeping requirements of this chapter may satisfy the requirements by submitting to the state board of pharmacy, and its authorized representatives:

(1) Computer readable data from which all of the required information may be readily derived; or

(2) Copies of reports that are filed under federal law that contain all of the information required by the particular reporting or recordkeeping requirement of this chapter which it is submitted to satisfy. [2001 c 96 § 6.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.050 Rules. (1) The state board of pharmacy may adopt all rules necessary to carry out this chapter.

(2) Notwithstanding subsection (1) of this section, the department of health may adopt rules necessary for the administration of this chapter. [1989 1st ex.s. c 9 § 442; 1988 c 147 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.060 Theft—Missing quantity—Reporting. (1) The theft or loss of any substance under RCW 69.43.010 discovered by any person regulated by this chapter shall be reported to the state board of pharmacy within seven days after such discovery.

(2) Any difference between the quantity of any substance under RCW 69.43.010 received and the quantity shipped shall be reported to the state board of pharmacy within seven days of the receipt of actual knowledge of the discrepancy. When applicable, any report made pursuant to this subsection shall also include the name of any common carrier or person who transported the substance and the date of shipment of the substance. [1988 c 147 § 6.]

69.43.070 Sale, transfer, or furnishing of substance for unlawful purpose—Receipt of substance with intent to use unlawfully—Class B felony. (1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance listed in RCW 69.43.010 with knowledge or the intent that the recipient will use the substance unlawfully to manufacture a controlled substance under chapter 69.50 RCW is guilty of a class B felony under chapter 9A.20 RCW.

(2) Any person who receives any substance listed in RCW 69.43.010 with intent to use the substance unlawfully to manufacture a controlled substance under chapter 69.50 RCW is guilty of a class B felony under chapter 9A.20 RCW. [1988 c 147 § 7.]

69.43.080 False statement in report or record—Class C felony. It is unlawful for any person knowingly to make a false statement in connection with any report or record

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required under this chapter. A violation of this section is a class C felony under chapter 9A.20 RCW. [1988 c 147 § 8.]

69.43.090 Permit to sell, transfer, furnish, or receive substance—Exemptions—Application for permit—Fee—Renewal—Penalty. (1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010 to any person or who receives from a source outside of the state any substance specified in RCW 69.43.010 shall obtain a permit for the conduct of that business from the state board of pharmacy. However, a permit shall not be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

(2) Applications for permits shall be filed with the department in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(3) The board may grant permits on forms prescribed by it. The permits shall be effective for not more than one year from the date of issuance.

(4) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department.

(5) A permit granted under this chapter may be renewed on a date to be determined by the board, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee determined by the department.

(6) Permit fees charged by the department shall not exceed the costs incurred by the department in administering this chapter.

(7) Selling, transferring, or otherwise furnishing, or receiving any substance specified in RCW 69.43.010 without a required permit, is a gross misdemeanor. [2001 c 96 § 8; 1989 1st ex.s. c 9 § 443; 1988 c 147 § 9.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.100 Refusal, suspension, or revocation of a manufacturer's or wholesaler's permit. The board shall have the power to refuse, suspend, or revoke the permit of any manufacturer or wholesaler upon proof that:

(1) The permit was procured through fraud, misrepresentation, or deceit;

(2) The permittee has violated or has permitted any employee to violate any of the laws of this state relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated any of the rules and regulations of the board of pharmacy. [1988 c 147 § 10.]

69.43.105 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Exceptions—Penalty. (1) For purposes of this section, "traditional Chinese herbal

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practitioner" means a person who is certified as a diplomate in Chinese herbology from the national certification commission for acupuncture and oriental medicine or who has received a certificate in Chinese herbology from a school accredited by the accreditation council on acupuncture and oriental medicine.

(2) A pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may not knowingly sell, transfer, or otherwise furnish to any person a product at retail that he or she knows to contain any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, without first obtaining photo identification of the person that shows the date of birth of the person.

(3) A person buying or receiving a product at retail containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, from a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner must first produce photo identification of the person that shows the date of birth of the person.

(4) Any product containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, shall be kept in a central location that is not accessible by customers without assistance of an employee of the merchant.

(5) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may sell any product containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, to a person that is not at least eighteen years old.

(6) The board of pharmacy, by rule, may exempt products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, in combination with another active ingredient from the requirements of this section if they are found not to be used in the illegal manufacture of methamphetamine or other controlled dangerous substances. A manufacturer of a drug product may apply for removal of the product from the requirements of this section if the product is determined by the board to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine. The burden of proof for exemption is upon the person requesting the exemption. The petitioner shall provide the board with evidence that the product has been formulated in such a way as to serve as an effective general deterrent to the conversion of pseudoephedrine into methamphetamine. The evidence must include the furnishing of a valid scientific study, conducted by an independent, professional laboratory and evincing professional quality chemical analysis. Factors to be considered in whether a product should be excluded from this section include but are not limited to:

(a) Ease with which the product can be converted to methamphetamine;

(b) Ease with which ephedrine, pseudoephedrine, or phenylpropanolamine is extracted from the substance and whether it forms an emulsion, salt, or other form;

(c) Whether the product contains a "molecular lock" that renders it incapable of being converted into methamphetamine;

(d) Presence of other ingredients that render the product less likely to be used in the manufacture of methamphetamine; and

(e) Any pertinent data that can be used to determine the risk of the substance being used in the illegal manufacture of methamphetamine or any other controlled substance.

(7) Nothing in this section applies:

(a) To any product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers that is not the only active ingredient and that is in liquid, liquid capsule, or gel capsule form;

(b) To the sale of a product that may only be sold upon the presentation of a prescription;

(c) To the sale of a product by a traditional Chinese herbal practitioner to a patient; or

(d) When the details of the transaction are recorded in a pharmacy profile individually identified with the recipient and maintained by a licensed pharmacy.

(8)(a) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may retaliate against any employee that has made a good faith attempt to comply with the requirements of this section by requesting that a customer present photo identification, making a reasonable effort to determine the customer's age.

(b) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner is subject to prosecution under subsection (9) of this section if they made a good faith attempt to comply with the requirements of this section by requesting that a customer present photo identification, making a reasonable effort to determine the customer's age.

(9) A violation of this section is a gross misdemeanor. [2005 c 388 § 2.]

Finding—2005 c 388: "Restricting access to certain precursor drugs used to manufacture methamphetamine to ensure that they are only sold at retail to individuals who will use them for legitimate purposes upon production of proper identification is an essential step to controlling the manufacture of methamphetamine." [2005 c 388 § 1.]

Effective dates—2005 c 388: "(1) Section 2 of this act takes effect October 1, 2005.

(2) Sections 1, 3 through 7, 9, and 10 of this act take effect January 1, 2006.

(3) Section 8 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2005]." [2005 c 388 § 11.]

Severability—2005 c 388: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 388 § 10.]

69.43.110 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Penalty. (1) It is unlaw-

ful for a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, or a practitioner as defined in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish, in a single transaction:

(a) More than two packages of one or more products that he or she knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or

(b) A single package of any product that he or she knows to contain more than three grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances.

(2) It is unlawful for a person who is not a manufacturer, wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor licensed by or registered with the department of health under chapter 18.64 RCW to purchase or acquire, in any twenty-four hour period, more than the quantities of the substances specified in subsection (1) of this section.

(3) It is unlawful for any person to sell or distribute any of the substances specified in subsection (1) of this section unless the person is licensed by or registered with the department of health under chapter 18.64 RCW, or is a practitioner as defined in RCW 18.64.011.

(4) A violation of this section is a gross misdemeanor. [2005 c 388 § 4; 2004 c 52 § 5; 2001 c 96 § 9.]

Finding—Effective dates—Severability—2005 c 388: See notes following RCW 69.43.105.

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.120 Ephedrine, pseudoephedrine, phenylpropanolamine—Possession of more than fifteen grams—Penalty—Exceptions. (1) Any person who possesses more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of those substances, is guilty of a gross misdemeanor.

(2) This section does not apply to any of the following:

(a) A pharmacist or other authorized person who sells or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers upon the prescription of a practitioner, as defined in RCW 69.41.010;

(b) A practitioner who administers or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers to his or her patients;

(c) A pharmacy, manufacturer, or wholesaler licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW;

(d) A person in the course of his or her business of selling, transporting, or storing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, for a person described in (a), (b), or (c) of this subsection; or

(e) A person in possession of more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers in their home or residence under circumstances consistent with typical medicinal or household use as indicated by, but not limited to, storage

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location and possession of products in a variety of strengths, brands, types, purposes, and expiration dates. [2001 c 96 § 10.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.130 Exemptions—Pediatric products—Products exempted by the state board of pharmacy. RCW 69.43.110 and 69.43.120 do not apply to:

(1) Pediatric products primarily intended for administration to children under twelve years of age, according to label instructions, either: (a) In solid dosage form whose individual dosage units do not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or (b) in liquid form whose recommended dosage, according to label instructions, does not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters of liquid product;

(2) Pediatric liquid products primarily intended for administration to children under two years of age for which the recommended dosage does not exceed two milliliters and the total package content does not exceed one fluid ounce;

(3) Products that the state board of pharmacy, upon application of a manufacturer, exempts by rule from RCW 69.43.110 and 69.43.120 because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors; or

(4) Products, as packaged, that the board of pharmacy, upon application of a manufacturer, exempts from RCW 69.43.110(1)(b) and 69.43.120 because:

(a) The product meets the federal definition of an ordinary over-the-counter pseudoephedrine product as defined in 21 U.S.C. 802;

(b) The product is a salt, isomer, or salts of isomers of pseudoephedrine and, as packaged, has a total weight of more than three grams but the net weight of the pseudoephedrine base is equal to or less than three grams; and

(c) The board of pharmacy determines that the value to the people of the state of having the product, as packaged, available for sale to consumers outweighs the danger, and the product, as packaged, has not been used in the illegal manufacture of methamphetamine. [2004 c 52 § 7; 2001 c 96 § 11.]

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.135 Iodine, methylsulfonylmethane—Sales restrictions—Recording of transactions—Penalties. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Iodine matrix" means iodine at a concentration greater than two percent by weight in a matrix or solution.

(b) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.

(c) "Methylsulfonylmethane" means methylsulfonylmethane in its powder form only, and does not include products containing methylsulfonylmethane in other forms such as liquids, tablets, capsules not containing methylsulfonyl-

methane in pure powder form, ointments, creams, cosmetics, foods, and beverages.

(2) Any person who knowingly purchases in a thirty-day period or possesses any quantity of iodine in its elemental form, an iodine matrix, or more than two pounds of methylsulfonylmethane is guilty of a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Subsection (2) of this section does not apply to:

(a) A person who possesses iodine in its elemental form or an iodine matrix as a prescription drug, under a prescription issued by a licensed veterinarian, physician, or advanced registered nurse practitioner;

(b) A person who possesses iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane in its powder form and is actively engaged in the practice of animal husbandry of livestock;

(c) A person who possesses iodine in its elemental form or an iodine matrix in conjunction with experiments conducted in a chemistry or chemistry-related laboratory maintained by a:

(i) Public or private secondary school;

(ii) Public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States department of education;

(iii) Manufacturing facility, government agency, or research facility in the course of lawful business activities;

(d) A veterinarian, physician, advanced registered nurse practitioner, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons who possesses iodine in its elemental form, an iodine matrix, or methylsulfonylmethane in its powder form in the regular course of lawful business activities; or

(e) A person working in a general hospital who possesses iodine in its elemental form or an iodine matrix in the regular course of employment at the hospital.

(4) Any person who purchases any quantity of iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane must present an identification card or driver's license issued by any state in the United States or jurisdiction of another country before purchasing the item.

(5) The Washington state patrol shall develop a form to be used in recording transactions involving iodine in its elemental form, an iodine matrix, or methylsulfonylmethane. A person who sells or otherwise transfers any quantity of iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane to a person for any purpose authorized in subsection (3) of this section must record each sale or transfer. The record must be made on the form developed by the Washington state patrol and must be retained by the person for at least three years. The Washington state patrol or any local law enforcement agency may request access to the records:

(a) Failure to make or retain a record required under this subsection is a misdemeanor.

(b) Failure to comply with a request for access to records required under this subsection to the Washington state patrol or a local law enforcement agency is a misdemeanor. [2006 c 188 § 1.]

Reviser's note: This section was directed to be codified in chapter 9.91 RCW, but placement in chapter 69.43 RCW appears to be more appropriate.

69.43.140 Civil penalty—State board of pharmacy waiver. (1) In addition to the other penalties provided for in this chapter or in chapter 18.64 RCW, the state board of pharmacy may impose a civil penalty, not to exceed ten thousand dollars for each violation, on any licensee or registrant who has failed to comply with this chapter or the rules adopted under this chapter. In the case of a continuing violation, every day the violation continues shall be considered a separate violation.

(2) The state board of pharmacy may waive the suspension or revocation of a license or registration issued under chapter 18.64 RCW, or waive any civil penalty under this chapter, if the licensee or registrant establishes that he or she acted in good faith to prevent violations of this chapter, and the violation occurred despite the licensee's or registrant's exercise of due diligence. In making such a determination, the state board of pharmacy may consider evidence that an employer trained employees on how to sell, transfer, or otherwise furnish substances specified in RCW 69.43.010(1) in accordance with applicable laws. [2001 c 96 § 12.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.150 Application of chapter to local government. This chapter is applicable and uniform throughout this state and in all counties, cities, code cities, and towns therein. A county, city, code city, or town may not adopt or enforce any ordinance, pertaining to this chapter, which prohibits conduct that is not prohibited under this chapter, or defining violations or penalties different from those provided under this chapter. However, this section does not preclude a county, city, code city, or town from revoking, canceling, suspending, or otherwise limiting a business or professional license it has issued for conduct that violates any provision of this chapter. [2001 c 96 § 13.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.160 Ephedrine, pseudoephedrine, phenylpropanolamine—Methods to prevent sales violations—Department of health preparation of sign summarizing prohibitions. (1) To prevent violations of RCW 69.43.110, every licensee and registrant under chapter 18.64 RCW, who sells at retail any products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, shall do either or may do both of the following:

(a) Program scanners, cash registers, or other electronic devices used to record sales in a manner that will alert persons handling transactions to potential violations of RCW 69.43.110(1) and/or prevent such violations; or

(b) Place one or more signs on the premises to notify customers of the prohibitions of RCW 69.43.110. Any such sign may, but is not required to, conform to the language and format prepared by the department of health under subsection (2) of this section.

(2) The department of health shall prepare language and format for a sign summarizing the prohibitions in RCW 69.43.110 and 69.43.120 and make the language and format available to licensees and registrants under chapter 18.64 RCW, for voluntary use in their places of business to inform

customers and employees of the prohibitions. Nothing in this section requires the department of health to provide licensees or registrants with copies of signs, or any licensee or registrant to use the specific language or format prepared by the department under this subsection. [2001 c 96 § 14.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.170 Ephedrine, pseudoephedrine, phenylpropanolamine—Pilot project to record retail transactions—Penalty.

(1) The state board of pharmacy, using procedures under chapter 34.05 RCW, shall implement and conduct a statewide pilot project requiring the collection and maintenance of written or electronic logs or other alternative means of recording retail transactions involving ephedrine, pseudoephedrine, or phenylpropanolamine. The rules implementing the pilot project shall be in place by January 1, 2006.

(2) The pilot project shall be designed to address:

(a) Whether a log or other means of recording a transaction is an effective law enforcement tool;

(b) What information is needed to make logs or other means of recording a transaction useful as a deterrent to criminal activity;

(c) The most effective method of obtaining, recording, and storing log or other electronic data in the least intrusive manner available;

(d) How long the information recorded in the logs or other means of recording a transaction should be maintained; and

(e) How logs or other means of recording a transaction can be most effectively transmitted to law enforcement and the state board of pharmacy.

(3) The board shall convene a work group to evaluate the data collected during the pilot project. The work group shall consist of:

(a) One representative from law enforcement appointed by the Washington association of sheriffs and police chiefs;

(b) One representative from the Washington state patrol;

(c) One representative appointed by the Washington association of prosecuting attorneys;

(d) One representative appointed by the office of the attorney general;

(e) One representative appointed by the state board of pharmacy; and

(f) Two representatives from the retail industry.

(4) The state board of pharmacy shall begin data collection for the pilot project no later than January 1, 2006, and report to the legislature no later than November 1, 2007, regarding the findings of the work group along with any recommendations or proposed legislation.

(5) Any orders and rules adopted under this section not in conflict with state law continue in effect until modified, superseded, or repealed. The board may implement rule changes based upon the results of the pilot project and recommendations of the work group.

(6)(a) The records required by this section are for the confidential use of the pharmacy, shopkeeper, or itinerant vendor, except that:

(i) Every pharmacy, shopkeeper, or itinerant vendor shall produce the records in court whenever lawfully required to do so;

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(ii) The records shall be open for inspection by the board of pharmacy; and

(iii) The records shall be open for inspection by any general or limited authority Washington peace officer to enforce the provisions of this chapter.

(b) A person violating this subsection is guilty of a misdemeanor. [2005 c 388 § 8.]

Finding—Effective dates—Severability—2005 c 388: See notes following RCW 69.43.105.

69.43.180 Expansion of log requirements—Petition by law enforcement.

(1) The Washington association of sheriffs and police chiefs or the Washington state patrol may petition the state board of pharmacy to apply the log requirements in RCW 69.43.170 to one or more products that contain ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, that is not the only active ingredient and that is in liquid, liquid capsule, or gel capsule form. The petition shall establish that:

(a) Ephedrine, pseudoephedrine, or phenylpropanolamine can be effectively extracted from the product and converted into methamphetamine or another controlled dangerous substance; and

(b) Law enforcement, the Washington state patrol, or the department of ecology are finding substantial evidence that the product is being used for the illegal manufacture of methamphetamine or another controlled dangerous substance.

(2) The board of pharmacy shall adopt rules when a petition establishes that requiring the application of the log requirements in RCW 69.43.170 to the sale of the product at retail is warranted based upon the effectiveness and extent of use of the product for the illegal manufacture of methamphetamine or other controlled dangerous substances and the extent of the burden of any restrictions upon consumers. The board of pharmacy may adopt emergency rules to apply the log requirements to the sale of a product when the petition establishes that the immediate restriction of the product is necessary in order to protect public health and safety. [2005 c 388 § 3.]

Finding—Effective dates—Severability—2005 c 388: See notes following RCW 69.43.105.

69.43.190 Products found at methamphetamine sites—Report.

Each county sheriff shall compile and maintain a record of commercial products containing ephedrine, pseudoephedrine, or phenylpropanolamine and packaging found at methamphetamine laboratory sites. The data shall be forwarded to the Washington association of sheriffs and police chiefs and shall be reported to the legislature by November 1, 2007, and annually thereafter. [2005 c 388 § 9.]

Finding—Effective dates—Severability—2005 c 388: See notes following RCW 69.43.105.

**Chapter 69.45 RCW
DRUG SAMPLES**

Sections

69.45.010	Definitions.
69.45.020	Registration of manufacturers—Additional information required by the department.

69.45.030	Records maintained by manufacturer—Report of loss or theft of drug samples—Reports of practitioners receiving controlled substance drug samples.
69.45.040	Storage and transportation of drug samples—Disposal of samples which have exceeded their expiration dates.
69.45.050	Distribution of drug samples—Written request—No fee or charge permitted—Possession of legend drugs or controlled substances by manufacturers' representatives.
69.45.060	Disposal of surplus, outdated, or damaged drug samples.
69.45.070	Registration fees—Penalty.
69.45.080	Violations of chapter—Manufacturer's liability—Penalty—Seizure of drug samples.
69.45.090	Confidentiality.
69.45.900	Severability—1987 c 411.

69.45.010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Board" means the board of pharmacy.

(2) "Drug samples" means any federal food and drug administration approved controlled substance, legend drug, or products requiring prescriptions in this state, which is distributed at no charge to a practitioner by a manufacturer or a manufacturer's representative, exclusive of drugs under clinical investigations approved by the federal food and drug administration.

(3) "Controlled substance" means a drug, substance, or immediate precursor of such drug or substance, so designated under or pursuant to chapter 69.50 RCW, the uniform controlled substances act.

(4) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a drug or device, whether or not there is an agency relationship.

(5) "Dispense" means the interpretation of a prescription or order for a drug, biological, or device and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Distribute" means to deliver, other than by administering or dispensing, a legend drug.

(7) "Legend drug" means any drug that is required by state law or by regulations of the board to be dispensed on prescription only or is restricted to use by practitioners only.

(8) "Manufacturer" means a person or other entity engaged in the manufacture or distribution of drugs or devices, but does not include a manufacturer's representative.

(9) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(10) "Practitioner" means a physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a pharmacist under chapter 18.64 RCW, a commissioned medical or dental officer in the United States armed forces or the public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized to prescribe by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic

medicine and surgery, or a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission.

(11) "Manufacturer's representative" means an agent or employee of a drug manufacturer who is authorized by the drug manufacturer to possess drug samples for the purpose of distribution in this state to appropriately authorized health care practitioners.

(12) "Reasonable cause" means a state of facts found to exist that would warrant a reasonably intelligent and prudent person to believe that a person has violated state or federal drug laws or regulations.

(13) "Department" means the department of health.

(14) "Secretary" means the secretary of health or the secretary's designee. [1994 sp.s. c 9 § 738; 1989 1st ex.s. c 9 § 444; 1987 c 411 § 1.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.020 Registration of manufacturers—Additional information required by the department. A manufacturer that intends to distribute drug samples in this state shall register annually with the department, providing the name and address of the manufacturer, and shall:

(1) Provide a twenty-four hour telephone number and the name of the individual(s) who shall respond to reasonable official inquiries from the department, as directed by the board, based on reasonable cause, regarding required records, reports, or requests for information pursuant to a specific investigation of a possible violation. Each official request by the department and each response by a manufacturer shall be limited to the information specifically relevant to the particular official investigation. Requests for the address of sites in this state at which drug samples are stored by the manufacturer's representative and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples shall be responded to as soon as possible but not later than the close of business on the next business day following the request; or

(2) If a twenty-four hour telephone number is not available, provide the addresses of sites in this state at which drug samples are stored by the manufacturer's representative, and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples. The manufacturer shall annually submit a complete updated list of the sites and individuals to the department. [1989 1st ex.s. c 9 § 445; 1987 c 411 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.030 Records maintained by manufacturer—Report of loss or theft of drug samples—Reports of practitioners receiving controlled substance drug samples. (1) The following records shall be maintained by the manufacturer distributing drug samples in this state and shall be available for inspection by authorized representatives of the department based on reasonable cause and pursuant to an official investigation:

(a) An inventory of drug samples held in this state for distribution, taken at least annually by a representative of the manufacturer other than the individual in direct control of the drug samples;

(b) Records or documents to account for all drug samples distributed, destroyed, or returned to the manufacturer. The records shall include records for sample drugs signed for by practitioners, dates and methods of destruction, and any dates of returns; and

(c) Copies of all reports of lost or stolen drug samples.

(2) All required records shall be maintained for two years and shall include transaction dates.

(3) Manufacturers shall report to the department the discovery of any loss or theft of drug samples as soon as possible but not later than the close of business on the next business day following the discovery.

(4) Manufacturers shall report to the department as frequently as, and at the same time as, their other reports to the federal drug enforcement administration, or its lawful successor, the name, address and federal registration number for each practitioner who has received controlled substance drug samples and the name, strength and quantity of the controlled substance drug samples distributed. [1989 1st ex.s. c 9 § 446; 1987 c 411 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.040 Storage and transportation of drug samples—Disposal of samples which have exceeded their expiration dates. (1) Drug samples shall be stored in compliance with the requirements of federal and state laws, rules, and regulations.

(2) Drug samples shall be maintained in a locked area to which access is limited to persons authorized by the manufacturer.

(3) Drug samples shall be stored and transported in such a manner as to be free of contamination, deterioration, and adulteration.

(4) Drug samples shall be stored under conditions of temperature, light, moisture, and ventilation so as to meet the label instructions for each drug.

(5) Drug samples which have exceeded the expiration date shall be physically separated from other drug samples until disposed of or returned to the manufacturer. [1987 c 411 § 4.]

69.45.050 Distribution of drug samples—Written request—No fee or charge permitted—Possession of legend drugs or controlled substances by manufacturers' representatives. (1) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to practitioners legally authorized to prescribe such drugs or, at the request of such practitioner, to pharmacies of hospitals or other health care entities. The recipient of the drug sample must execute a written receipt upon delivery that is returned to the manufacturer or the manufacturer's representative.

(2) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to a practitioner legally authorized to prescribe such drugs pursuant to a written request for such samples. The request shall contain:

(a) The recipient's name, address, and professional designation;

(b) The name, strength, and quantity of the drug samples delivered;

(c) The name or identification of the manufacturer and of the individual distributing the drug sample; and

(d) The dated signature of the practitioner requesting the drug sample.

(3) No fee or charge may be imposed for sample drugs distributed in this state.

(4) A manufacturer's representative shall not possess legend drugs or controlled substances other than those distributed by the manufacturer they represent. Nothing in this section prevents a manufacturer's representative from possessing a legally prescribed and dispensed legend drug or controlled substance. [1989 c 164 § 2; 1987 c 411 § 5.]

Legislative finding—1989 c 164: "The legislature finds that chapter 69.45 RCW is more restrictive than the federal prescription drug marketing act of 1987, and the legislature further finds that a change in chapter 69.45 RCW accepting the position of the federal law is beneficial to the citizens of this state." [1989 c 164 § 1.]

69.45.060 Disposal of surplus, outdated, or damaged drug samples. Surplus, outdated, or damaged drug samples shall be disposed of as follows:

(1) Returned to the manufacturer; or

(2) Witnessed destruction by such means as to assure that the drug cannot be retrieved. However, controlled substances shall be returned to the manufacturer or disposed of in accordance with rules adopted by the board: PROVIDED, That the board shall adopt by rule the regulations of the federal drug enforcement administration or its lawful successor unless, stating reasonable grounds, it adopts rules consistent with such regulations. [1987 c 411 § 6.]

69.45.070 Registration fees—Penalty. The department may charge reasonable fees for registration. The registration fee shall not exceed the fee charged by the department for a pharmacy location license. If the registration fee is not paid on or before the date due, a renewal or new registration may be issued only upon payment of the registration renewal fee and a penalty fee equal to the registration renewal fee. [1991 c 229 § 8; 1989 1st ex.s. c 9 § 447; 1987 c 411 § 7.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.080 Violations of chapter—Manufacturer's liability—Penalty—Seizure of drug samples. (1) The manufacturer is responsible for the actions and conduct of its representatives with regard to drug samples.

(2) The board may hold a public hearing to examine a possible violation and may require a designated representative of the manufacturer to attend.

(3) If a manufacturer fails to comply with this chapter following notification by the board, the board may impose a civil penalty of up to five thousand dollars. The board shall take no action to impose any civil penalty except pursuant to a hearing held in accordance with chapter 34.05 RCW.

(4) Specific drug samples which are distributed in this state in violation of this chapter, following notification by the

board, shall be subject to seizure following the procedures set out in RCW 69.41.060. [1987 c 411 § 8.]

69.45.090 Confidentiality. All records, reports, and information obtained by the board from or on behalf of a manufacturer or manufacturer's representative under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. This section does not apply to public disclosure of the identity of persons found by the board to have violated state or federal law, rules, or regulations. This section is not intended to restrict the investigations and proceedings of the board so long as the board maintains the confidentiality required by this section. [2005 c 274 § 330; 1987 c 411 § 9.]

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

69.45.900 Severability—1987 c 411. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 411 § 12.]

Chapter 69.50 RCW

UNIFORM CONTROLLED SUBSTANCES ACT

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ARTICLE I DEFINITIONS

69.50.101 Definitions. Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or

dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of

isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(z) "Secretary" means the secretary of health or the secretary's designee.

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(cc) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy. [2003 c 142 § 4; 1998 c 222 § 3; 1996 c 178 § 18; 1994 sp.s. c 9 § 739; 1993 c 187 § 1. Prior: 1990 c 248 § 1; 1990 c 219 § 3; 1990 c 196 § 8; 1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Severability—2003 c 142: See note following RCW 18.53.010.

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Finding—1990 c 219: See note following RCW 69.41.030.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1973 2nd ex.s. c 38: "If any of the provisions of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the amendatory act, or the application of the provision to other persons or circumstances, or the act prior to its amendment is not affected." [1973 2nd ex.s. c 38 § 3.]

69.50.102 Drug paraphernalia—Definitions. (a) As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) Miniature cocaine spoons, and cocaine vials;

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;

(xi) Chillums;

(xii) Bongs; and

(xiii) Ice pipes or chillers.

(b) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this chapter;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community; and

(14) Expert testimony concerning its use. [1981 c 48 § 1.]

Severability—1981 c 48: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 48 § 4.]

ARTICLE II STANDARDS AND SCHEDULES

69.50.201 Enforcement of chapter—Authority to change schedules of controlled substances. (a) The state board of pharmacy shall enforce this chapter and may add substances to or delete or reschedule substances listed in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the procedures of chapter 34.05 RCW.

(1) In making a determination regarding a substance, the board shall consider the following:

(i) the actual or relative potential for abuse;

(ii) the scientific evidence of its pharmacological effect, if known;

(iii) the state of current scientific knowledge regarding the substance;

(iv) the history and current pattern of abuse;

(v) the scope, duration, and significance of abuse;

(vi) the risk to the public health;

(vii) the potential of the substance to produce psychic or physiological dependence liability; and

(viii) whether the substance is an immediate precursor of a controlled substance.

(2) The board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

(b) After considering the factors enumerated in subsection (a) of this section, the board shall make findings with respect thereto and adopt and cause to be published a rule controlling the substance upon finding the substance has a potential for abuse.

(c) The board, without regard to the findings required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211 or the procedures prescribed by subsections (a) and (b) of this section, may place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule. If the board designates a substance as an immediate precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

(d) If a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the board shall similarly control the substance under this chapter after the expiration of thirty days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C. Sec. 811(h), unless within that thirty-day period, the board or an interested party objects to inclusion, rescheduling, temporary scheduling, or deletion. If no objection is made, the board shall adopt and cause to be published, without the necessity of making determinations or findings as required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling, or deleting the substance. If an objection is made, the board shall make a determination with respect to the designation, rescheduling, or deletion of the substance as provided by subsection (a) of this section. Upon receipt of an objection to inclusion, rescheduling, or deletion under this chapter by the board, the board shall publish notice of the receipt of the objection, and control under this chapter is stayed until the board adopts a rule as provided by subsection (a) of this section.

(e) The board, by rule and without regard to the requirements of subsection (a) of this section, may schedule a substance in Schedule I regardless of whether the substance is substantially similar to a controlled substance in Schedule I or II if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355. Upon receipt of notice under RCW 69.50.214, the board shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsection (a)(1)(iv), (v), and (vi) of this section, and may also consider clandestine

importation, manufacture, or distribution, and, if available, information concerning the other factors set forth in subsection (a)(1) of this section. A rule may not be adopted under this subsection until the board initiates a rule-making proceeding under subsection (a) of this section with respect to the substance. A rule adopted under this subsection must be vacated upon the conclusion of the rule-making proceeding initiated under subsection (a) of this section with respect to the substance.

(g) [(f)] Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Titles 66 and 26 RCW. [1998 c 245 § 108; 1993 c 187 § 2; 1989 1st ex.s. c 9 § 430; 1986 c 124 § 2; 1971 ex.s. c 308 § 69.50.201.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.202 Nomenclature. The controlled substances listed or to be listed in the schedules in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 are included by whatever official, common, usual, chemical, or trade name designated. [1971 ex.s. c 308 § 69.50.202.]

69.50.203 Schedule I tests. (a) The state board of pharmacy shall place a substance in Schedule I upon finding that the substance:

- (1) has high potential for abuse;
- (2) has no currently accepted medical use in treatment in the United States; and
- (3) lacks accepted safety for use in treatment under medical supervision.

(b) The board may place a substance in Schedule I without making the findings required by subsection (a) of this section if the substance is controlled under Schedule I of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 3; 1971 ex.s. c 308 § 69.50.203.]

69.50.204 Schedule I. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule I:

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol;
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide); (1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl some trade or other names: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;

(21) Dimenoxadol;

(22) Dimepheptanol;

(23) Dimethylthiambutene;

(24) Dioxaphetyl butyrate;

(25) Dipipanone;

(26) Ethylmethylthiambutene;

(27) Etonitazene;

(28) Etoxadine;

(29) Furethidine;

(30) Hydroxypethidine;

(31) Ketobemidone;

(32) Levomoramide;

(33) Levophenacymorphan;

(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);

(35) 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(36) Morpheridine;

(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(38) Noracymethadol;

(39) Norlevorphanol;

(40) Normethadone;

(41) Norpipanone;

(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

(43) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(44) Phenadoxone;

(45) Phenampromide;

(46) Phenomorphan;

(47) Phenoperidine;

(48) Piritramide;

(49) Proheptazine;

(50) Properidine;

(51) Propiram;

(52) Racemoramide;

(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(54) Tilidine;

(55) Trimeperidine.

(b) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) 3,4-methylenedioxy-N-ethylamphetamine some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

(9) N-hydroxy-3,4-methylenedioxyamphetamine some trade or other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

(10) Dihydromorphine;

(11) Drotebanol;

(12) Etorphine, except hydrochloride salt;

(13) Heroin;

(14) Hydromorphanol;

(15) Methyldesorphine;

(16) Methyldihydromorphine;

(17) Morphine methylbromide;

(18) Morphine methylsulfonate;

(19) Morphine-N-Oxide;

(20) Myrophine;

(21) Nicocodeine;

(22) Nicomorphine;

(23) Normorphine;

(24) Pholcodine;

(25) Thebacon.

(c) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;

(2) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;

(3) 4-methoxyamphetamine: Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA;

(4) 5-methoxy-3,4-methylenedioxy-amphetamine;

(5) 4-methyl-2,5-dimethoxy-amphetamine: Some trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP";

(6) 3,4-methylenedioxy amphetamine;

(7) 3,4-methylenedioxymethamphetamine (MDMA);

(8) 3,4,5-trimethoxy amphetamine;

(9) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(10) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;

(11) Dimethyltryptamine: Some trade or other names: DMT;

(12) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2' 1,2) azepino (5,4-b) indole; Tabernanthe iboga;

(13) Lysergic acid diethylamide;

(14) Marijuana or marijuana;

(15) Mescaline;

(16) Parahexyl-7374: Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

(17) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 U.S.C. Sec. 812 (c), Schedule I (c)(12));

(18) N-ethyl-3-piperidyl benzilate;

(19) N-methyl-3-piperidyl benzilate;

(20) Psilocybin;

(21) Psilocyn;

(22) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extracts of *Cannabis*, species, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 - cis - or trans tetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

(ii) Delta 6 - cis - or trans tetrahydrocannabinol, and their optical isomers;

(iii) Delta 3,4 - cis - or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(23) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE;

(24) Pyrrolidine analog of phencyclidine: Some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; PHP;

(25) Thiophene analog of phencyclidine: Some trade or other names: 1-(1-[2-thienyl]-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP;

(26) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine: A trade or other name is TCPy.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) Mecloqualone;

(2) Methaqualone.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following

substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline;

(2) (+-)-cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(3) N-ethylamphetamine;

(4) N,N-dimethylamphetamine: Some trade or other names: N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenoethylene.

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 4; 1986 c 124 § 3; 1980 c 138 § 1; 1971 ex.s. c 308 § 69.50.204.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.205 Schedule II tests. (a) The state board of pharmacy shall place a substance in Schedule II upon finding that:

(1) the substance has high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe psychological or physical dependence.

(b) The state board of pharmacy may place a substance in Schedule II without making the findings required by subsection (a) of this section if the substance is controlled under Schedule II of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 5; 1971 ex.s. c 308 § 69.50.205.]

69.50.206 Schedule II. (a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

(b) Substances. (Vegetable origin or chemical synthesis.) Unless specifically excepted, any of the following substances, except those listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

(i) Raw opium;

(ii) Opium extracts;

(iii) Opium fluid;

(iv) Powdered opium;

(v) Granulated opium;

(vi) Tincture of opium;

(vii) Codeine;

(viii) Ethylmorphine;

(ix) Etorphine hydrochloride;

(x) Hydrocodone;

(xi) Hydromorphone;

(xii) Metopon;

- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone; and
- (xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subsection (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves including cocaine and ecgonine, and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(5) Methylbenzoyllecgonine (cocaine — its salts, optical isomers, and salts of optical isomers).

(6) Concentrate of poppy straw (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.)

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following synthetic opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levomethorphan;
- (12) Levorphanol;
- (13) Metazocine;
- (14) Methadone;
- (15) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (16) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (17) Pethidine (meperidine);
- (18) Pethidine—Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (19) Pethidine—Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (20) Pethidine—Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (21) Phenazocine;
- (22) Piminodine;
- (23) Racemethorphan;
- (24) Racemorphan;
- (25) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, its salts, isomers, and salts of its isomers;

(3) Phenmetrazine and its salts;

(4) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital;

(4) Phencyclidine;

(5) Secobarbital.

(f) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product. (Some other names for dronabinol [6aR-trans]-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-i-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.)

(2) Nabilone: Some trade or other names are (\pm)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzol[b,d]pyran-9-one.

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone: Some trade or other names phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 6; 1986 c 124 § 4; 1980 c 138 § 2; 1971 ex.s. c 308 § 69.50.206.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.207 Schedule III tests. (a) The state board of pharmacy shall place a substance in Schedule III upon finding that:

(1) the substance has a potential for abuse less than the substances included in Schedules I and II;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(b) The state board of pharmacy may place a substance in Schedule III without making the findings required by subsection (a) of this section if the substance is controlled under Schedule III of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 7; 1971 ex.s. c 308 § 69.50.207.]

69.50.208 Schedule III. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule III:

(a) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Any compound, mixture, or preparation in dosage unit form containing any stimulant substance included in Schedule II and which was listed as an excepted compound on August 25, 1971, pursuant to the federal Controlled Substances Act, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except for containing a lesser quantity of controlled substances;

- (2) Benzphetamine;
- (3) Chlorphentermine;
- (4) Clortermine;
- (5) Phendimetrazine.

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture, or preparation containing:
 - (i) Amobarbital;
 - (ii) Secobarbital;
 - (iii) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

- (2) Any suppository dosage form containing:
 - (i) Amobarbital;
 - (ii) Secobarbital;
 - (iii) Pentobarbital;

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;

- (4) Chlorhexadol;
- (5) Lysergic acid;
- (6) Lysergic acid amide;
- (7) Methyprylon;
- (8) Sulfondiethylmethane;
- (9) Sulfonethylmethane;
- (10) Sulfonmethane;

(11) Tiletamine and zolazepam or any of their salts—some trade or other names for a tiletamine-zolazepam combination product. Telazol, some trade or other names for tile-

tamine: 2-(ethylamino)-2-(2-thienyl) cyclohexanone, some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]- diazepin-7(1H)-one flupyrzapon.

(c) Nalorphine.

(d) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) Boldenone;
- (2) Chlorotestosterone;
- (3) Clostebol;
- (4) Dehydrochlormethyltestosterone;
- (5) Dihydrotestosterone;
- (6) Drostanolone;
- (7) Ethylestrenol;
- (8) Fluoxymesterone;
- (9) Formebolone;
- (10) Mesterolone;
- (11) Methandienone;
- (12) Methandranone;
- (13) Methandriol;
- (14) Methandrostenolone;
- (15) Methenolone;
- (16) Methyltestosterone;
- (17) Mibolerone;
- (18) Nanrolone [nandrolone];
- (19) Norethandrolone;
- (20) Oxandrolone;
- (21) Oxymesterone;
- (22) Oxymetholone;
- (23) Stanolone;
- (24) Stanozolol;
- (25) Testolactone;
- (26) Testosterone;
- (27) Trenbolone; and

(28) Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this subsection:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one

or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (a)(1) and (2) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a stimulant or depressant effect on the central nervous system.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 8; 1986 c 124 § 5; 1980 c 138 § 3; 1971 ex.s. c 308 § 69.50.208.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.209 Schedule IV tests. (a) The state board of pharmacy shall place a substance in Schedule IV upon finding that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule III.

(b) The state board of pharmacy may place a substance in Schedule IV without making the findings required by subsection (a) of this section if the substance is controlled under Schedule IV of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 9; 1971 ex.s. c 308 § 69.50.209.]

69.50.210 Schedule IV. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule IV:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Barbitol;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Chloral betaine;
- (6) Chloral hydrate;
- (7) Chlordiazepoxide;
- (8) Clobazam;
- (9) Clonazepam;
- (10) Clorazepate;
- (11) Clotiazepam;
- (12) Cloxazolam;
- (13) Delorazepam;
- (14) Diazepam;
- (15) Estazolam;
- (16) Ethchlorvynol;
- (17) Ethinamate;
- (18) Ethyl loflazepate;
- (19) Fludiazepam;
- (20) Flunitrazepam;
- (21) Flurazepam;
- (22) Halazepam;
- (23) Haloxazolam;
- (24) Ketazolam;
- (25) Loprazolam;
- (26) Lorazepam;
- (27) Lormetazepam;
- (28) Mebutamate;
- (29) Medazepam;
- (30) Meprobamate;
- (31) Methohexital;
- (32) Methylphenobarbital (mephobarbital);
- (33) Midazolam;
- (34) Nimetazepam;
- (35) Nitrazepam;
- (36) Nordiazepam;
- (37) Oxazepam;
- (38) Oxazolam;
- (39) Paraldehyde;
- (40) Petrichloral;
- (41) Phenobarbital;
- (42) Pinazepam;

- (43) Prazepam;
- (44) Quazepam;
- (45) Temazepam;
- (46) Tetrazepam;
- (47) Triazolam.

(c) Any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

- (1) Cathine((+)norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Pemoline (including organometallic complexes and chelates thereof);
- (8) Phentermine;
- (9) Pipradrol;
- (10) SPA ((-)-1-dimethylamino-1, 2-dephenylethane).

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts:

- (1) Pentazocine.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a depressant effect on the central nervous system.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 10; 1986 c 124 § 6; 1981 c 147 § 2; 1980 c 138 § 4; 1971 ex.s. c 308 § 69.50.210.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.211 Schedule V tests. (a) The state board of pharmacy shall place a substance in Schedule V upon finding that:

- (1) the substance has low potential for abuse relative to the controlled substances included in Schedule IV;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule IV.

(b) The state board of pharmacy may place a substance in Schedule V without being required to make the findings required by subsection (a) of this section if the substance is

controlled under Schedule V of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 11; 1971 ex.s. c 308 § 69.50.211.]

69.50.212 Schedule V. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule V:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drug and its salts: Buprenorphine.

(b) Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this subsection, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
- (6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers: Pyrovalerone.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 12; 1986 c 124 § 7; 1980 c 138 § 5; 1971 ex.s. c 308 § 69.50.212.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.213 Republishing of schedules. The state board of pharmacy shall publish updated schedules annually. Failure to publish updated schedules is not a defense in any administrative or judicial proceeding under this chapter. [1993 c 187 § 13; 1971 ex.s. c 308 § 69.50.213.]

69.50.214 Controlled substance analog. A controlled substance analog, to the extent intended for human consumption, shall be treated, for the purposes of this chapter, as a substance included in Schedule I. Within thirty days after the initiation of prosecution with respect to a controlled substance analog by indictment or information, the prosecuting attorney shall notify the state board of pharmacy of information relevant to emergency scheduling as provided for in *RCW 69.50.201(f). After final determination that the controlled substance analog should not be scheduled, no prosecu-

tion relating to that substance as a controlled substance analog may continue or take place. [1993 c 187 § 14.]

*Reviser's note: RCW 69.50.201 was amended by 1998 c 245 § 108, changing subsection (f) to subsection (e).

ARTICLE III

REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

69.50.301 Rules—Fees. The board may adopt rules and the department may charge reasonable fees, relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state. [1993 c 187 § 15; 1991 c 229 § 9; 1989 1st ex.s. c 9 § 431; 1971 ex.s. c 308 § 69.50.301.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.302 Registration requirements. (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain annually a registration issued by the department in accordance with the board's rules.

(b) A person registered by the department under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by the registration and in conformity with this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of business or employment. This exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a substance included in Schedule V.

(d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers upon finding it consistent with the public health and safety. Personal practitioners licensed or registered in the state of Washington under the respective professional licensing acts shall not be required to be registered under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The department may inspect the establishment of a registrant or applicant for registration in accordance with rules adopted by the board. [1993 c 187 § 16; 1989 1st ex.s. c 9 § 432; 1971 ex.s. c 308 § 69.50.302.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.303 Registration. (a) The department shall register an applicant to manufacture or distribute controlled substances included in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 unless the board determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(2) compliance with applicable state and local law;

(3) promotion of technical advances in the art of manufacturing controlled substances and the development of new substances;

(4) any convictions of the applicant under any laws of another country or federal or state laws relating to any controlled substance;

(5) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(6) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(7) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(8) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture or distribute controlled substances included in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered, or exempted under RCW 69.50.302(d), to dispense any controlled substances or to conduct research with controlled substances included in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this Article for practitioners engaging in research with nonnarcotic substances included in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with substances included in Schedule I may conduct research with substances included in Schedule I within this state upon furnishing the board evidence of that federal registration.

(d) A manufacturer or distributor registered under the federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., may submit a copy of the federal application as an application for registration as a manufacturer or distributor under this section. The board may require a manufacturer or distributor to submit information in addition to the application for registration under the federal act. [1993 c 187 § 17; 1989 1st ex.s. c 9 § 433; 1971 ex.s. c 308 § 69.50.303.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.304 Revocation and suspension of registration—Seizure or placement under seal of controlled substances. (a) A registration, or exemption from registration, under RCW 69.50.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the state board of pharmacy upon finding that the registrant has:

- (1) furnished false or fraudulent material information in any application filed under this chapter;
- (2) been convicted of a felony under any state or federal law relating to any controlled substance;
- (3) had the registrant's federal registration suspended or revoked and is no longer authorized by federal law to manufacture, distribute, or dispense controlled substances; or
- (4) committed acts that would render registration under RCW 69.50.303 inconsistent with the public interest as determined under that section.

(b) The board may limit revocation or suspension of a registration to the particular controlled substance or schedule of controlled substances, with respect to which grounds for revocation or suspension exist.

(c) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The department may seize or place under seal any controlled substance owned or possessed by a registrant whose registration has expired or who has ceased to practice or do business in the manner contemplated by the registration. The controlled substance must be held for the benefit of the registrant or the registrant's successor in interest. The department shall notify a registrant, or the registrant's successor in interest, who has any controlled substance seized or placed under seal, of the procedures to be followed to secure the return of the controlled substance and the conditions under which it will be returned. The department may not dispose of any controlled substance seized or placed under seal under this subsection until the expiration of one hundred eighty days after the controlled substance was seized or placed under seal. The costs incurred by the department in seizing, placing under seal, maintaining custody, and disposing of any controlled substance under this subsection may be recovered from the registrant, any proceeds obtained from the disposition of the controlled substance, or from both. Any balance remaining after the costs have been recovered from the proceeds of any disposition must be delivered to the registrant or the registrant's successor in interest.

(e) The department shall promptly notify the drug enforcement administration of all orders restricting, suspending, or revoking registration and all forfeitures of controlled substances. [1993 c 187 § 18; 1989 1st ex.s. c 9 § 434; 1986 c 124 § 8; 1971 ex.s. c 308 § 69.50.304.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.305 Procedure for denial, suspension, or revocation of registration. (a) Any registration, or exemption from registration, issued pursuant to the provisions of this chapter shall not be denied, suspended, or revoked unless the board denies, suspends, or revokes such registration, or exemption from registration, by proceedings consistent with the administrative procedure act, chapter 34.05 RCW.

(b) The board may suspend any registration simultaneously with the institution of proceedings under RCW 69.50.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction. [1971 ex.s. c 308 § 69.50.305.]

69.50.306 Records of registrants. Persons registered, or exempted from registration under RCW 69.50.302(d), to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the state board of pharmacy issues. [1971 ex.s. c 308 § 69.50.306.]

69.50.308 Prescriptions. (a) A controlled substance may be dispensed only as provided in this section.

(b) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule II may not be dispensed without the written prescription of a practitioner.

(1) Schedule II narcotic substances may be dispensed by a pharmacy pursuant to a facsimile prescription under the following circumstances:

(i) The facsimile prescription is transmitted by a practitioner to the pharmacy; and

(ii) The facsimile prescription is for a patient in a long-term care facility. "Long-term care facility" means nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, and adult family homes licensed under chapter 70.128 RCW; or

(iii) The facsimile prescription is for a patient of a hospice program certified or paid for by medicare under Title XVIII; or

(iv) The facsimile prescription is for a patient of a hospice program licensed by the state; and

(v) The practitioner or the practitioner's agent notes on the facsimile prescription that the patient is a long-term care or hospice patient.

(2) Injectable Schedule II narcotic substances that are to be compounded for patient use may be dispensed by a pharmacy pursuant to a facsimile prescription if the facsimile prescription is transmitted by a practitioner to the pharmacy.

(3) Under (1) and (2) of this subsection the facsimile prescription shall serve as the original prescription and shall be maintained as other Schedule II narcotic substances prescriptions.

(c) In emergency situations, as defined by rule of the state board of pharmacy, a substance included in Schedule II

may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of RCW 69.50.306. A prescription for a substance included in Schedule II may not be refilled.

(d) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule III or IV, which is a prescription drug as determined under RCW 69.04.560, may not be dispensed without a written or oral prescription of a practitioner. Any oral prescription must be promptly reduced to writing. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(e) A valid prescription or lawful order of a practitioner, in order to be effective in legalizing the possession of controlled substances, must be issued in good faith for a legitimate medical purpose by one authorized to prescribe the use of such controlled substance. An order purporting to be a prescription not in the course of professional treatment is not a valid prescription or lawful order of a practitioner within the meaning and intent of this chapter; and the person who knows or should know that the person is filling such an order, as well as the person issuing it, can be charged with a violation of this chapter.

(f) A substance included in Schedule V must be distributed or dispensed only for a medical purpose.

(g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession. Medical treatment includes dispensing or administering a narcotic drug for pain, including intractable pain.

(h) No administrative sanction, or civil or criminal liability, authorized or created by this chapter may be imposed on a pharmacist for action taken in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(i) An individual practitioner may not dispense a substance included in Schedule II, III, or IV for that individual practitioner's personal use. [2001 c 248 § 1; 1993 c 187 § 19; 1971 ex.s. c 308 § 69.50.308.]

69.50.309 Containers. A person to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner, and the owner of any animal for which such controlled substance has been prescribed, sold, or dispensed may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. [1971 ex.s. c 308 § 69.50.309.]

69.50.310 Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control. On and after September 21, 1977, a humane society and animal control agency may apply to the department for registration pursuant to the applicable provisions of this chapter for the sole purpose of being authorized to purchase, possess, and administer sodium pentobarbital to euth-

anize injured, sick, homeless, or unwanted domestic pets and animals. Any agency so registered shall not permit a person to administer sodium pentobarbital unless such person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering this drug.

The department may issue a limited registration to carry out the provisions of this section. The board shall promulgate such rules as it deems necessary to insure strict compliance with the provisions of this section. The board may suspend or revoke registration upon determination that the person administering sodium pentobarbital has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [1989 1st ex.s. c 9 § 435; 1977 ex.s. c 197 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.311 Triplicate prescription form program—Compliance by health care practitioners. Any licensed health care practitioner with prescription or dispensing authority shall, as a condition of licensure and as directed by the practitioner's disciplinary board, consent to the requirement, if imposed, of complying with a triplicate prescription form program as may be established by rule by the department of health. [1989 1st ex.s. c 9 § 436; 1984 c 153 § 20.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.312 Electronic communication of prescription information—Board may adopt rules. (1) Information concerning an original prescription or information concerning a prescription refill for a controlled substance may be electronically communicated to a pharmacy of the patient's choice pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information and the system used for receiving electronically communicated prescription information must be approved by the board. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and sys-

tems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section. [1998 c 222 § 4.]

69.50.320 Registration of department of fish and wildlife for use in chemical capture programs—Rules. The department of fish and wildlife may apply to the department of health for registration pursuant to the applicable provisions of this chapter to purchase, possess, and administer controlled substances for use in chemical capture programs. The department of fish and wildlife must not permit a person to administer controlled substances unless the person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

The department of health may issue a limited registration to carry out the provisions of this section. The board may adopt rules to ensure strict compliance with the provisions of this section. The board, in consultation with the department of fish and wildlife, must by rule add or remove additional controlled substances for use in chemical capture programs. The board shall suspend or revoke registration upon determination that the person administering controlled substances has not demonstrated adequate knowledge as required by this section. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [2003 c 175 § 2.]

Findings—2003 c 175: "The legislature finds that the department of fish and wildlife is responsible for the proper management of the state's diverse wildlife resources. Wildlife management often requires the department of fish and wildlife to immobilize individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes. The legislature finds that it is often necessary for the department to use certain controlled substances to accomplish these purposes. Therefore, the legislature finds that the department of fish and wildlife, in coordination with the board of pharmacy, must be enabled to use approved controlled substances in order to accomplish its legitimate wildlife management goals." [2003 c 175 § 1.]

ARTICLE IV OFFENSES AND PENALTIES

69.50.401 Prohibited acts: A—Penalties. (1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(2) Any person who violates this section with respect to:

(a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam, including its salts, isomers, and salts of isomers, classified in Schedule IV, is

guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(b) Amphetamine, including its salts, isomers, and salts of isomers, or methamphetamine, including its salts, isomers, and salts of isomers, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A substance classified in Schedule IV, except flunitrazepam, including its salts, isomers, and salts of isomers, is guilty of a class C felony punishable according to chapter 9A.20 RCW; or

(e) A substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2005 c 218 § 1; 2003 c 53 § 331. Prior: 1998 c 290 § 1; 1998 c 82 § 2; 1997 c 71 § 2; 1996 c 205 § 2; 1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

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

Application—1998 c 290: "This act applies to crimes committed on or after July 1, 1998." [1998 c 290 § 9.]

Effective date—1998 c 290: "This act takes effect July 1, 1998." [1998 c 290 § 10.]

Severability—1998 c 290: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 290 § 11.]

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

Severability—1987 c 458: See note following RCW 48.21.160.

Serious drug offenders, notice of release or escape: RCW 72.09.710.

69.50.4011 Counterfeit substances—Penalties. (1) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(2) Any person who violates this section with respect to:

(a) A counterfeit substance classified in Schedule I or II which is a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(b) A counterfeit substance which is methamphetamine, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(c) Any other counterfeit substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A counterfeit substance classified in Schedule IV, except flunitrazepam, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(e) A counterfeit substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 332.]

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

69.50.4012 Delivery of substance in lieu of controlled substance—Penalty. (1) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance.

(2) Any person who violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 333.]

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

69.50.4013 Possession of controlled substance—Penalty. (1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW. [2003 c 53 § 334.]

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

69.50.4014 Possession of forty grams or less of marijuana—Penalty. Except as provided in RCW 69.50.401(2)(c), any person found guilty of possession of forty grams or less of marijuana is guilty of a misdemeanor. [2003 c 53 § 335.]

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

69.50.4015 Involving a person under eighteen in unlawful controlled substance transaction—Penalty. (1) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawful to manufacture, sell, or deliver a controlled substance.

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(2) A violation of this section is a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 336.]

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

69.50.4016 Provisions not applicable to offenses under RCW 69.50.410. RCW 69.50.401 through 69.50.4015 shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410. [2003 c 53 § 337.]

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

69.50.402 Prohibited acts: B—Penalties. (1) It is unlawful for any person:

(a) Who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

(b) Who is a registrant, to manufacture a controlled substance not authorized by his or her registration, or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or other authorized person;

(c) Who is a practitioner, to prescribe, order, dispense, administer, supply, or give to any person:

(i) Any amphetamine, including its salts, optical isomers, and salts of optical isomers classified as a schedule II controlled substance by the board of pharmacy pursuant to chapter 34.05 RCW; or

(ii) Any nonnarcotic stimulant classified as a schedule II controlled substance and designated as a nonnarcotic stimulant by the board of pharmacy pursuant to chapter 34.05 RCW;

except for the treatment of narcolepsy or for the treatment of hyperkinesia, or for the treatment of drug-induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic psychiatric evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the state board of pharmacy before the investigation has been begun: PROVIDED, That the board of pharmacy, in consultation with the medical quality assurance commission and the osteopathic disciplinary board, may establish by rule, pursuant to chapter 34.05 RCW, disease states or conditions in addition to those listed in this subsection for the treatment of which Schedule II nonnarcotic stimulants may be prescribed, ordered, dispensed, administered, supplied, or given to patients by practitioners: AND PROVIDED, FURTHER, That investigations by the board of pharmacy of abuse of prescriptive authority by physicians, licensed pursuant to chapter 18.71 RCW, pursuant to subsection (1)(c) of this section shall be done in consultation with the medical quality assurance commission;

(d) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(e) To refuse an entry into any premises for any inspection authorized by this chapter; or

(f) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other

structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(2) Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [2003 c 53 § 338; 1994 sp.s. c 9 § 740; 1980 c 138 § 6; 1979 ex.s. c 119 § 1; 1971 ex.s. c 308 § 69.50.402.]

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

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

69.50.403 Prohibited acts: C—Penalties. (1) It is unlawful for any person knowingly or intentionally:

(a) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by *RCW 69.50.307;

(b) To use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, or issued to another person;

(c) To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii) by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address;

(d) To falsely assume the title of, or represent herself or himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance;

(e) To make or utter any false or forged prescription or false or forged written order;

(f) To affix any false or forged label to a package or receptacle containing controlled substances;

(g) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;

(h) To possess a false or fraudulent prescription with intent to obtain a controlled substance; or

(i) To attempt to illegally obtain controlled substances by providing more than one name to a practitioner when obtaining a prescription for a controlled substance. If a person's name is legally changed during the time period that he or she is receiving health care from a practitioner, the person shall inform all providers of care so that the medical and pharmacy records for the person may be filed under a single name identifier.

(2) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

(3) A person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, or fined not more than two thousand

dollars, or both. [2003 c 53 § 339; 1996 c 255 § 1; 1993 c 187 § 21; 1971 ex.s. c 308 § 69.50.403.]

***Reviser's note:** RCW 69.50.307 was repealed by 2001 c 248 § 2.

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

69.50.404 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [1971 ex.s. c 308 § 69.50.404.]

69.50.405 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. [1971 ex.s. c 308 § 69.50.405.]

69.50.406 Distribution to persons under age eighteen. (1) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing a controlled substance listed in Schedules I or II which is a narcotic drug or methamphetamine, including its salts, isomers, and salts of isomers, or flunitrazepam, including its salts, isomers, and salts of isomers, listed in Schedule IV, to a person under eighteen years of age is guilty of a class A felony punishable by the fine authorized by RCW 69.50.401(2) (a) or (b), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(2) (a) or (b), or by both.

(2) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his or her junior is guilty of a class B felony punishable by the fine authorized by RCW 69.50.401(2) (c), (d), or (e), by a term of imprisonment up to twice that authorized by RCW 69.50.401(2) (c), (d), or (e), or both. [2005 c 218 § 2; 2003 c 53 § 340; 1998 c 290 § 2; 1996 c 205 § 7; 1987 c 458 § 5; 1971 ex.s. c 308 § 69.50.406.]

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

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.407 Conspiracy. Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy. [1971 ex.s. c 308 § 69.50.407.]

69.50.408 Second or subsequent offenses. (1) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(2) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United

States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(3) This section does not apply to offenses under RCW 69.50.4013. [2003 c 53 § 341; 1989 c 8 § 3; 1971 ex.s. c 308 § 69.50.408.]

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

69.50.410 Prohibited acts: D—Penalties. (1) Except as authorized by this chapter it is a class C felony for any person to sell for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana.

For the purposes of this section only, the following words and phrases shall have the following meanings:

(a) "To sell" means the passing of title and possession of a controlled substance from the seller to the buyer for a price whether or not the price is paid immediately or at a future date.

(b) "For profit" means the obtaining of anything of value in exchange for a controlled substance.

(c) "Price" means anything of value.

(2)(a) Any person convicted of a violation of subsection (1) of this section shall receive a sentence of not more than five years in a correctional facility of the department of social and health services for the first offense.

(b) Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, of subsection (1) of this section shall receive a mandatory sentence of five years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for the second or subsequent violation of subsection (1) of this section.

(3)(a) Any person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for such violation.

(b) Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin shall receive a mandatory sentence of ten years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for this second or subsequent violation: PROVIDED, That the indeterminate sentence review board under RCW 9.95.040 shall not reduce the minimum term imposed for a violation under this subsection.

(4) Whether or not a mandatory minimum term has expired, an offender serving a sentence under this section may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4).

(5) In addition to the sentences provided in subsection (2) of this section, any person convicted of a violation of subsection (1) of this section shall be fined in an amount calculated to at least eliminate any and all proceeds or profits directly or indirectly gained by such person as a result of sales of controlled substances in violation of the laws of this

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or other states, or the United States, up to the amount of five hundred thousand dollars on each count.

(6) Any person, addicted to the use of controlled substances, who voluntarily applies to the department of social and health services for the purpose of participating in a rehabilitation program approved by the department for addicts of controlled substances shall be immune from prosecution for subsection (1) offenses unless a filing of an information or indictment against such person for a violation of subsection (1) of this section is made prior to his or her voluntary participation in the program of the department of social and health services. All applications for immunity under this section shall be sent to the department of social and health services in Olympia. It shall be the duty of the department to stamp each application received pursuant to this section with the date and time of receipt.

(7) This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.401 through 69.50.4015. [2003 c 53 § 342; 1999 c 324 § 6; 1975-'76 2nd ex.s. c 103 § 1; 1973 2nd ex.s. c 2 § 2.]

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

69.50.412 Prohibited acts: E—Penalties. (1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

(5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases. [2002 c 213 § 1; 1981 c 48 § 2.]

Severability—1981 c 48: See note following RCW 69.50.102.

69.50.4121 Drug paraphernalia—Selling or giving—Penalty. (1) Every person who sells or gives, or permits to be sold or given to any person any drug paraphernalia in any

form commits a class I civil infraction under chapter 7.80 RCW. For purposes of this subsection, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. Drug paraphernalia includes, but is not limited to objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips: Meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs; and

(m) Ice pipes or chillers.

(2) It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

(3) Nothing in subsection (1) of this section prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs, and pharmacies. [2002 c 213 § 2; 1998 c 317 § 1.]

69.50.413 Health care practitioners—Suspension of license for violation of chapter. The license of any licensed health care practitioner shall be suspended for any violation of this chapter. The suspension shall run concurrently with, and not less than, the term of the sentence for the violation. [1984 c 153 § 21.]

69.50.414 Sale or transfer of controlled substance to minor—Cause of action by parent—Damages. The parent or legal guardian of any minor to whom a controlled substance, as defined in RCW 69.50.101, is sold or transferred, shall have a cause of action against the person who sold or transferred the controlled substance for all damages to the minor or his or her parent or legal guardian caused by such sale or transfer. Damages shall include: (a) Actual damages, including the cost for treatment or rehabilitation of the minor child's drug dependency, (b) forfeiture to the parent or legal guardian of the cash value of any proceeds received from such sale or transfer of a controlled substance, and (c) reasonable attorney fees.

This section shall not apply to a practitioner, as defined in *RCW 69.50.101(t), who sells or transfers a controlled

substance to a minor pursuant to a valid prescription or order. [1986 c 124 § 10.]

*Reviser's note: The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (w) of that section.

69.50.415 Controlled substances homicide—Penalty.

(1) A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401(2) (a), (b), or (c) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide.

(2) Controlled substances homicide is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 343; 1996 c 205 § 8; 1987 c 458 § 2.]

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

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.416 Counterfeit substances prohibited—Penalties.

(1) It is unlawful for any person knowingly or intentionally to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who in fact manufactured, distributed, or dispensed the substance.

(2) It is unlawful for any person knowingly or intentionally to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof.

(3) A person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [2003 c 53 § 344; 1993 c 187 § 22.]

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

69.50.420 Violations—Juvenile driving privileges.

(1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW

46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 120; 1988 c 148 § 5.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

69.50.425 Misdemeanor violations—Minimum penalties. A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction, the fine shall not be less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community restitution. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred. [2002 c 175 § 44; 1989 c 271 § 105.]

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

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.430 Additional fine for certain felony violations. (1) Every person convicted of a felony violation of RCW 69.50.401 through 69.50.4013, 69.50.4015, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415 shall be fined one thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

(2) On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court. [2003 c 53 § 345; 1989 c 271 § 106.]

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

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.435 Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions. (1) Any person who violates RCW 69.50.401 by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under RCW 69.50.401 or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I,

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RCW 69.50.204, except leaves and flowering tops of marijuana to a person:

- (a) In a school;
- (b) On a school bus;
- (c) Within one thousand feet of a school bus route stop designated by the school district;
- (d) Within one thousand feet of the perimeter of the school grounds;
- (e) In a public park;
- (f) In a public housing project designated by a local governing authority as a drug-free zone;
- (g) On a public transit vehicle;
- (h) In a public transit stop shelter;
- (i) At a civic center designated as a drug-free zone by the local governing authority; or
- (j) Within one thousand feet of the perimeter of a facility designated under (i) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter

may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(2) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, in a public housing project designated by a local governing authority as a drug-free zone, on a public transit vehicle, in a public transit stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter.

(3) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, the public housing project designated by a local governing authority as a drug-free zone, or the public transit vehicle, or at the school bus route stop, the public transit vehicle stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter at the time of the offense or that school was not in session.

(4) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW

69.50.401 for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(5) In a prosecution under this section, a map produced or reproduced by any municipality, school district, county, transit authority engineer, or public housing authority for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or civic center designated as a drug-free zone by a local governing authority. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, transit authority, or public housing authority if the map or diagram is otherwise admissible under court rule.

(6) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(a) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(b) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

(c) "School bus route stop" means a school bus stop as designated by a school district;

(d) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(e) "Public transit vehicle" means any motor vehicle, streetcar, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and

which is used for the purpose of carrying passengers on a regular schedule;

(f) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(g) "Stop shelter" means a passenger shelter designated by a transit authority;

(h) "Civic center" means a publicly owned or publicly operated place or facility used for recreational, educational, or cultural activities;

(i) "Public housing project" means the same as "housing project" as defined in RCW 35.82.020. [2003 c 53 § 346. Prior: 1997 c 30 § 2; 1997 c 23 § 1; 1996 c 14 § 2; 1991 c 32 § 4; prior: 1990 c 244 § 1; 1990 c 33 § 588; 1989 c 271 § 112.]

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

Findings—Intent—1997 c 30: "The legislature finds that a large number of illegal drug transactions occur in or near public housing projects. The legislature also finds that this activity places the families and children residing in these housing projects at risk for drug-related crimes and increases the general level of fear among the residents of the housing project and the areas surrounding these projects. The intent of the legislature is to allow local governments to designate public housing projects as drug-free zones." [1997 c 30 § 1.]

Findings—Intent—1996 c 14: "The legislature finds that a large number of illegal drug transactions occur in or near publicly owned places used for recreational, educational, and cultural purposes. The legislature also finds that this activity places the people using these facilities at risk for drug-related crimes, discourages the use of recreational, educational, and cultural facilities, blights the economic development around these facilities, and increases the general level of fear among the residents of the areas surrounding these facilities. The intent of the legislature is to allow local governments to designate a perimeter of one thousand feet around publicly owned places used primarily for recreation, education, and cultural activities as drug-free zones." [1996 c 14 § 1.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.440 Possession with intent to manufacture—Penalty. (1) It is unlawful for any person to possess ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, including its salts, isomers, and salts of isomers.

(2) Any person who violates this section is guilty of a class B felony and may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost. [2005 c 218 § 3; 2003 c 53 § 347; 2002 c 134 § 1; 2000 c 225 § 4; 1997 c 71 § 3; 1996 c 205 § 1.]

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

Effective date—2002 c 134: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002]." [2002 c 134 § 5.]

Severability—2000 c 225: See note following RCW 69.55.010.

ARTICLE V
ENFORCEMENT AND
ADMINISTRATIVE PROVISIONS

69.50.500 Powers of enforcement personnel. (a) It is hereby made the duty of the state board of pharmacy, the department, and their officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and all other states, relating to controlled substances as defined in this chapter.

(b) Employees of the department of health, who are so designated by the board as enforcement officers are declared to be peace officers and shall be vested with police powers to enforce the drug laws of this state, including this chapter. [1989 1st ex.s. c 9 § 437; 1971 ex.s. c 308 § 69.50.500.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.501 Administrative inspections. The state board of pharmacy may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(a) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(b) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to RCW 69.50.502 an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(a) inspect and copy records required by this chapter to be kept;

(b) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(c) inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative

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subpoena issued in accordance with chapter 34.05 RCW, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) if the owner, operator, or agent in charge of the controlled premises consents;

(b) in situations presenting imminent danger to health or safety;

(c) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(d) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(e) in all other situations in which a warrant is not constitutionally required;

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing. [1971 ex.s. c 308 § 69.50.501.]

69.50.502 Warrants for administrative inspections.

Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of a superior court, or a judge of a district court within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(a) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(b) be directed to a person authorized by RCW 69.50.500 to execute it;

(c) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(d) identify the item or types of property to be seized, if any;

(e) direct that it be served during normal business hours and designate the judge to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders oth-

erwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court in which the inspection was made. [1971 ex.s. c 308 § 69.50.502.]

69.50.503 Injunctions. (a) The superior courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section. [1971 ex.s. c 308 § 69.50.503.]

69.50.504 Cooperative arrangements. The state board of pharmacy shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. [1971 ex.s. c 308 § 69.50.504.]

69.50.505 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a *lis pendens* by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stat-

ing that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

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

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

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

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

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(13) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(a) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(b) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (b) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(c) For any claim filed under (b) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency. [2008 c 6 § 631; 2003 c 53 § 348; 2001 c 168 § 1; 1993 c 487 § 1; 1992 c 211 § 1. Prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); 1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15; prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

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

Severability—2001 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 168 § 5.]

Effective date—1990 c 213 §§ 2 and 12: See note following RCW 64.44.010.

Severability—1990 c 213: See RCW 64.44.901.

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Severability—1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 282 § 3.]

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

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

Severability—1983 c 2: See note following RCW 18.71.030.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—Effective date—1982 c 171: See RCW 69.52.900 and 69.52.901.

Severability—1981 c 48: See note following RCW 69.50.102.

69.50.506 Burden of proof; liabilities. (a) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this chapter upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties. [1971 ex.s. c 308 § 69.50.506.]

69.50.507 Judicial review. All final determinations, findings and conclusions of the state board of pharmacy under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the superior court wherein he resides or in the superior court of Thurston county, such review to be in conformity with the administrative procedure act, chapter 34.05 RCW. [1971 ex.s. c 308 § 69.50.507.]

69.50.508 Education and research. (a) The state board of pharmacy may carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The board may encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, it may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The board may enter into contracts for educational and research activities without performance bonds.

(d) The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization. [1971 ex.s. c 308 § 69.50.508.]

69.50.509 Search and seizure of controlled substances. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court, district court, or municipal court that there is probable cause to believe that any controlled substance is being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any law enforcement officer of the state, commanding him or her to search the premises designated and described in such complaint and warrant, and to seize all controlled substances there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, administering, dispensing, delivering, distributing, producing, possessing, giving away, furnishing or otherwise disposing of such controlled substances, and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if

any, and if no person be found in the possession of said articles, the returns shall so state. The provisions of RCW 10.31.030 as now or hereafter amended shall apply to actions taken pursuant to this chapter. [1987 c 202 § 228; 1971 ex.s. c 308 § 69.50.509.]

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

69.50.510 Search and seizure at rental premises—Notification of landlord. Whenever a controlled substance which is manufactured, distributed, dispensed, or acquired in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known by the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 9.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.50.511 Cleanup of hazardous substances at illegal drug manufacturing facility—Rules. Law enforcement agencies who during the official investigation or enforcement of any illegal drug manufacturing facility come in contact with or are aware of any substances suspected of being hazardous as defined in RCW 70.105D.020, shall notify the department of ecology for the purpose of securing a contractor to identify, clean up, store, and dispose of suspected hazardous substances, except for those random and representative samples obtained for evidentiary purposes. Whenever possible, a destruct order covering hazardous substances which may be described in general terms shall be obtained concurrently with a search warrant. Materials that have been photographed, fingerprinted, and subsampled by police shall be destroyed as soon as practical. The department of ecology shall make every effort to recover costs from the parties responsible for the suspected hazardous substance. All recoveries shall be deposited in the account or fund from which contractor payments are made.

The department of ecology may adopt rules to carry out its responsibilities under this section. The department of ecology shall consult with law enforcement agencies prior to adopting any rule or policy relating to this section. [2007 c 104 § 17; 1990 c 213 § 13; 1989 c 271 § 228.]

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Severability—1990 c 213: See RCW 64.44.901.

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.520 Violence reduction and drug enforcement account. The violence reduction and drug enforcement account is created in the state treasury. All designated receipts from RCW 9.41.110(8), 66.24.210(4), 66.24.290(2), 69.50.505(9)(a), 82.08.150 (5) and (7)(b)(iii), 82.24.020(2), 82.24.026(2)(c), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under chapter 271, Laws of 1989 and chapter 7, Laws of 1994 sp. sess., including state incarceration costs. Funds from the account may also be appropriated to reim-

burse local governments for costs associated with implementing criminal justice legislation including chapter 338, Laws of 1997. During the 2003-2005 and 2005-2007 bienniums, funds from the account may also be used for costs associated with providing grants to local governments in accordance with chapter 338, Laws of 1997, funding drug offender treatment services in accordance with RCW 70.96A.350, maintenance and operating costs of the Washington association of sheriffs and police chiefs jail reporting system, maintenance and operating costs of the juvenile rehabilitation administration's client activity tracking system, civil indigent legal representation, multijurisdictional narcotics task forces, transfers to the health services account, and grants to community networks under chapter 70.190 RCW by the family policy council. [2005 c 518 § 937; 2005 c 514 § 1107; 2005 c 514 § 202; 2004 c 276 § 912; 2003 1st sp.s. c 25 § 930; 2002 c 371 § 920. Prior: 2001 2nd sp.s. c 7 § 920; 2001 c 168 § 3; 2000 2nd sp.s. c 1 § 917; 1999 c 309 § 922; 1998 c 346 § 909; prior: 1997 c 451 § 2; 1997 c 338 § 69; 1997 c 149 § 912; 1995 2nd sp.s. c 18 § 919; 1994 sp.s. c 7 § 910; 1989 c 271 § 401.]

Reviser's note: This section was amended by 2005 c 514 § 202, 2005 c 514 § 1107, and by 2005 c 518 § 937, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

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

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—2001 c 168: See note following RCW 69.50.505.

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Construction—Severability—Effective date—1998 c 346: See notes following RCW 50.24.014.

Effective date—1997 c 451: See note following RCW 66.24.290.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

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

Captions not law—1989 c 271: "Part, subpart, and section headings and the index as used in this act do not constitute any part of the law." [1989 c 271 § 605.]

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.525 Diversion prevention and control—Report. (a) As used in this section, "diversion" means the (2008 Ed.)

transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(b) The department shall regularly prepare and make available to other state regulatory, licensing, and law enforcement agencies a report on the patterns and trends of actual distribution, diversion, and abuse of controlled substances.

(c) The department shall enter into written agreements with local, state, and federal agencies for the purpose of improving identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent, and control drug diversion and drug abuse. The department shall convene periodic meetings to coordinate a state diversion prevention and control program. The department shall arrange for cooperation and exchange of information among agencies and with neighboring states and the federal government. [1998 c 245 § 109; 1993 c 187 § 20.]

ARTICLE VI MISCELLANEOUS

69.50.601 Pending proceedings. (a) Prosecution for any violation of law occurring prior to May 21, 1971 is not affected or abated by this chapter. If the offense being prosecuted is similar to one set out in Article IV of this chapter, then the penalties under Article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to May 21, 1971 are not affected by this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to May 21, 1971. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state board of pharmacy shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to May 21, 1971 and who are registered or licensed by the state.

(e) This chapter applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following May 21, 1971. [1971 ex.s. c 308 § 69.50.601.]

69.50.602 Continuation of rules. Any orders and rules promulgated under any law affected by this chapter and in effect on May 21, 1971 and not in conflict with it continue in effect until modified, superseded or repealed. [1971 ex.s. c 308 § 69.50.602.]

69.50.603 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject

of this chapter among those states which enact it. [1971 ex.s. c 308 § 69.50.603.]

69.50.604 Short title. This chapter may be cited as the Uniform Controlled Substances Act. [1971 ex.s. c 308 § 69.50.604.]

69.50.605 Severability—1971 ex.s. c 308. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 308 § 69.50.605.]

69.50.606 Repealers. The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act:

(1) Section 2072, Code of 1881, section 418, chapter 249, Laws of 1909, section 4, chapter 205, Laws of 1963 and RCW 9.91.030;

(2) Section 69.33.220, chapter 27, Laws of 1959, section 7, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.220;

(3) Sections 69.33.230 through 69.33.280, chapter 27, Laws of 1959 and RCW 69.33.230 through 69.33.280;

(4) Section 69.33.290, chapter 27, Laws of 1959, section 1, chapter 97, Laws of 1959 and RCW 69.33.290;

(5) Section 69.33.300, chapter 27, Laws of 1959, section 8, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.300;

(6) Sections 69.33.310 through 69.33.400, chapter 27, Laws of 1959 and RCW 69.33.310 through 69.33.400;

(7) Section 69.33.410, chapter 27, Laws of 1959, section 20, chapter 38, Laws of 1963 and RCW 69.33.410;

(8) Sections 69.33.420 through 69.33.440, 69.33.900 through 69.33.950, chapter 27, Laws of 1959 and RCW 69.33.420 through 69.33.440, 69.33.900 through 69.33.950;

(9) Section 255, chapter 249, Laws of 1909 and RCW 69.40.040;

(10) Section 1, chapter 6, Laws of 1939, section 1, chapter 29, Laws of 1939, section 1, chapter 57, Laws of 1945, section 1, chapter 24, Laws of 1955, section 1, chapter 49, Laws of 1961, section 1, chapter 71, Laws of 1967, section 9, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.060;

(11) Section 1, chapter 23, Laws of 1955, section 2, chapter 49, Laws of 1961, section 2, chapter 71, Laws of 1967 and RCW 69.40.061;

(12) Section 21, chapter 38, Laws of 1963 and RCW 69.40.063;

(13) Section 2, chapter 6, Laws of 1939, section 23, chapter 38, Laws of 1963, section 10, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.070;

(14) Section 12, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.075;

(15) Section 1, chapter 205, Laws of 1963 and RCW 69.40.080;

(16) Section 2, chapter 205, Laws of 1963 and RCW 69.40.090;

(17) Section 3, chapter 205, Laws of 1963 and RCW 69.40.100;

(18) Section 11, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.110;

(19) Section 1, chapter 33, Laws of 1970 ex. sess. and RCW 69.40.120; and

(20) Section 1, chapter 80, Laws of 1970 ex. sess. [1971 ex.s. c 308 § 69.50.606.]

69.50.607 Effective date—1971 ex.s. c 308. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1971 ex.s. c 308 § 69.50.607.]

69.50.608 State preemption. The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality. [1989 c 271 § 601.]

69.50.609 Captions not law—1993 c 187. Section captions as used in this act constitute no part of the law. [1993 c 187 § 23.]

Chapter 69.51 RCW

CONTROLLED SUBSTANCES THERAPEUTIC RESEARCH ACT

Sections

69.51.010	Short title.
69.51.020	Legislative purpose.
69.51.030	Definitions.
69.51.040	Controlled substances therapeutic research program.
69.51.050	Patient qualification review committee.
69.51.060	Sources and distribution of marijuana.
69.51.080	Cannabis and related products considered Schedule II substances.

69.51.010 Short title. This chapter may be cited as the Controlled Substances Therapeutic Research Act. [1979 c 136 § 1.]

69.51.020 Legislative purpose. The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill effects of cancer chemotherapy and radiology, and, additionally, may alleviate the ill effects of glaucoma. The legislature further finds that there is a need for further research and experimentation regarding the use of marijuana under strictly controlled circumstances. It is for this purpose that the Controlled Substances Therapeutic Research Act is hereby enacted. [1979 c 136 § 2.]

69.51.030 Definitions. As used in this chapter:

- (1) "Board" means the state board of pharmacy;
- (2) "Department" means the department of health.

(3) "Marijuana" means all parts of the plant of the genus *Cannabis* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin; and

(4) "Practitioner" means a physician licensed pursuant to chapter 18.71 or 18.57 RCW. [1989 1st ex.s. c 9 § 438; 1979 c 136 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.51.040 Controlled substances therapeutic research program. (1) There is established in the board the controlled substances therapeutic research program. The program shall be administered by the department. The board shall promulgate rules necessary for the proper administration of the Controlled Substances Therapeutic Research Act. In such promulgation, the board shall take into consideration those pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse.

(2) Except as provided in RCW 69.51.050(4), the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the patient qualification review committee by a practitioner as being involved in a life-threatening or sense-threatening situation. No patient may be admitted to the controlled substances therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment in accordance with the informed consent provisions of chapter 7.70 RCW.

(3) The board shall provide by rule for a program of registration with the department of bona fide controlled substance therapeutic research projects. [1989 1st ex.s. c 9 § 439; 1979 c 136 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.51.050 Patient qualification review committee. (1) The board shall appoint a patient qualification review committee to serve at its pleasure. The patient qualification review committee shall be comprised of:

(a) A physician licensed to practice medicine in Washington state and specializing in the practice of ophthalmology;

(b) A physician licensed to practice medicine in Washington state and specializing in the subspecialty of medical oncology;

(c) A physician licensed to practice medicine in Washington state and specializing in the practice of psychiatry; and

(d) A physician licensed to practice medicine in Washington state and specializing in the practice of radiology.

Members of the committee shall be compensated at the rate of fifty dollars per day for each day spent in the performance of their official duties, and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The patient qualification review committee shall review all applicants for the controlled substance therapeutic

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research program and their licensed practitioners and certify their participation in the program.

(3) The patient qualification review committee and the board shall insure that the privacy of individuals who participate in the controlled substance therapeutic research program is protected by withholding from all persons not connected with the conduct of the research the names and other identifying characteristics of such individuals. Persons authorized to engage in research under the controlled substance therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted, except to the extent necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(4) The patient qualification review committee may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the committee and the board, and after approval for such participation has been granted pursuant to pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse. [1979 c 136 § 5.]

69.51.060 Sources and distribution of marijuana. (1)

The board shall obtain marijuana through whatever means it deems most appropriate and consistent with regulations promulgated by the United States food and drug administration, the drug enforcement agency, and the national institute on drug abuse, and pursuant to the provisions of this chapter.

(2) The board may use marijuana which has been confiscated by local or state law enforcement agencies and has been determined to be free from contamination.

(3) The board shall distribute the analyzed marijuana to approved practitioners and/or institutions in accordance with rules promulgated by the board. [1979 c 136 § 6.]

69.51.080 Cannabis and related products considered Schedule II substances. (1)

The enumeration of tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols in RCW 69.50.204 as a Schedule I controlled substance does not apply to the use of cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols by certified patients pursuant to the provisions of this chapter.

(2) Cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols shall be considered Schedule II substances as enumerated in RCW 69.50.206 only for the purposes enumerated in this chapter. [1979 c 136 § 8.]

Chapter 69.51A RCW

MEDICAL MARIJUANA

Sections

69.51A.005	Purpose and intent.
69.51A.010	Definitions.
69.51A.020	Construction of chapter.
69.51A.030	Physicians excepted from state's criminal laws.
69.51A.040	Failure to seize marijuana, qualifying patients' affirmative defense.
69.51A.050	Medical marijuana, lawful possession—State not liable.

69.51A.060	Crimes—Limitations of chapter.
69.51A.070	Addition of medical conditions.
69.51A.080	Adoption of rules by the department of health—Sixty-day supply for qualifying patients.
69.51A.900	Short title—1999 c 2.
69.51A.901	Severability—1999 c 2.
69.51A.902	Captions not law—1999 c 2.

69.51A.005 Purpose and intent. The people of Washington state find that some patients with terminal or debilitating illnesses, under their physician's care, may benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; AIDS wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.

The people find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

Therefore, the people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, may benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;

Persons who act as designated providers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and

Physicians also be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the physician's professional judgment, medical marijuana may prove beneficial. [2007 c 371 § 2; 1999 c 2 § 2 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: "The legislature intends to clarify the law on medical marijuana so that the lawful use of this substance is not impaired and medical practitioners are able to exercise their best professional judgment in the delivery of medical treatment, qualifying patients may fully participate in the medical use of marijuana, and designated providers may assist patients in the manner provided by this act without fear of state criminal prosecution. This act is also intended to provide clarification to law enforcement and to all participants in the judicial system." [2007 c 371 § 1.]

69.51A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Designated provider" means a person who:

- (a) Is eighteen years of age or older;
- (b) Has been designated in writing by a patient to serve as a designated provider under this chapter;
- (c) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and
- (d) Is the designated provider to only one patient at any one time.

(2) "Medical use of marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(q), for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating illness.

(3) "Qualifying patient" means a person who:

(a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;

(b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;

(c) Is a resident of the state of Washington at the time of such diagnosis;

(d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and

(e) Has been advised by that physician that they may benefit from the medical use of marijuana.

(4) "Terminal or debilitating medical condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or

(e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or

(f) Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or

(g) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.

(5) "Valid documentation" means:

(a) A statement signed by a qualifying patient's physician, or a copy of the qualifying patient's pertinent medical records, which states that, in the physician's professional opinion, the patient may benefit from the medical use of marijuana;

(b) Proof of identity such as a Washington state driver's license or identicaid, as defined in RCW 46.20.035; and

(c) A copy of the physician statement described in (a) of this subsection shall have the same force and effect as the signed original. [2007 c 371 § 3; 1999 c 2 § 6 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.020 Construction of chapter. Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana for nonmedical purposes. [1999 c 2 § 3 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.030 Physicians excepted from state's criminal laws. A physician licensed under chapter 18.71 or 18.57 RCW shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for:

(1) Advising a qualifying patient about the risks and benefits of medical use of marijuana or that the qualifying patient

may benefit from the medical use of marijuana where such use is within a professional standard of care or in the individual physician's medical judgment; or

(2) Providing a qualifying patient with valid documentation, based upon the physician's assessment of the qualifying patient's medical history and current medical condition, that the medical use of marijuana may benefit a particular qualifying patient. [2007 c 371 § 4; 1999 c 2 § 4 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.040 Failure to seize marijuana, qualifying patients' affirmative defense. (1) If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.

(2) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.

(3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:

(a) Meet all criteria for status as a qualifying patient or designated provider;

(b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and

(c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.

(4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall demonstrate compliance with subsection (3)(a) and (c) of this section. However, any possession under subsection (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient. [2007 c 371 § 5; 1999 c 2 § 5 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.050 Medical marijuana, lawful possession—State not liable. (1) The lawful possession or manufacture of medical marijuana as authorized by this chapter shall not result in the forfeiture or seizure of any property.

(2) No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of medical marijuana or its use as authorized by this chapter.

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(3) The state shall not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient. [1999 c 2 § 7 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.060 Crimes—Limitations of chapter. (1) It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana.

(3) Nothing in this chapter requires any physician to authorize the use of medical marijuana for a patient.

(4) Nothing in this chapter requires any accommodation of any on-site medical use of marijuana in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking medical marijuana in any public place as that term is defined in RCW 70.160.020.

(5) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under *RCW 69.51A.010(6)(a).

(6) No person shall be entitled to claim the affirmative defense provided in RCW 69.51A.040 for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway. [2007 c 371 § 6; 1999 c 2 § 8 (Initiative Measure No. 692, approved November 3, 1998).]

***Reviser's note:** The reference to RCW 69.51A.010(6)(a) is erroneous. RCW 69.51A.010(5)(a) was apparently intended.

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.070 Addition of medical conditions. The Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery, or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review. [2007 c 371 § 7; 1999 c 2 § 9 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.080 Adoption of rules by the department of health—Sixty-day supply for qualifying patients. (1) By July 1, 2008, the department of health shall adopt rules defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients; this

presumption may be overcome with evidence of a qualifying patient's necessary medical use.

(2) As used in this chapter, "sixty-day supply" means that amount of marijuana that qualifying patients would reasonably be expected to need over a period of sixty days for their personal medical use. During the rule-making process, the department shall make a good faith effort to include all stakeholders identified in the rule-making analysis as being impacted by the rule.

(3) The department of health shall gather information from medical and scientific literature, consulting with experts and the public, and reviewing the best practices of other states regarding access to an adequate, safe, consistent, and secure source, including alternative distribution systems, of medical marijuana for qualifying patients. The department shall report its findings to the legislature by July 1, 2008. [2007 c 371 § 8.]

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.900 Short title—1999 c 2. This chapter may be known and cited as the Washington state medical use of marijuana act. [1999 c 2 § 1 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.901 Severability—1999 c 2. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 2 § 10 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.902 Captions not law—1999 c 2. Captions used in this chapter are not any part of the law. [1999 c 2 § 11 (Initiative Measure No. 692, approved November 3, 1998).]

Chapter 69.52 RCW

IMITATION CONTROLLED SUBSTANCES

Sections

69.52.010	Legislative findings.
69.52.020	Definitions.
69.52.030	Violations—Exceptions.
69.52.040	Seizure of contraband.
69.52.045	Seizure at rental premises—Notification of landlord.
69.52.050	Injunctive action by attorney general authorized.
69.52.060	Injunctive or other legal action by manufacturer of controlled substances authorized.
69.52.070	Violations—Juvenile driving privileges.
69.52.900	Severability—1982 c 171.
69.52.901	Effective date—1982 c 171.

Drug nuisances—Injunctions: Chapter 7.43 RCW.

69.52.010 Legislative findings. The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of controlled substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation controlled substances. The close similarity of appearance

between dosage units of imitation controlled substances and controlled substances is indicative of a deliberate and wilful attempt to profit by deception without regard to the tragic human consequences. The use of imitation controlled substances is responsible for a growing number of injuries and deaths, and the legislature hereby declares that this chapter is necessary for the protection and preservation of the public health and safety. [1982 c 171 § 2.]

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

(1) "Controlled substance" means a substance as that term is defined in chapter 69.50 RCW.

(2) "Distribute" means the actual or constructive transfer (or attempted transfer) or delivery or dispensing to another of an imitation controlled substance.

(3) "Imitation controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

(a) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(b) Statements made to the recipient that the substance may be resold for inordinate profit; or

(c) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(4) "Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, or labeling or relabeling of an imitation controlled substance. [1982 c 171 § 3.]

69.52.030 Violations—Exceptions. (1) It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this subsection shall, upon conviction, be guilty of a class C felony.

(2) Any person eighteen years of age or over who violates subsection (1) of this section by distributing an imitation controlled substance to a person under eighteen years of age is guilty of a class B felony.

(3) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale imitation controlled substances. Any person who violates this subsection is guilty of a class C felony.

(4) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act pursuant to RCW 69.50.301 or 69.50.303 who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in *RCW 69.50.101(t), in the course of professional practice or research.

(5) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact. [1983 1st ex.s. c 4 § 5; 1982 c 171 § 4.]

***Reviser's note:** The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (w) of that section.

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

69.52.040 Seizure of contraband. Imitation controlled substances shall be subject to seizure, forfeiture, and disposition in the same manner as are controlled substances under RCW 69.50.505. [1982 c 171 § 5.]

69.52.045 Seizure at rental premises—Notification of landlord. Whenever an imitation controlled substance which is manufactured, distributed, or possessed in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 10.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.52.050 Injunctive action by attorney general authorized. The attorney general is authorized to apply for injunctive action against a manufacturer or distributor of imitation controlled substances in this state. [1982 c 171 § 6.]

69.52.060 Injunctive or other legal action by manufacturer of controlled substances authorized. Any manufacturer of controlled substances licensed or registered in a state requiring such licensure or registration, may bring injunctive or other action against a manufacturer or distributor of imitation controlled substances in this state. [1982 c 171 § 7.]

69.52.070 Violations—Juvenile driving privileges. (1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW,

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the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 121; 1988 c 148 § 6.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

69.52.900 Severability—1982 c 171. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1982 c 171 § 8.]

69.52.901 Effective date—1982 c 171. This act shall take effect on July 1, 1982. [1982 c 171 § 10.]

Chapter 69.53 RCW

USE OF BUILDINGS FOR UNLAWFUL DRUGS

Sections

69.53.010	Unlawful use of building for drug purposes—Liability of owner or manager—Penalty.
69.53.020	Unlawful fortification of building for drug purposes—Penalty.
69.53.030	Unlawful use of fortified building—Penalty.

69.53.010 Unlawful use of building for drug purposes—Liability of owner or manager—Penalty. (1) It is unlawful for any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly rent, lease, or make available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

(3) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1988 c 150 § 13; 1987 c 458 § 7.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1987 c 458: See note following RCW 48.21.160.

69.53.020 Unlawful fortification of building for drug purposes—Penalty. (1) It is unlawful for any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly allow the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the unlawful manufacture, delivery, sale, storage, or gift of any controlled substance under chapter 69.50 RCW, legend drug under chapter

69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

(3) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1988 c 150 § 14; 1987 c 458 § 8.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1987 c 458: See note following RCW 48.21.160.

69.53.030 Unlawful use of fortified building—Penalty. (1) It is unlawful for any person to use a building, room, space, or enclosure specifically designed to suppress law enforcement entry in order to unlawfully manufacture, deliver, sell, store, or give away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1987 c 458 § 9.]

Severability—1987 c 458: See note following RCW 48.21.160.

Chapter 69.55 RCW

AMMONIA

(Formerly: Anhydrous ammonia)

Sections

69.55.010	Theft of ammonia.
69.55.020	Unlawful storage of ammonia.
69.55.030	Damages—Liability.

69.55.010 Theft of ammonia. (1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains pressurized ammonia gas or pressurized ammonia gas solution, is guilty of theft of ammonia.

(2) Theft of ammonia is a class C felony. [2002 c 133 § 1; 2000 c 225 § 1.]

Effective date—2002 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002]." [2002 c 133 § 5.]

Severability—2000 c 225: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 225 § 8.]

69.55.020 Unlawful storage of ammonia. A person is guilty of the crime of unlawful storage of ammonia if the person possesses, transports, or delivers pressurized ammonia gas or pressurized ammonia gas solution in a container that (1) is not approved by the United States department of transportation to hold ammonia, or (2) was not constructed to meet state and federal industrial health and safety standards for holding ammonia. Violation of this section is a class C felony.

This section does not apply to public employees or private contractors authorized to clean up and dispose of hazard-

ous waste or toxic substances under chapter 70.105 or 70.105D RCW or to solid waste haulers and their employees who unknowingly possess, transport, or deliver pressurized ammonia gas or pressurized ammonia gas solution during the course of the performance of their duties. [2002 c 133 § 2; 2000 c 225 § 2.]

Effective date—2002 c 133: See note following RCW 69.55.010.

Severability—2000 c 225: See note following RCW 69.55.010.

69.55.030 Damages—Liability. Any damages arising out of the unlawful possession of, storage of, or tampering with pressurized ammonia gas or pressurized ammonia gas solution, or pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, shall be the sole responsibility of the unlawful possessor, storer, or tamperer. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with pressurized ammonia gas or pressurized ammonia gas solution, or pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the pressurized ammonia gas or pressurized ammonia gas solution, or pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, unless such damages arise out of the owner, installer, maintainer, designer, manufacturer, possessor, or seller's acts or omissions that constitute negligent misconduct to abide by the laws regarding pressurized ammonia gas or pressurized ammonia gas solution possession and storage. [2002 c 133 § 3; 2000 c 225 § 3.]

Effective date—2002 c 133: See note following RCW 69.55.010.

Severability—2000 c 225: See note following RCW 69.55.010.

Chapter 69.60 RCW

OVER-THE-COUNTER MEDICATIONS

Sections

69.60.010	Legislative findings.
69.60.020	Definitions.
69.60.030	Identification required.
69.60.040	Imprint information—Publication—Availability.
69.60.050	Noncompliance—Contraband—Fine.
69.60.060	Rules.
69.60.070	Imprinting requirements—Retailers and wholesalers.
69.60.080	Exemptions—Application by manufacturer.
69.60.090	Implementation of federal system—Termination of state system.
69.60.900	Severability—1993 c 135.
69.60.901	Effective date—1993 c 135.

69.60.010 Legislative findings. The legislature of the state of Washington finds that:

(1) Accidental and purposeful ingestions of solid medication forms continue to be the most frequent cause of poisoning in our state;

(2) Modern treatment is dependent upon knowing the ingredients of the ingestant;

(3) The imprinting of identifying characteristics on all tablets, capsules, and caplets of prescription medication forms, both trade name products and generic products, has been extremely beneficial in our state and was accomplished at trivial cost to the manufacturers and consumers;

(4) Although over-the-counter medications usually constitute a lower order of risk to ingestees, treatment after over-

dose is equally dependent upon knowing the ingredients involved, but there is no coding index uniformly used by this class of medication;

(5) Approximately seventy percent of over-the-counter medications in solid form already have some type of an identifier imprinted on their surfaces;

(6) While particular efforts are being instituted to prevent recurrent tampering with over-the-counter medications, the added benefit of rapid and prompt identification of all possible contaminated products, including over-the-counter medications, would make for a significant improvement in planning for appropriate tracking and monitoring programs;

(7) At the same time, health care professionals serving the elderly find it especially advantageous to be able to identify and confirm the ingredients of their multiple medications, including over-the-counter products, as are often consumed by such patients;

(8) The legislature supports and encourages efforts that are being made to establish a national, legally enforceable system governing the imprinting of solid dosage form over-the-counter medications, which system is consistent with the requirements of this chapter. [1989 c 247 § 1.]

69.60.020 Definitions. The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Solid dosage form" means capsules or tablets or similar over-the-counter medication products intended for administration and which could be ingested orally.

(2) "Over-the-counter medication" means a drug that can be obtained without a prescription and is not restricted to use by prescribing practitioners. For purposes of this chapter, over-the-counter medication does not include vitamins.

(3) "Board" means the state board of pharmacy.

(4) "Purveyor" means any corporation, person, or other entity that offers over-the-counter medications for wholesale, retail, or other type of sale. [1989 c 247 § 3.]

69.60.030 Identification required. (1) No over-the-counter medication in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer or distributor of the medication: PROVIDED, HOWEVER, That an over-the-counter medication which has clearly marked or imprinted on it a distinctive logo, symbol, product name, letters, or other identifying mark, or which by its color, shape, or size together with a distinctive logo, symbol, product name, letters, or other mark is identifiable, shall be deemed in compliance with the provisions of this chapter.

(2) No manufacturer may sell any over-the-counter medication in solid dosage form contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the

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medication and the manufacturer, packer, or distributor of the medication. [1993 c 135 § 1; 1989 c 247 § 2.]

69.60.040 Imprint information—Publication—Availability. Each manufacturer shall publish and provide to the board printed material which will identify each current imprint used by the manufacturer and the board shall be notified of any change. This information shall be provided by the board to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms. [1989 c 247 § 4.]

69.60.050 Noncompliance—Contraband—Fine. (1) Any over-the-counter medication prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure, in the same manner as contraband legend drugs under RCW 69.41.060.

(2) A purveyor who fails to comply with this chapter after one notice of noncompliance by the board is subject to a one thousand dollar civil fine for each instance of noncompliance. [1989 c 247 § 5.]

69.60.060 Rules. The board shall have authority to promulgate rules for the enforcement and implementation of this chapter. [1989 c 247 § 6.]

69.60.070 Imprinting requirements—Retailers and wholesalers. All over-the-counter medications manufactured in, received by, distributed to, or shipped to any retailer or wholesaler in this state after January 1, 1994, shall meet the requirements of this chapter. No over-the-counter medication may be sold to a consumer in this state after January 1, 1995, unless such over-the-counter medication complies with the imprinting requirements of this chapter. [1993 c 135 § 2; 1989 c 247 § 7.]

69.60.080 Exemptions—Application by manufacturer. The board, upon application of a manufacturer, may exempt an over-the-counter drug from the requirements of chapter 69.60 RCW on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics. [1989 c 247 § 8.]

69.60.090 Implementation of federal system—Termination of state system. Before January 1, 1994, the board of pharmacy will consult with the state toxicologist to determine whether the federal government has established a legally enforceable system that is substantially equivalent to the requirements of this chapter that govern the imprinting of solid dosage form over-the-counter medication. To be substantially equivalent, the effective dates for implementation of the federal system for imprinting solid dosage form over-the-counter medication must be the same or earlier than the dates of implementation set out in the state system for imprinting solid dosage form over-the-counter medication. If the board determines that the federal system for imprinting solid dosage form over-the-counter medication is substantially equivalent to the state system for imprinting solid dosage form over-the-counter medication, this chapter will cease

to exist on January 1, 1994. If the board determines that the federal system is substantially equivalent, except that the federal dates for implementation are later than the Washington state dates, this chapter will cease to exist when the federal system is implemented. [1993 c 135 § 3; 1989 c 247 § 9.]

69.60.900 Severability—1993 c 135. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 135 § 4.]

69.60.901 Effective date—1993 c 135. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]. [1993 c 135 § 5.]

Chapter 69.80 RCW FOOD DONATION AND DISTRIBUTION—LIABILITY

Sections

69.80.010	Purpose.
69.80.020	Definitions.
69.80.031	Good samaritan food donation act—Definitions—Collecting, distributing, gleaning—Liability.
69.80.040	Information and referral service for food donation program.
69.80.050	Inspection of donated food by state and local agencies—Variance.
69.80.060	Safe receipt, preparation, and handling of donated food—Rules—Educational materials.
69.80.900	Construction.

69.80.010 Purpose. The purpose of this chapter is to promote the free distribution of food to needy persons, prevent waste of food products, and provide liability protection for persons and organizations donating or distributing such food products. [1983 c 241 § 1.]

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

(1) "Distributing organization" means a charitable nonprofit organization under section 501(c) of the federal internal revenue code which distributes food free of charge and includes any nonprofit organization that distributes food free of charge to other nonprofit organizations or to the public.

(2) "Donor" means a person, corporation, association, or other organization which donates food to a distributing organization. "Donor" includes, but is not limited to, farmers, processors, distributors, wholesalers, and retailers of food. "Donor" also includes persons who harvest agricultural crops or perishable foods which have been donated by the owner to a distributing organization.

(3) "Food" means food products for human consumption as defined in RCW 69.04.008. [1983 c 241 § 2.]

69.80.031 Good samaritan food donation act—Definitions—Collecting, distributing, gleaning—Liability. (1) This section may be cited as the "good samaritan food donation act."

(2) As used in this section:

(a) "Apparently fit grocery product" means a grocery product that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(b) "Apparently wholesome food" means food that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(c) "Donate" means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(d) "Food" means a raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(e) "Gleaner" means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(f) "Grocery product" means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(g) "Gross negligence" means voluntary and conscious conduct by a person with knowledge, at the time of the conduct, that the conduct is likely to be harmful to the health or well-being of another person.

(h) "Intentional misconduct" means conduct by a person with knowledge, at the time of the conduct, that the conduct is harmful to the health or well-being of another person.

(i) "Nonprofit organization" means an incorporated or unincorporated entity that:

(i) Is operating for religious, charitable, or educational purposes; and

(ii) Does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

(j) "Person" means an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, councilmember, or other elected or appointed individual responsible for the governance of the entity.

(3) A person or gleaner is not subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this subsection does not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the

donor constituting gross negligence or intentional misconduct.

(4) A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals is not subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this subsection does not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(5) If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by federal, state, and local laws and regulations, the person or gleaner who donates the food and grocery products is not subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products:

(a) Is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(b) Agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and

(c) Is knowledgeable of the standards to properly recondition the donated food or grocery product.

(6) This section may not be construed to create liability. [1994 c 299 § 36.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

69.80.040 Information and referral service for food donation program. The department of agriculture shall maintain an information and referral service for persons and organizations that have notified the department of their desire to participate in the food donation program under this chapter. [1983 c 241 § 4.]

69.80.050 Inspection of donated food by state and local agencies—Variance. (1) Appropriate state and local agencies are authorized to inspect donated food items for wholesomeness and may establish procedures for the handling of food items.

(2) To facilitate the free distribution of food to needy persons, the local health officer, upon request from either a donor or distributing organization, may grant a variance to chapter 246-215 WAC covering physical facilities, equipment standards, and food source requirements when no known or expected health hazard would exist as a result of the action. [2002 c 217 § 3; 1983 c 241 § 6.]

Effective date—2002 c 217 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 217 § 4.]

Finding—Purpose—2002 c 217: "The legislature finds and declares that the distribution of food by donors to charitable organizations, such as shelters, churches, and fraternal organizations, serving communal meals to needy individuals can be done safely consistent with rules and recommended health and safety guidelines. The establishment of recommended donor guidelines by the department of health can educate the public about the preparation and handling of food donated to charitable organizations for distribution to homeless and other needy people. The purpose of this act is to authorize and facilitate the donation of food to needy persons in accordance with health and safety guidelines and rules, to assure that the donated food will

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not place needy recipients at risk, and to encourage businesses and individuals to donate surplus food to charitable organizations serving our state's needy population." [2002 c 217 § 1.]

69.80.060 Safe receipt, preparation, and handling of donated food—Rules—Educational materials. (1) No later than December 31, 2004, the state board of health shall promulgate rules for the safe receipt, preparation, and handling by distributing organizations of food accepted from donors in order to facilitate the donation of food, free of charge, and to protect the health and safety of needy people.

(2) No later than December 31, 2004, the department of health, in consultation with the state board of health, shall develop educational materials for donors containing recommended health and safety guidelines for the preparation and handling of food donated to distributing organizations. [2002 c 217 § 2.]

Finding—Purpose—2002 c 217: See note following RCW 69.80.050.

69.80.900 Construction. Nothing in this chapter may be construed to create any liability of, or penalty against a donor or distributing organization except as provided in RCW 69.80.031. [1994 c 299 § 38; 1983 c 241 § 5.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Chapter 69.90 RCW KOSHER FOOD PRODUCTS

Sections

69.90.010	Definitions.
69.90.020	Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations—Penalty.
69.90.030	Violation of chapter is violation of consumer protection act.
69.90.900	Short title.

Organic food products: Chapter 15.86 RCW.

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

(1) "Food product" includes any article other than drugs, whether in raw or prepared form, liquid or solid, or packaged or unpackaged, and which is used for human consumption.

(2) "Kosher" means a food product which has been prepared, processed, manufactured, maintained, and sold in accordance with the requisites of traditional Jewish dietary law.

(3) "Person" includes individuals, partnerships, corporations, and associations. [1985 c 127 § 2.]

69.90.020 Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations—Penalty. (1) No person may knowingly sell or offer for sale any food product represented as "kosher" or "kosher style" when that person knows that the food product is not kosher and when the representation is likely to cause a prospective purchaser to believe that it is kosher. Such a representation can be made orally or in writing, or by display of a sign, mark, insignia, or simulation.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 349; 1985 c 127 § 3.]

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

69.90.030 Violation of chapter is violation of consumer protection act. A violation of this chapter shall constitute a violation of the consumer protection act, chapter 19.86 RCW. [1985 c 127 § 4.]

69.90.900 Short title. This chapter shall be known as the sale of kosher food products act of 1985. [1985 c 127 § 1.]

Title 70

PUBLIC HEALTH AND SAFETY

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Asbestos, regulation of use: Chapter 49.26 RCW.

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Board of health and bureau of vital statistics authorized: State Constitution Art. 20 § 1.

Child labor: Chapter 49.12 RCW.

Civil defense: Chapter 38.52 RCW.

Control of pet animals infected with diseases communicable to humans: Chapter 16.70 RCW.

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Dangerous caustic and corrosive substances: Chapter 69.36 RCW.

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Health measures in public schools: Chapter 28A.210 RCW, RCW 28A.210.300.

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Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

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Sale or gift of tobacco to minor is gross misdemeanor: RCW 26.28.080.

Sanitary control of shellfish: Chapter 69.30 RCW.

Social and health services, department of: Chapter 43.20A RCW.

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State coordinator of search and rescue operations: RCW 38.52.030.

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Water pollution control: Chapter 90.48 RCW.

Chapter 70.01 RCW

GENERAL PROVISIONS

Sections

70.01.010 Cooperation with federal government—Construction.

70.01.020 Donation of blood by person eighteen or over without parental consent authorized.

70.01.010 Cooperation with federal government—Construction. In furtherance of the policy of this state to cooperate with the federal government in the public health programs, the department of social and health services shall adopt such rules and regulations as may become necessary to entitle this state to participate in federal funds unless the same be expressly prohibited by law. Any section or provision of the public health laws of this state which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal funds for the various programs of public health. [1985 c 213 § 14; 1969 ex.s. c 25 § 1; 1967 ex.s. c 102 § 12.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

Severability—1967 ex.s. c 102: See note following RCW 43.70.130.

70.01.020 Donation of blood by person eighteen or over without parental consent authorized. Any person of the age of eighteen years or over shall be eligible to donate blood in any voluntary and noncompensatory blood program without the necessity of obtaining parental permission or authorization. [1969 c 51 § 1.]

Chapter 70.02 RCW

MEDICAL RECORDS—HEALTH CARE
INFORMATION ACCESS AND DISCLOSURE

Sections

70.02.005	Findings.
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70.02.902	Short title.
70.02.903	Severability—1991 c 335.
70.02.904	Captions not law—1991 c 335.

Record retention by hospitals: RCW 70.41.190.

70.02.005 Findings. The legislature finds that:

(1) Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests.

(2) Patients need access to their own health care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

(3) In order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information.

(4) Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

(5) The movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information. [1991 c 335 § 101.]

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

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not

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employed by or affiliated with the provider to determine compliance with:

(a) Statutory, regulatory, fiscal, medical, or scientific standards;

(b) A private or public program of payments to a health care provider; or

(c) Requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(3) "Federal, state, or local law enforcement authorities" means an officer of any agency or authority in the United States, a state, a tribe, a territory, or a political subdivision of a state, a tribe, or a territory who is empowered by law to: (a) Investigate or conduct an official inquiry into a potential criminal violation of law; or (b) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law.

(4) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(5) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(6) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(7) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

(8) "Health care operations" means any of the following activities of a health care provider, health care facility, or third-party payor to the extent that the activities are related to functions that make an entity a health care provider, a health care facility, or a third-party payor:

(a) Conducting: Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, if the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance and third-party payor performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or

improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;

(c) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care, including stop-loss insurance and excess of loss insurance, if any applicable legal requirements are met;

(d) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(e) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the health care facility or third-party payor, including formulary development and administration, development, or improvement of methods of payment or coverage policies; and

(f) Business management and general administrative activities of the health care facility, health care provider, or third-party payor including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this chapter;

(ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that health care information is not disclosed to such policy holder, plan sponsor, or customer;

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of a health care provider, health care facility, or third-party payor with another health care provider, health care facility, or third-party payor or an entity that following such activity will become a health care provider, health care facility, or third-party payor, and due diligence related to such activity; and

(v) Consistent with applicable legal requirements, creating deidentified health care information or a limited dataset and fund-raising for the benefit of the health care provider, health care facility, or third-party payor.

(9) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(10) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(11) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(12) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(13) "Payment" means:

(a) The activities undertaken by:

(i) A third-party payor to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits by the third-party payor; or

(ii) A health care provider, health care facility, or third-party payor, to obtain or provide reimbursement for the provision of health care; and

(b) The activities in (a) of this subsection that relate to the patient to whom health care is provided and that include, but are not limited to:

(i) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance, and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, and concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following health care information relating to collection of premiums or reimbursement:

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

(F) Name and address of the health care provider, health care facility, and/or third-party payor.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(15) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

(16) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan; or a state or federal health benefit program.

(17) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care

from one health care provider or health care facility to another. [2006 c 235 § 2; 2005 c 468 § 1; 2002 c 318 § 1; 1993 c 448 § 1; 1991 c 335 § 102.]

Reviser's note: For charges or fees under subsection (15) of this section as adjusted by the secretary of health, see chapter 246-08 WAC.

Purpose—Effective date—2006 c 235: See notes following RCW 70.02.050.

Effective date—1993 c 448: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 448 § 9.]

70.02.020 Disclosure by health care provider. (1)

Except as authorized in RCW 70.02.050, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A patient has a right to receive an accounting of disclosures of health care information made by a health care provider or a health care facility in the six years before the date on which the accounting is requested, except for disclosures:

- (a) To carry out treatment, payment, and health care operations;
- (b) To the patient of health care information about him or her;
- (c) Incident to a use or disclosure that is otherwise permitted or required;
- (d) Pursuant to an authorization where the patient authorized the disclosure of health care information about himself or herself;
- (e) Of directory information;
- (f) To persons involved in the patient's care;
- (g) For national security or intelligence purposes if an accounting of disclosures is not permitted by law;
- (h) To correctional institutions or law enforcement officials if an accounting of disclosures is not permitted by law; and
- (i) Of a limited data set that excludes direct identifiers of the patient or of relatives, employers, or household members of the patient. [2005 c 468 § 2; 1993 c 448 § 2; 1991 c 335 § 201.]

Effective date—1993 c 448: See note following RCW 70.02.010.

70.02.030 Patient authorization of disclosure. (1) A patient may authorize a health care provider or health care facility to disclose the patient's health care information. A health care provider or health care facility shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider or health care facility denies the patient access to health care information under RCW 70.02.090.

(2) A health care provider or health care facility may charge a reasonable fee for providing the health care information and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider or health care facility shall:

- (a) Be in writing, dated, and signed by the patient;

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- (b) Identify the nature of the information to be disclosed;
- (c) Identify the name and institutional affiliation of the person or class of persons to whom the information is to be disclosed;

(d) Identify the provider or class of providers who are to make the disclosure;

(e) Identify the patient; and

(f) Contain an expiration date or an expiration event that relates to the patient or the purpose of the use or disclosure.

(4) Unless disclosure without authorization is otherwise permitted under RCW 70.02.050 or the federal health insurance portability and accountability act of 1996 and its implementing regulations, an authorization may permit the disclosure of health care information to a class of persons that includes:

(a) Researchers if the health care provider or health care facility obtains the informed consent for the use of the patient's health care information for research purposes; or

(b) Third-party payors if the information is only disclosed for payment purposes.

(5) Except as provided by this chapter, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

(6) When an authorization permits the disclosure of health care information to a financial institution or an employer of the patient for purposes other than payment, the authorization as it pertains to those disclosures shall expire ninety days after the signing of the authorization, unless the authorization is renewed by the patient.

(7) A health care provider or health care facility shall retain the original or a copy of each authorization or revocation in conjunction with any health care information from which disclosures are made.

(8) Where the patient is under the supervision of the department of corrections, an authorization signed pursuant to this section for health care information related to mental health or drug or alcohol treatment expires at the end of the term of supervision, unless the patient is part of a treatment program that requires the continued exchange of information until the end of the period of treatment. [2005 c 468 § 3; 2004 c 166 § 19; 1994 sp.s. c 9 § 741; 1993 c 448 § 3; 1991 c 335 § 202.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1993 c 448: See note following RCW 70.02.010.

70.02.040 Patient's revocation of authorization for disclosure. A patient may revoke in writing a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no actual notice of the revocation of the authorization. [1991 c 335 § 203.]

70.02.045 Third-party payor release of information.

Third-party payors shall not release health care information disclosed under this chapter, except to the extent that health care providers are authorized to do so under RCW 70.02.050. [2000 c 5 § 2.]

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

70.02.050 Disclosure without patient's authorization.

(1) A health care provider or health care facility may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(d) To any person if the health care provider or health care facility reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider or facility to so disclose;

(e) To immediate family members of the patient, including a patient's state registered domestic partner, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(f) To a health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(k) To fire, police, sheriff, or another public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(l) To federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(m) To another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(8) (a) and (b); or

(n) For payment.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been

treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

- (i) The name of the patient;
 - (ii) The patient's residence;
 - (iii) The patient's sex;
 - (iv) The patient's age;
 - (v) The patient's condition;
 - (vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;
 - (vii) Whether the patient was conscious when admitted;
 - (viii) The name of the health care provider making the determination in (c)(v), (vi), and (vii) of this subsection;
 - (ix) Whether the patient has been transferred to another facility; and
 - (x) The patient's discharge time and date;
- (d) To county coroners and medical examiners for the investigations of deaths;
- (e) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter. [2007 c 156 § 12; 2006 c 235 § 3; 2005 c 468 § 4; 1998 c 158 § 1; 1993 c 448 § 4; 1991 c 335 § 204.]

Purpose—2006 c 235: "The purpose of this act is to aid law enforcement in combating crime through the rapid identification of all persons who require medical treatment as a result of a criminal act and to assist in the rapid identification of human remains." [2006 c 235 § 1.]

Effective date—2006 c 235: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2006]." [2006 c 235 § 5.]

Effective date—1993 c 448: See note following RCW 70.02.010.

70.02.060 Discovery request or compulsory process.

(1) Before service of a discovery request or compulsory process on a health care provider for health care information, an attorney shall provide advance notice to the health care provider and the patient or the patient's attorney involved through service of process or first-class mail, indicating the health care provider from whom the information is sought, what health care information is sought, and the date by which a protective order must be obtained to prevent the health care provider from complying. Such date shall give the patient and the health care provider adequate time to seek a protective order, but in no event be less than fourteen days since the date of service or delivery to the patient and the health care provider of the foregoing. Thereafter the request for discovery or compulsory process shall be served on the health care provider.

(2) Without the written consent of the patient, the health care provider may not disclose the health care information sought under subsection (1) of this section if the requestor has not complied with the requirements of subsection (1) of this

section. In the absence of a protective order issued by a court of competent jurisdiction forbidding compliance, the health care provider shall disclose the information in accordance with this chapter. In the case of compliance, the request for discovery or compulsory process shall be made a part of the patient record.

(3) Production of health care information under this section, in and of itself, does not constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure. [1991 c 335 § 205.]

70.02.070 Certification of record. Upon the request of the person requesting the record, the health care provider or facility shall certify the record furnished and may charge for such certification in accordance with RCW 36.18.016(5). No record need be certified until the fee is paid. The certification shall be affixed to the record and disclose:

- (1) The identity of the patient;
- (2) The kind of health care information involved;
- (3) The identity of the person to whom the information is being furnished;
- (4) The identity of the health care provider or facility furnishing the information;
- (5) The number of pages of the health care information;
- (6) The date on which the health care information is furnished; and
- (7) That the certification is to fulfill and meet the requirements of this section. [1995 c 292 § 20; 1991 c 335 § 206.]

70.02.080 Patient's examination and copying—Requirements. (1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances, but no later than fifteen working days after receiving the request shall:

- (a) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient;
- (b) Inform the patient if the information does not exist or cannot be found;
- (c) If the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;
- (d) If the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than twenty-one working days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or
- (e) Deny the request, in whole or in part, under RCW 70.02.090 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing

record to make the health care information available in the requested form. The health care provider may charge a reasonable fee for providing the health care information and is not required to permit examination or copying until the fee is paid. [1993 c 448 § 5; 1991 c 335 § 301.]

Effective date—1993 c 448: See note following RCW 70.02.010.

70.02.090 Patient's request—Denial of examination and copying. (1) Subject to any conflicting requirement in the public records act, chapter 42.56 RCW, a health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) Knowledge of the health care information would be injurious to the health of the patient;

(b) Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) Access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) of this section from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (c) of this section, the provider shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, registered, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection. The patient shall be responsible for arranging for compensation of the other health care provider so selected. [2005 c 274 § 331; 1991 c 335 § 302.]

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

70.02.100 Correction or amendment of record. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which a patient has access under RCW 70.02.080.

(2) As promptly as required under the circumstances, but no later than ten days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) Make the requested correction or amendment and inform the patient of the action;

(b) Inform the patient if the record no longer exists or cannot be found;

(c) If the health care provider does not maintain the record, inform the patient and provide the patient with the name and address, if known, of the person who maintains the record;

(d) If the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing, the earliest date, not later than twenty-one days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) Inform the patient in writing of the provider's refusal to correct or amend the record as requested and the patient's right to add a statement of disagreement. [1991 c 335 § 401.]

70.02.110 Correction or amendment or statement of disagreement—Procedure. (1) In making a correction or amendment, the health care provider shall:

(a) Add the amending information as a part of the health record; and

(b) Mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) Permit the patient to file as a part of the record of the patient's health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) Mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

(3) A health care provider who receives a request from a patient to amend or correct the patient's health care information, as provided in RCW 70.02.100, shall forward any changes made in the patient's health care information or health record, including any statement of disagreement, to any third-party payor or insurer to which the health care provider has disclosed the health care information that is the subject of the request. [2000 c 5 § 3; 1991 c 335 § 402.]

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

70.02.120 Notice of information practices—Display conspicuously. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a "notice of information practices" that contains substantially the following:

NOTICE

"We keep a record of the health care services we provide you. You may ask us to see and copy that record. You may also ask us to correct that record.

We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at"

(2) The health care provider shall place a copy of the notice of information practices in a conspicuous place in the health care facility, on a consent form or with a billing or other notice provided to the patient. [1991 c 335 § 501.]

70.02.130 Consent by others—Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this chapter to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized to consent to health care without parental consent under federal and state law, only the minor may exercise the rights of a patient under this chapter as to information pertaining to health care to which the minor lawfully consented. In cases where parental consent is required, a health care provider may rely, without incurring any civil or criminal liability for such reliance, on the representation of a parent that he or she is authorized to consent to health care for the minor patient regardless of whether:

(a) The parents are married, unmarried, or separated at the time of the representation;

(b) The consenting parent is, or is not, a custodial parent of the minor;

(c) The giving of consent by a parent is, or is not, full performance of any agreement between the parents, or of any order or decree in any action entered pursuant to chapter 26.09 RCW.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient. [1991 c 335 § 601.]

70.02.140 Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this chapter. If there is no personal representative, or upon discharge of the personal representative, a deceased patient's rights under this chapter may be exercised by persons who would have been authorized to make health care decisions for the deceased patient when the patient was living under RCW 7.70.065. [1991 c 335 § 602.]

70.02.150 Security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

Reasonable safeguards shall include affirmative action to delete outdated and incorrect facsimile transmission or other telephone transmittal numbers from computer, facsimile, or other databases. When health care information is transmitted electronically to a recipient who is not regularly transmitted health care information from the health care provider, the health care provider shall verify that the number is accurate prior to transmission. [2001 c 16 § 2; 1991 c 335 § 701.]

70.02.160 Retention of record. A health care provider shall maintain a record of existing health care information for at least one year following receipt of an authorization to dis-

close that health care information under RCW 70.02.040, and during the pendency of a request for examination and copying under RCW 70.02.080 or a request for correction or amendment under RCW 70.02.100. [1991 c 335 § 702.]

70.02.170 Civil remedies. (1) A person who has complied with this chapter may maintain an action for the relief provided in this section against a health care provider or facility who has not complied with this chapter.

(2) The court may order the health care provider or other person to comply with this chapter. Such relief may include actual damages, but shall not include consequential or incidental damages. The court shall award reasonable attorneys' fees and all other expenses reasonably incurred to the prevailing party.

(3) Any action under this chapter is barred unless the action is commenced within two years after the cause of action is discovered.

(4) A violation of this chapter shall not be deemed a violation of the consumer protection act, chapter 19.86 RCW. [1991 c 335 § 801.]

70.02.180 Licensees under chapter 18.225 RCW—Subject to chapter. Mental health counselors, marriage and family therapists, and social workers licensed under chapter 18.225 RCW are subject to this chapter. [2001 c 251 § 34.]

Severability—2001 c 251: See RCW 18.225.900.

70.02.900 Conflicting laws. (1) This chapter does not restrict a health care provider, a third-party payor, or an insurer regulated under Title 48 RCW from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, *70.39, 70.96A, 71.05, and 71.34 RCW and rules adopted under these provisions. [2000 c 5 § 4; 1991 c 335 § 901.]

***Reviser's note:** Chapter 70.39 RCW was repealed by 1982 c 223 § 10, effective June 30, 1990.

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

70.02.901 Application and construction—1991 c 335. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [1991 c 335 § 903.]

70.02.902 Short title. This act may be cited as the uniform health care information act. [1991 c 335 § 904.]

70.02.903 Severability—1991 c 335. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 335 § 905.]

70.02.904 Captions not law—1991 c 335. As used in this act, captions constitute no part of the law. [1991 c 335 § 906.]

Chapter 70.05 RCW

LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

Sections

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Health districts: Chapter 70.46 RCW.

State board of health: Chapter 43.20 RCW.

70.05.010 Definitions. For the purposes of chapters 70.05 and 70.46 RCW and unless the context thereof clearly indicates to the contrary:

(1) "Local health departments" means the county or district which provides public health services to persons within the area.

(2) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department.

(3) "Local board of health" means the county or district board of health.

(4) "Health district" means all the territory consisting of one or more counties organized pursuant to the provisions of chapters 70.05 and 70.46 RCW.

(5) "Department" means the department of health. [1993 c 492 § 234; 1967 ex.s. c 51 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 51 § 24.]

70.05.030 Counties—Local health board—Jurisdiction. In counties without a home rule charter, the board of county commissioners shall constitute the local board of health, unless the county is part of a health district pursuant to chapter 70.46 RCW. The jurisdiction of the local board of health shall be coextensive with the boundaries of said county. The board of county commissioners may, at its discretion, adopt an ordinance expanding the size and composition of the board of health to include elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. An ordinance adopted under this section shall include provisions for the appointment, term, and compensation, or reimbursement of expenses. [1995 c 43 § 6; 1993 c 492 § 235; 1967 ex.s. c 51 § 3.]

Effective dates—Contingent effective dates—1995 c 43: "(1) Sections 15 and 16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1995.

(2) Sections 1 through 5, 12, and 13 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995.

(3) Section 9 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 17, 1995].

(4) *Sections 6 through 8, 10, and 11 of this act take effect January 1, 1996, if funding of at least two million two hundred fifty thousand dollars, is provided by June 30, 1995, in the 1995 omnibus appropriations act or as a result of the passage of Senate Bill No. 6058, to implement the changes in public health governance as outlined in this act. If such funding is not provided, sections 6 through 8, 10, and 11 of this act shall take effect January 1, 1998." [1995 c 43 § 17.]

***Reviser's note:** The 1995 omnibus appropriations act, chapter 18, Laws of 1995 2nd sp. sess. provided two million two hundred fifty thousand dollars.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.035 Home rule charter—Local board of health. In counties with a home rule charter, the county legislative authority shall establish a local board of health and may prescribe the membership and selection process for the board. The county legislative authority may appoint to the board of health elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. The county legislative authority shall specify the appointment, term, and compensation or reimbursement of expenses. The jurisdiction of the local board of health shall be coextensive with the boundaries of the county. The local health officer, as described in RCW 70.05.050, shall be appointed by the official designated under the provisions of the county charter. The same official designated under the provisions of the

county charter may appoint an administrative officer, as described in RCW 70.05.045. [1995 c 43 § 7; 1993 c 492 § 237.]

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.040 Local board of health—Chair—Administrative officer—Vacancies. The local board of health shall elect a chair and may appoint an administrative officer. A local health officer shall be appointed pursuant to RCW 70.05.050. Vacancies on the local board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. At the first meeting of the local board of health, the members shall elect a chair to serve for a period of one year. [1993 c 492 § 236; 1984 c 25 § 1; 1983 1st ex.s. c 39 § 1; 1967 ex.s. c 51 § 4.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.045 Administrative officer—Responsibilities. The administrative officer shall act as executive secretary and administrative officer for the local board of health, and shall be responsible for administering the operations of the board including such other administrative duties required by the local health board, except for duties assigned to the health officer as enumerated in RCW 70.05.070 and other applicable state law. [1984 c 25 § 2.]

70.05.050 Local health officer—Qualifications—Employment of personnel—Salary and expenses. The local health officer shall be an experienced physician licensed to practice medicine and surgery or osteopathic medicine and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the office of local health officer. No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal. The local health officer shall act as executive secretary to, and administrative officer for the local board of health and shall also be empowered to employ such technical and other personnel as approved by the local board of health except where the local board of health has appointed an administrative officer under RCW 70.05.040. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. In home rule counties that are part of a health district under this chapter and chapter 70.46 RCW the local health officer and administrative officer shall be appointed by the local board of health. [1996 c 178 § 19; 1995 c 43 § 8; 1993 c 492 § 238; 1984 c 25 § 5; 1983 1st ex.s. c 39 § 2; 1969 ex.s. c 114 § 1; 1967 ex.s. c 51 § 9.]

(2008 Ed.)

Effective date—1996 c 178: See note following RCW 18.35.110.

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.051 Local health officer—Qualifications. The following persons holding licenses as required by RCW 70.05.050 shall be deemed qualified to hold the position of local health officer:

(1) Persons holding the degree of master of public health or its equivalent;

(2) Persons not meeting the requirements of subsection (1) of this section, who upon August 11, 1969 are currently employed in this state as a local health officer and whom the secretary of social and health services recommends in writing to the local board of health as qualified; and

(3) Persons qualified by virtue of completing three years of service as a provisionally qualified officer pursuant to RCW 70.05.053 through 70.05.055. [1979 c 141 § 75; 1969 ex.s. c 114 § 2.]

70.05.053 Provisionally qualified local health officers—Appointment—Term—Requirements. A person holding a license required by RCW 70.05.050 but not meeting any of the requirements for qualification prescribed by RCW 70.05.051 may be appointed by the board or official responsible for appointing the local health officer under RCW 70.05.050 as a provisionally qualified local health officer for a maximum period of three years upon the following conditions and in accordance with the following procedures:

(1) He or she shall participate in an in-service orientation to the field of public health as provided in RCW 70.05.054, and

(2) He or she shall satisfy the secretary of health pursuant to the periodic interviews prescribed by RCW 70.05.055 that he or she has successfully completed such in-service orientation and is conducting such program of good health practices as may be required by the jurisdictional area concerned. [1991 c 3 § 305; 1983 1st ex.s. c 39 § 3; 1979 c 141 § 76; 1969 ex.s. c 114 § 3.]

70.05.054 Provisionally qualified local health officers—In-service public health orientation program. The secretary of health shall provide an in-service public health orientation program for the benefit of provisionally qualified local health officers.

Such program shall consist of—

(1) A three months course in public health training conducted by the secretary either in the state department of health, in a county and/or city health department, in a local health district, or in an institution of higher education; or

(2) An on-the-job, self-training program pursuant to a standardized syllabus setting forth the major duties of a local health officer including the techniques and practices of public health principles expected of qualified local health officers: PROVIDED, That each provisionally qualified local health

officer may choose which type of training he or she shall pursue. [1991 c 3 § 306; 1979 c 141 § 77; 1969 ex.s. c 114 § 4.]

70.05.055 Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer. Each year, on a date which shall be as near as possible to the anniversary date of appointment as provisional local health officer, the secretary of health or his or her designee shall personally visit such provisional officer's office for a personal review and discussion of the activity, plans, and study being carried on relative to the provisional officer's jurisdictional area: PROVIDED, That the third such interview shall occur three months prior to the end of the three year provisional term. A standardized checklist shall be used for all such interviews, but such checklist shall not constitute a grading sheet or evaluation form for use in the ultimate decision of qualification of the provisional appointee as a public health officer.

Copies of the results of each interview shall be supplied to the provisional officer within two weeks following each such interview.

Following the third such interview, the secretary shall evaluate the provisional local health officer's in-service performance and shall notify such officer by certified mail of his or her decision whether or not to qualify such officer as a local public health officer. Such notice shall be mailed at least sixty days prior to the third anniversary date of provisional appointment. Failure to so mail such notice shall constitute a decision that such provisional officer is qualified. [1991 c 3 § 307; 1979 c 141 § 78; 1969 ex.s. c 114 § 5.]

70.05.060 Powers and duties of local board of health. Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:

(1) Enforce through the local health officer or the administrative officer appointed under RCW 70.05.040, if any, the public health statutes of the state and rules promulgated by the state board of health and the secretary of health;

(2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;

(3) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;

(4) Provide for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department;

(5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;

(6) Make such reports to the state board of health through the local health officer or the administrative officer as the state board of health may require; and

(7) Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules of the state board of health: PROVIDED, That such fees for services shall not exceed the actual cost of providing any such services. [1991 c 3 § 308; 1984 c 25 § 6; 1979 c 141 § 79; 1967 ex.s. c 51 § 10.]

70.05.070 Local health officer—Powers and duties.

The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and 70.118.130, the confidentiality provisions in RCW 70.24.105 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department. [2007 c 343 § 10; 1999 c 391 § 5; 1993 c 492 § 239; 1991 c 3 § 309; 1990 c 133 § 10; 1984 c 25 § 7; 1979 c 141 § 80; 1967 ex.s. c 51 § 12.]

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

70.05.072 Local health officer—Authority to grant waiver from on-site sewage system requirements. The local health officer may grant a waiver from specific requirements adopted by the state board of health for on-site sewage systems if:

(1) The on-site sewage system for which a waiver is requested is for sewage flows under three thousand five hundred gallons per day;

(2) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;

(3) The local health officer determines that the waiver is consistent with the standards in, and the intent of, the state board of health rules; and

(4) The local health officer submits quarterly reports to the department regarding any waivers approved or denied.

Based on review of the quarterly reports, if the department finds that the waivers previously granted have not been consistent with the standards in, and intent of, the state board of health rules, the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns.

If upon further review of the quarterly reports, the department finds that the inconsistency between the waivers granted and the state board of health standards has not been corrected, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected. [1995 c 263 § 1.]

70.05.074 On-site sewage system permits—Application—Limitation of alternative sewage systems. (1) The local health officer must respond to the applicant for an on-site sewage system permit within thirty days after receiving a fully completed application. The local health officer must respond that the application is either approved, denied, or pending.

(2) If the local health officer denies an application to install an on-site sewage system, the denial must be for cause and based upon public health and environmental protection concerns, including concerns regarding the ability to operate and maintain the system, or conflicts with other existing laws, regulations, or ordinances. The local health officer must provide the applicant with a written justification for the denial, along with an explanation of the procedure for appeal.

(3) If the local health officer identifies the application as pending and subject to review beyond thirty days, the local health officer must provide the applicant with a written justification that the site-specific conditions or circumstances necessitate a longer time period for a decision on the application. The local health officer must include any specific information necessary to make a decision and the estimated time required for a decision to be made.

(4) A local health officer may not limit the number of alternative sewage systems within his or her jurisdiction without cause. Any such limitation must be based upon public health and environmental protection concerns, including concerns regarding the ability to operate and maintain the system, or conflicts with other existing laws, regulations, or ordinances. If such a limitation is established, the local health officer must justify the limitation in writing, with specific reasons, and must provide an explanation of the procedure for appealing the limitation. [1997 c 447 § 2.]

Finding—Purpose—1997 c 447: "The legislature finds that improperly designed, installed, or maintained on-site sewage disposal systems are a major contributor to water pollution in this state. The legislature also recognizes that evolving technology has produced many viable alternatives to tra-

ditional on-site septic systems. It is the purpose of this act to help facilitate the siting of new alternative on-site septic systems and to assist local governments in promoting efficient operation of on-site septic *these systems." [1997 c 447 § 1.]

***Reviser's note:** Due to a drafting error, the word "these" was not removed when this sentence was rewritten.

Construction—1997 c 447 §§ 2-4: "Nothing in sections 2 through 4 of this act may be deemed to eliminate any requirements for approval from public health agencies under applicable law in connection with the siting, design, construction, and repair of on-site septic systems." [1997 c 447 § 6.]

70.05.077 Department of health—Training—On-site sewage systems—Application of the waiver authority—Topics—Availability. (1) The department of health, in consultation and cooperation with local environmental health officers, shall develop a one-day course to train local environmental health officers, health officers, and environmental health specialists and technicians to address the application of the waiver authority granted under RCW 70.05.072 as well as other existing statutory or regulatory flexibility for siting on-site sewage systems.

(2) The training course shall include the following topics:

(a) The statutory authority to grant waivers from the state on-site sewage system rules;

(b) The regulatory framework for the application of on-site sewage treatment and disposal technologies, with an emphasis on the differences between rules, standards, and guidance. The course shall include instruction on interpreting the intent of a rule rather than the strict reading of the language of a rule, and also discuss the liability assumed by a unit of local government when local rules, policies, or practices deviate from the state administrative code;

(c) The application of site evaluation and assessment methods to match the particular site and development plans with the on-site sewage treatment and disposal technology suitable to protect public health to at least the level provided by state rule; and

(d) Instruction in the concept and application of mitigation waivers.

(3) The training course shall be made available to all local health departments and districts in various locations in the state without fee. Updated guidance documents and materials shall be provided to all participants, including examples of the types of waivers and processes that other jurisdictions in the region have granted and used. The first training conducted under this section shall take place by June 30, 1999. [1998 c 34 § 3.]

Intent—1998 c 34: "(1) The 1997 legislature directed the department of health to convene a work group for the purpose of making recommendations to the legislature for the development of a certification program for occupations related to on-site septic systems, including those who pump, install, design, perform maintenance, inspect, or regulate on-site septic systems. The work group was convened and studied issues relating to certification of people employed in these occupations, bonding levels, and other standards related to these occupations. In addition, the work group examined the application of a risk analysis pertaining to the installation and maintenance of different types of septic systems in different parts of the state. A written report containing the work group's findings and recommendations was submitted to the legislature as directed.

(2) The legislature recognizes that the recommendations of the work group must be phased-in over a time period in order to develop the necessary scope of work requirements, knowledge requirements, public protection requirements, and other criteria for the upgrading of these occupations. It is the intent of the legislature to start implementing the work group's recom-

mendations by focusing first on the occupations that are considered to be the highest priority, and to address the other occupational recommendations in subsequent sessions." [1998 c 34 § 1.]

70.05.080 Local health officer—Failure to appoint—Procedure. If the local board of health or other official responsible for appointing a local health officer under RCW 70.05.050 refuses or neglects to appoint a local health officer after a vacancy exists, the secretary of health may appoint a local health officer and fix the compensation. The local health officer so appointed shall have the same duties, powers and authority as though appointed under RCW 70.05.050. Such local health officer shall serve until a qualified individual is appointed according to the procedures set forth in RCW 70.05.050. The board or official responsible for appointing the local health officer under RCW 70.05.050 shall also be authorized to appoint an acting health officer to serve whenever the health officer is absent or incapacitated and unable to fulfill his or her responsibilities under the provisions of chapters 70.05 and 70.46 RCW. [1993 c 492 § 240; 1991 c 3 § 310; 1983 1st ex.s. c 39 § 4; 1979 c 141 § 81; 1967 ex.s. c 51 § 13.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.090 Physicians to report diseases. Whenever any physician shall attend any person sick with any dangerous contagious or infectious disease, or with any diseases required by the state board of health to be reported, he or she shall, within twenty-four hours, give notice thereof to the local health officer within whose jurisdiction such sick person may then be or to the state department of health in Olympia. [1991 c 3 § 311; 1979 c 141 § 82; 1967 ex.s. c 51 § 14.]

70.05.100 Determination of character of disease. In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state department of health can be notified, and then the opinion of the executive officer of the state department of health, or any physician he or she may appoint to examine such case, shall be final. [1991 c 3 § 312; 1979 c 141 § 83; 1967 ex.s. c 51 § 15.]

70.05.110 Local health officials and physicians to report contagious diseases. It shall be the duty of the local board of health, health authorities or officials, and of physicians in localities where there are no local health authorities or officials, to report to the state board of health, promptly upon discovery thereof, the existence of any one of the following diseases which may come under their observation, to wit: Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus, typhoid fever, bubonic plague or leprosy, and of such other contagious or infectious diseases as the state board may from time to time specify. [1967 ex.s. c 51 § 16.]

70.05.120 Violations—Remedies—Penalties. (1) Any local health officer or administrative officer appointed under

RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.05 RCW, and the rules and regulations of the state board of health adopted thereunder.

(2) Any member of a local board of health who shall violate any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars.

(3) Any physician who shall refuse or neglect to report to the proper health officer or administrative officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

(4) Any person violating any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment. [2003 c 53 § 350; 1999 c 391 § 6; 1993 c 492 § 241; 1984 c 25 § 8; 1967 ex.s. c 51 § 17.]

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

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.125 County public health account—Distribution to local public health jurisdictions. (1) The county public health account is created in the state treasury. Funds deposited in the county public health account shall be distributed by the state treasurer to each local public health jurisdiction based upon amounts certified to it by the department of community, trade, and economic development in consultation with the Washington state association of counties. The account shall include funds distributed under RCW *82.44.110 and 82.14.200(8) and such funds as are appropriated to the account from the health services account under RCW 43.72.900, the public health services account under RCW 43.72.902, and such other funds as the legislature may appropriate to it.

(2)(a) The director of the department of community, trade, and economic development shall certify the amounts to be distributed to each local public health jurisdiction using 1995 as the base year of actual city contributions to local public health.

(b) Only if funds are available and in an amount no greater than available funds under RCW 82.14.200(8), the department of community, trade, and economic development shall adjust the amount certified under (a) of this subsection to compensate for any annexation of an area with fifty thousand residents or more to any city as a result of a petition during calendar year 1996 or 1997, or for any city that became newly incorporated as a result of an election during calendar year 1994 or 1995. The amount to be adjusted shall be equal to the amount which otherwise would have been lost to the health jurisdiction due to the annexation or incorporation as calculated using the jurisdiction's 1995 funding formula.

(c) The county treasurer shall certify the actual 1995 city contribution to the department. Funds in excess of the base shall be distributed proportionately among the health jurisdictions based on incorporated population figures as last determined by the office of financial management.

(3) Moneys distributed under this section shall be expended exclusively for local public health purposes. [1998 c 266 § 1; 1997 c 333 § 1; 1995 1st sp.s. c 15 § 1.]

***Reviser's note:** RCW 82.44.110 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

Effective date—1998 c 266: "This act takes effect July 1, 1998." [1998 c 266 § 2.]

Effective date—1997 c 333: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 333 § 3.]

Effective date—1995 1st sp.s. c 15: "This act shall take effect January 1, 1996." [1995 1st sp.s. c 15 § 3.]

70.05.130 Expenses of state, health district, or county in enforcing health laws and rules—Payment by county. All expenses incurred by the state, health district, or county in carrying out the provisions of chapters 70.05 and 70.46 RCW or any other public health law, or the rules of the department of health enacted under such laws, shall be paid by the county and such expenses shall constitute a claim against the general fund as provided in this section. [1993 c 492 § 242; 1991 c 3 § 313; 1979 c 141 § 84; 1967 ex.s. c 51 § 18.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

(2008 Ed.)

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.135 Treasurer—District funds—Contributions by counties and cities. See RCW 70.46.080.

70.05.140 County to bear expense of providing public health services. See RCW 70.46.085.

70.05.150 Contracts for sale or purchase of health services authorized. In addition to powers already granted them, any county, district, or local health department may contract for either the sale or purchase of any or all health services from any local health department. Such contract shall require the approval of the state board of health. [1993 c 492 § 243; 1967 ex.s. c 51 § 22.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.160 Moratorium on water, sewer hookups, or septic systems—Public hearing—Limitation on length. A local board of health that adopts a moratorium affecting water hookups, sewer hookups, or septic systems without holding a public hearing on the proposed moratorium, shall hold a public hearing on the adopted moratorium within at least sixty days of its adoption. If the board does not adopt findings of fact justifying its action before this hearing, then the board shall do so immediately after this public hearing. A moratorium adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 7.]

70.05.170 Child mortality review. (1)(a) The legislature finds that the mortality rate in Washington state among infants and children less than eighteen years of age is unacceptably high, and that such mortality may be preventable. The legislature further finds that, through the performance of child mortality reviews, preventable causes of child mortality can be identified and addressed, thereby reducing the infant and child mortality in Washington state.

(b) It is the intent of the legislature to encourage the performance of child death reviews by local health departments by providing necessary legal protections to the families of children whose deaths are studied, local health department officials and employees, and health care professionals participating in child mortality review committee activities.

(2) As used in this section, "child mortality review" means a process authorized by a local health department as such department is defined in RCW 70.05.010 for examining factors that contribute to deaths of children less than eighteen years of age. The process may include a systematic review of medical, clinical, and hospital records; home interviews of parents and caretakers of children who have died; analysis of individual case information; and review of this information

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by a team of professionals in order to identify modifiable medical, socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death.

(3) Local health departments are authorized to conduct child mortality reviews. In conducting such reviews, the following provisions shall apply:

(a) All medical records, reports, and statements procured by, furnished to, or maintained by a local health department pursuant to chapter 70.02 RCW for purposes of a child mortality review are confidential insofar as the identity of an individual child and his or her adoptive or natural parents is concerned. Such records may be used solely by local health departments for the purposes of the review. This section does not prevent a local health department from publishing statistical compilations and reports related to the child mortality review, if such compilations and reports do not identify individual cases and sources of information.

(b) Any records or documents supplied or maintained for the purposes of a child mortality review are not subject to discovery or subpoena in any administrative, civil, or criminal proceeding related to the death of a child reviewed. This provision shall not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section.

(c) Any summaries or analyses of records, documents, or records of interviews prepared exclusively for purposes of a child mortality review are not subject to discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of a child reviewed.

(d) No local health department official or employee, and no members of technical committees established to perform case reviews of selected child deaths may be examined in any administrative, civil, or criminal proceeding as to the existence or contents of documents assembled, prepared, or maintained for purposes of a child mortality review.

(e) This section shall not be construed to prohibit or restrict any person from reporting suspected child abuse or neglect under chapter 26.44 RCW nor to limit access to or use of any records, documents, information, or testimony in any civil or criminal action arising out of any report made pursuant to chapter 26.44 RCW. [1993 c 41 § 1; 1992 c 179 § 1.]

70.05.180 Infectious disease testing—Good samaritans—Rules. A person rendering emergency care or transportation, commonly known as a "Good Samaritan," as described in RCW 4.24.300 and 4.24.310, may request and receive appropriate infectious disease testing free of charge from the local health department of the county of her or his residence, if: (1) While rendering emergency care she or he came into contact with bodily fluids; and (2) she or he does not have health insurance that covers the testing. Nothing in this section requires a local health department to provide health care services beyond testing. The department shall adopt rules implementing this section.

The information obtained from infectious disease testing is subject to statutory confidentiality provisions, including those of chapters 70.24 and 70.05 RCW. [1999 c 391 § 2.]

Findings—Purpose—1999 c 391: "The legislature finds that citizens who assist individuals in emergency situations perform a needed and valuable role that deserves recognition and support. The legislature further finds that emergency assistance in the form of mouth to mouth resuscitation or other emergency medical procedures resulting in the exchange of bodily fluids significantly increases the odds of being exposed to a deadly infectious disease. Some of the more life-threatening diseases that can be transferred during an emergency procedure where bodily fluids are exchanged include hepatitis A, B, and C, and human immunodeficiency virus (HIV). Individuals infected by these diseases value confidentiality regarding this information. A number of good samaritans who perform life-saving emergency procedures such as cardiopulmonary resuscitation are unable to pay for the tests necessary for detecting infectious diseases that could have been transmitted during the emergency procedure. It is the purpose of this act to provide infectious disease testing at no cost to good samaritans who request testing for infectious diseases after rendering emergency assistance that has brought them into contact with a bodily fluid and to further protect the testing information once obtained through confidentiality provisions." [1999 c 391 § 1.]

Effective date—1999 c 391 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 18, 1999]." [1999 c 391 § 7.]

Chapter 70.08 RCW COMBINED CITY-COUNTY HEALTH DEPARTMENTS

Sections

70.08.005	Transfer of duties to the department of health.
70.08.010	Combined city-county health departments—Establishment.
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70.08.005 Transfer of duties to the department of health. The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 244.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.08.010 Combined city-county health departments—Establishment. Any city with one hundred thousand or more population and the county in which it is located, are authorized, as shall be agreed upon between the respective governing bodies of such city and said county, to establish and operate a combined city and county health department, and to appoint the director of public health. [1985 c 124 § 1; (1993 c 492 § 244 repealed by 1995 c 43 § 16); 1949 c 46 § 1; Rem. Supp. 1949 § 6099-30. Formerly RCW 70.05.037.]

70.08.020 Director of public health—Powers and duties. The director of public health is authorized to and shall exercise all powers and perform all duties by law vested

in the local health officer. [1985 c 124 § 2; 1949 c 46 § 2; Rem. Supp. 1949 § 6099-31.]

70.08.030 Qualifications. Notwithstanding any provisions to the contrary contained in any city or county charter, the director of public health, under this chapter shall meet as a minimum one of the following standards of educational achievement and vocational experience to be qualified for appointment to the office:

(1) Bachelor's degree in business administration, public administration, hospital administration, management, nursing, environmental health, epidemiology, public health, or its equivalent and five years of experience in administration in a community-related field; or

(2) A graduate degree in any of the fields listed in subsection (1) of this section, or in medicine or osteopathic medicine and surgery, plus three years of administrative experience in a community-related field.

The director shall not engage in the private practice of the director's profession during such tenure of office and shall not be included in the classified civil service of the said city or the said county.

If the director of public health does not meet the qualifications of a health officer or a physician under RCW 70.05.050, the director shall employ a person so qualified to advise the director on medical or public health matters. [1996 c 178 § 20; 1985 c 124 § 3; 1984 c 25 § 3; 1949 c 46 § 3; Rem. Supp. 1949 § 6099-32.]

Effective date—1996 c 178: See note following RCW 18.35.110.

70.08.040 Director of public health—Appointment. Notwithstanding any provisions to the contrary contained in any city or county charter, where a combined department is established under this chapter, the director of public health under this chapter shall be appointed by the county executive of the county and the mayor of the city. The appointment shall be effective only upon a majority vote confirmation of the legislative authority of the county and the legislative authority of the city. The director may be removed by the county executive of the county, after consultation with the mayor of the city, upon filing a statement of reasons therefor with the legislative authorities of the county and the city. [1995 c 188 § 1; 1995 c 43 § 9; 1985 c 124 § 4; 1980 c 57 § 1; 1949 c 46 § 4; Rem. Supp. 1949 § 6099-33.]

Reviser's note: This section was amended by 1995 c 43 § 9 and by 1995 c 188 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

70.08.050 May act as health officer for other cities or towns. Nothing in this chapter shall prohibit the director of public health as provided herein from acting as health officer for any other city or town within the county, nor from acting as health officer in any adjoining county or any city or town within such county having a contract or agreement as provided in RCW 70.08.090: PROVIDED, HOWEVER, That before being appointed health officer for such adjoining county, the secretary of health shall first give his or her

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approval thereto. [1991 c 3 § 314; 1979 c 141 § 85; 1949 c 46 § 8; Rem. Supp. 1949 § 6099-37.]

70.08.060 Director of public health shall be registrar of vital statistics. The director of public health under this chapter shall be registrar of vital statistics for all cities and counties under his jurisdiction and shall conduct such vital statistics work in accordance with the same laws and/or rules and regulations pertaining to vital statistics for a city of the first class. [1961 ex.s. c 5 § 4; 1949 c 46 § 9; Rem. Supp. 1949 § 6099-38.]

Vital statistics: Chapter 70.58 RCW.

70.08.070 Employees may be included in civil service or retirement plans of city, county, or combined department. Notwithstanding any provisions to the contrary contained in any city or county charter, and to the extent provided by the city and the county pursuant to appropriate legislative enactment, employees of the combined city and county health department may be included in the personnel system or civil service and retirement plans of the city or the county or a personnel system for the combined city and county health department that is separate from the personnel system or civil service of either county or city: PROVIDED, That residential requirements for such positions shall be coextensive with the county boundaries: PROVIDED FURTHER, That the city or county is authorized to pay such parts of the expense of operating and maintaining such personnel system or civil service and retirement system and to contribute to the retirement fund in behalf of employees such sums as may be agreed upon between the legislative authorities of such city and county. [1982 c 203 § 1; 1980 c 57 § 2; 1949 c 46 § 5; Rem. Supp. 1949 § 6099-34.]

70.08.080 Pooling of funds. The city by ordinance, and the county by appropriate legislative enactment, under this chapter may pool all or any part of their respective funds available for public health purposes, in the office of the city treasurer or the office of the county treasurer in a special pooling fund to be established in accordance with agreements between the legislative authorities of said city and county and which shall be expended for the combined health department. [1980 c 57 § 3; 1949 c 46 § 6; Rem. Supp. 1949 § 6099-35.]

70.08.090 Other cities or agencies may contract for services. Any other city in said county, other governmental agency or any charitable or health agency may by contract or by agreement with the governing bodies of the combined health department receive public health services. [1949 c 46 § 7; Rem. Supp. 1949 § 6099-36.]

70.08.100 Termination of agreement to operate combined city-county health department. Agreement to operate a combined city and county health department made under this chapter may after two years from the date of such agreement, be terminated by either party at the end of any calendar year upon notice in writing given at least six months prior thereto. The termination of such agreement shall not relieve either party of any obligations to which it has been

previously committed. [1949 c 46 § 10; Rem. Supp. 1949 § 6099-39.]

70.08.110 Prior expenditures in operating combined health department ratified. Any expenditures heretofore made by a city of one hundred thousand population or more, and by the county in which it is located, not made fraudulently and which were within the legal limits of indebtedness, towards the expense of maintenance and operation of a combined health department, are hereby legalized and ratified. [1949 c 46 § 11; Rem. Supp. 1949 § 6099-40.]

70.08.900 Severability—1980 c 57. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 57 § 4.]

Chapter 70.10 RCW

COMPREHENSIVE COMMUNITY HEALTH CENTERS

Sections

- 70.10.010 Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing.
- 70.10.020 "Comprehensive community health center" defined.
- 70.10.030 Authorization to apply for and administer federal or state funds.
- 70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center.
- 70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms.
- 70.10.060 Adoption of rules and regulations—Liberal construction of chapter.

Community mental health services act: Chapter 71.24 RCW.

Mental health and retardation services, interstate contracts: RCW 71.28.010.

70.10.010 Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing. It is declared to be the policy of the legislature of the state of Washington that, wherever feasible, community health, mental health and mental retardation services shall be combined within single facilities in order to provide maximum utilization of available funds and personnel, and to assure the greatest possible coordination of such services for the benefit of those requiring them. It is further declared to be the policy of the legislature to authorize the state to cooperate with counties, cities, and other municipal corporations in order to encourage them to take such steps as may be necessary to construct comprehensive community health centers in communities throughout the state. [1967 ex.s. c 4 § 1.]

70.10.020 "Comprehensive community health center" defined. The term "comprehensive community health center" as used in this chapter shall mean a health facility housing community health, mental health, and developmental disabilities services. [1977 ex.s. c 80 § 37; 1967 ex.s. c 4 § 2.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.030 Authorization to apply for and administer federal or state funds. The several agencies of the state authorized to administer within the state the various federal acts providing federal moneys to assist in the cost of establishing community health, mental health, and mental retardation facilities, are authorized to apply for and disburse federal grants, matching funds, or other funds, including gifts or donations from any source, available for use by counties, cities, other municipal corporations or nonprofit corporations. Upon application, these agencies shall also be authorized to distribute such state funds as may be appropriated by the legislature for such local construction projects: PROVIDED, That where state funds have been appropriated to assist in covering the cost of constructing a comprehensive community health center, or a community health, mental health, or mental retardation facility, and where any county, city, other municipal corporation or nonprofit corporation has submitted an approved application for such state funds, then, after any applicable federal grant has been deducted from the total cost of construction, the state agency or agencies in charge of each program may allocate to such applicant an amount not to exceed fifty percent of that particular program's contribution toward the balance of remaining construction costs. [1967 ex.s. c 4 § 3.]

70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center. Any application for federal or state funds to be used for construction of the community health, mental health, or developmental disabilities facility, which will be part of the comprehensive community health center as defined in RCW 70.10.020, shall be separately processed and approved by the state agency which has been designated to administer the particular federal or state program involved. Any application for federal or state funds for a construction project to establish a community health, mental health, or developmental disabilities facility not part of a comprehensive health center shall be processed by the state agency which is designated to administer the particular federal or state program involved. This agency shall also forward a copy of the application to the other agency or agencies designated to administer the program or programs providing funds for construction of the facilities which make up a comprehensive health center. The agency or agencies receiving this copy of the application shall have a period of time not to exceed sixty days in which to file a statement with the agency to which the application has been submitted and to any statutory advisory council or committee which has been designated to advise the administering agency with regard to the program, stating that the proposed facility should or should not be part of a comprehensive health center. [1977 ex.s. c 80 § 38; 1967 ex.s. c 4 § 4.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms. The several state agencies processing applications for the construction of comprehensive health centers for community health, mental health, or developmental disability facilities shall cooperate to develop general procedures to be used in implementing the statute and to attempt to develop application forms and procedures which are as nearly standard as possible, after taking cognizance of the different information required in the various programs, to assist applicants in applying to various state agencies. [1977 ex.s. c 80 § 39; 1967 ex.s. c 4 § 5.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.060 Adoption of rules and regulations—Liberal construction of chapter. In furtherance of the legislative policy to authorize the state to cooperate with the federal government in facilitating the construction of comprehensive community health centers, the state agencies involved shall adopt such rules and regulations as may become necessary to entitle the state and local units of government to share in federal grants, matching funds, or other funds, unless the same be expressly prohibited by this chapter. Any section or provision of this chapter susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling the state and local units of government to receive federal grants, matching funds or other funds for the construction of comprehensive community health centers. [1967 ex.s. c 4 § 6.]

Chapter 70.12 RCW PUBLIC HEALTH FUNDS

Sections

COUNTY FUNDS

70.12.015 Secretary may expend funds in counties.
70.12.025 County funds for public health.

PUBLIC HEALTH POOLING FUND

70.12.030 Public health pooling fund.
70.12.040 Fund, how maintained and disbursed.
70.12.050 Expenditures from fund.
70.12.060 Expenditures geared to budget.
70.12.070 Fund subject to audit and check by state.

COUNTY FUNDS

70.12.015 Secretary may expend funds in counties. The secretary of health is hereby authorized to apportion and expend such sums as he or she shall deem necessary for public health work in the counties of the state, from the appropriations made to the state department of health for county public health work. [1991 c 3 § 315; 1979 c 141 § 86; 1939 c 191 § 2; RRS § 6001-1. Formerly RCW 70.12.080.]

70.12.025 County funds for public health. Each county legislative authority shall annually budget and appropriate a sum for public health work. [1975 1st ex.s. c 291 § 2.]

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Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

PUBLIC HEALTH POOLING FUND

70.12.030 Public health pooling fund. Any county, combined city-county health department, or health district is hereby authorized and empowered to create a "public health pooling fund", hereafter called the "fund", for the efficient management and control of all moneys coming to such county, combined department, or district for public health purposes. [1993 c 492 § 245; 1945 c 46 § 1; 1943 c 190 § 1; Rem. Supp. 1945 § 6099-1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.12.040 Fund, how maintained and disbursed. Any such fund may be established in the county treasurer's office or the city treasurer's office of a first-class city according to the type of local health department organization existing.

In a district composed of more than one county, the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of receipts and disbursements; and shall draw and the county treasurer shall honor and pay all such warrants.

Into any such fund so established may be paid:

- (1) All grants from any state fund for county public health work;
- (2) Any county current expense funds appropriated for the health department;
- (3) Any other money appropriated by the county for health work;
- (4) City funds appropriated for the health department;
- (5) All moneys received from any governmental agency, local, state or federal which may contribute to the local health department; and
- (6) Any contributions from any charitable or voluntary agency or contributions from any individual or estate.

Any school district may contract in writing for health services with the health department of the county, first-class city or health district, and place such funds in the public health pooling fund in accordance with the contract. [1983 c 3 § 170; 1945 c 46 § 2; 1943 c 190 § 2; Rem. Supp. 1945 § 6099-2.]

70.12.050 Expenditures from fund. All expenditures in connection with salaries, wages and operations incurred in carrying on the health department of the county, combined city-county health department, or health district shall be paid out of such fund. [1993 c 492 § 246; 1945 c 46 § 3; 1943 c 190 § 3; Rem. Supp. 1945 § 6099-3.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.12.060 Expenditures geared to budget. Any fund established as herein provided shall be expended so as to

make the expenditures thereof agree with any respective appropriation period. Any accumulation in any such fund so established shall be taken into consideration when preparing any budget for the operations for the ensuing year. [1943 c 190 § 4; Rem. Supp. 1943 § 6099-4.]

70.12.070 Fund subject to audit and check by state.

The public health pool fund shall be subject to audit by the state auditor and shall be subject to check by the state department of health. [1995 c 301 § 77; 1991 c 3 § 316; 1979 c 141 § 87; 1943 c 190 § 5; Rem. Supp. 1943 § 6099-5.]

Chapter 70.14 RCW

HEALTH CARE SERVICES PURCHASED BY STATE AGENCIES

Sections

70.14.020	State agencies to identify alternative health care providers.
70.14.030	Health care utilization review procedures.
70.14.040	Review of prospective rate setting methods.
70.14.050	Drug purchasing cost controls—Establishment of evidence-based prescription drug program.
70.14.060	Prescription drug purchasing consortium—Participation—Prescription drug consortium advisory committee—Exceptions—Rules.
70.14.070	Prescription drug consortium account.
70.14.080	Definitions.
70.14.090	Health technology clinical committee.
70.14.100	Health technology selection and assessment.
70.14.110	Health technology clinical committee determinations.
70.14.120	Agency compliance with committee determination—Coverage and reimbursement determinations for nonreviewed health technologies—Appeals.
70.14.130	Health technology clinical committee—Public notice.
70.14.140	Applicability to health care services purchased from health carriers.
70.14.150	Data-sharing agreements—Report.

State health care cost containment policies: RCW 43.41.160.

70.14.020 State agencies to identify alternative health care providers. Each of the agencies listed in *RCW 70.14.010, with the exception of the department of labor and industries, which expends more than five hundred thousand dollars annually of state funds for purchase of health care shall identify the availability and costs of nonfee for service providers of health care, including preferred provider organizations, health maintenance organizations, managed health care or case management systems, or other nonfee for service alternatives. In each case where feasible in which an alternative health care provider arrangement, of similar scope and quality, is available at lower cost than fee for service providers, such state agencies shall make the services of the alternative provider available to clients, consumers, or employees for whom state dollars are spent to purchase health care. As consistent with other state and federal law, requirements for copayments, deductibles, the scope of available services, or other incentives shall be used to encourage clients, consumers, or employees to use the lowest cost providers, except that copayments or deductibles shall not be required where they might have the impact of denying access to necessary health care in a timely manner. [1986 c 303 § 7.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

Medical assistance—Agreements with managed health care systems: RCW 74.09.522.

70.14.030 Health care utilization review procedures.

Plans for establishing or improving utilization review procedures for purchased health care services shall be developed by each agency listed in *RCW 70.14.010. The plans shall specifically address such utilization review procedures as prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and the obtaining of second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers. [1986 c 303 § 8.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

70.14.040 Review of prospective rate setting methods. The state agencies listed in *RCW 70.14.010 shall review the feasibility of establishing prospective payment approaches within their health care programs. Work plans or timetables shall be prepared for the development of prospective rates. The agencies shall identify legislative actions that may be necessary to facilitate the adoption of prospective rate setting methods. [1986 c 303 § 9.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

70.14.050 Drug purchasing cost controls—Establishment of evidence-based prescription drug program. (1) Each agency administering a state purchased health care program as defined in RCW 41.05.011(2) shall, in cooperation with other agencies, take any necessary actions to control costs without reducing the quality of care when reimbursing for or purchasing drugs. To accomplish this purpose, participating agencies may establish an evidence-based prescription drug program.

(2) In developing the evidence-based prescription drug program authorized by this section, agencies:

(a) Shall prohibit reimbursement for drugs that are determined to be ineffective by the United States food and drug administration;

(b) Shall adopt rules in order to ensure that less expensive generic drugs will be substituted for brand name drugs in those instances where the quality of care is not diminished;

(c) Where possible, may authorize reimbursement for drugs only in economical quantities;

(d) May limit the prices paid for drugs by such means as negotiated discounts from pharmaceutical manufacturers, central purchasing, volume contracting, or setting maximum prices to be paid;

(e) Shall consider the approval of drugs with lower abuse potential in substitution for drugs with significant abuse potential;

(f) May take other necessary measures to control costs of drugs without reducing the quality of care; and

(g) Shall adopt rules governing practitioner endorsement and use of any list developed as part of the program authorized by this section.

(3) Agencies shall provide for reasonable exceptions, consistent with RCW 69.41.190, to any list developed as part of the program authorized by this section.

(4) Agencies shall establish an independent pharmacy and therapeutics committee to evaluate the effectiveness of prescription drugs in the development of the program autho-

ized by this section. [2003 1st sp.s. c 29 § 9; 1986 c 303 § 10.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

70.14.060 Prescription drug purchasing consortium—Participation—Prescription drug consortium advisory committee—Exceptions—Rules. (1) The administrator of the state health care authority shall, directly or by contract, adopt policies necessary for establishment of a prescription drug purchasing consortium. The consortium's purchasing activities shall be based upon the evidence-based prescription drug program established under RCW 70.14.050. State purchased health care programs as defined in RCW 41.05.011 shall purchase prescription drugs through the consortium for those prescription drugs that are purchased directly by the state and those that are purchased through reimbursement of pharmacies, unless exempted under this section. The administrator shall not require any supplemental rebate offered to the department of social and health services by a pharmaceutical manufacturer for prescription drugs purchased for medical assistance program clients under chapter 74.09 RCW be extended to any other state purchased health care program, or to any other individuals or entities participating in the consortium. The administrator shall explore joint purchasing opportunities with other states.

(2) Participation in the purchasing consortium shall be offered as an option beginning January 1, 2006. Participation in the consortium is purely voluntary for units of local government, private entities, labor organizations, and for individuals who lack or are underinsured for prescription drug coverage. The administrator may set reasonable fees, including enrollment fees, to cover administrative costs attributable to participation in the prescription drug consortium.

(3) The prescription drug consortium advisory committee is created within the authority. The function of the prescription drug advisory committee is to advise the administrator of the state health care authority on the implementation of the prescription drug purchasing consortium.

(4) The prescription drug consortium advisory committee shall be composed of eleven members selected as provided in this subsection.

(a) The administrator shall select one member of the prescription drug consortium advisory committee from each list of three nominees submitted by statewide organizations representing the following:

- (i) One representative of state employees, who represents an employee union certified as exclusive representative of at least one bargaining unit of classified employees;
- (ii) One member who is a licensed physician;
- (iii) One member who is a licensed pharmacist;
- (iv) One member who is a licensed advanced registered nurse practitioner;
- (v) One member representing a health carrier licensed under Title 48 RCW; and
- (vi) One member representing unions that represent private sector employees;

(b) The administrator shall select two members of the advisory committee from a list of nominees submitted by statewide organizations representing consumers. One of the

consumer members shall have knowledge or experience regarding senior citizen prescription drug cost and utilization issues;

(c) The administrator shall select two members of the advisory committee from a list of nominees submitted by statewide organizations representing business, one of whom shall represent small businesses who employ fifty or fewer employees and one of whom shall represent large businesses; and

(d) The administrator shall select one member who is versed in biologic medicine through research or academia from the University of Washington or Washington State University.

(5) The administrator shall consult with the advisory committee on at least a quarterly basis on significant policy decisions related to implementation of the purchasing consortium.

(6) This section does not apply to state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, or group model health maintenance organizations that are accredited by the national committee for quality assurance.

(7) The state health care authority is authorized to adopt rules implementing chapter 129, Laws of 2005.

(8) State purchased health care programs are exempt from the requirements of this section if they can demonstrate to the administrator that, as a result of the availability of federal programs or other purchasing arrangements, their other purchasing mechanisms will result in greater discounts and aggregate cost savings than would be realized through participation in the consortium. [2005 c 129 § 1.]

Performance audit—2005 c 129 § 1: "By December 1, 2008, the joint legislative audit and review committee shall conduct a performance audit on the operation of the consortium created in section 1 of this act. The audit shall review the operations and outcomes associated with the implementation of this consortium and identify the net savings, if any, to the members of the consortium, the percentage of targeted populations participating, and changes in the health outcomes of participants." [2005 c 129 § 3.]

Severability—2005 c 129: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 129 § 4.]

Conflict with federal requirements—2005 c 129: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2005 c 129 § 5.]

70.14.070 Prescription drug consortium account. The prescription drug consortium account is created in the custody of the state treasurer. All receipts from activities related to administration of the state drug purchasing consortium on behalf of participating individuals and organizations, other than state purchased health care programs, shall be deposited into the account. The receipts include but are not limited to rebates from manufacturers, and the fees established under RCW 70.14.060(2). Expenditures from the account may be used only for the purposes of RCW 70.14.060. Only the administrator of the state health care authority or the administrator's designee may authorize

expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 129 § 2.]

Severability—Conflict with federal requirements—2005 c 129: See notes following RCW 70.14.060.

70.14.080 Definitions. The definitions in this section apply throughout RCW 70.14.090 through 70.14.130 unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the Washington state health care authority under chapter 41.05 RCW.

(2) "Advisory group" means a group established under RCW 70.14.110(2)(c).

(3) "Committee" means the health technology clinical committee established under RCW 70.14.090.

(4) "Coverage determination" means a determination of the circumstances, if any, under which a health technology will be included as a covered benefit in a state purchased health care program.

(5) "Health technology" means medical and surgical devices and procedures, medical equipment, and diagnostic tests. Health technologies does not include prescription drugs governed by RCW 70.14.050.

(6) "Participating agency" means the department of social and health services, the state health care authority, and the department of labor and industries.

(7) "Reimbursement determination" means a determination to provide or deny reimbursement for a health technology included as a covered benefit in a specific circumstance for an individual patient who is eligible to receive health care services from the state purchased health care program making the determination. [2006 c 307 § 1.]

Captions not law—2006 c 307: "Captions used in this act are not any part of the law." [2006 c 307 § 10.]

Conflict with federal requirements—2006 c 307: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2006 c 307 § 11.]

70.14.090 Health technology clinical committee. (1) A health technology clinical committee is established, to include the following eleven members appointed by the administrator in consultation with participating state agencies:

(a) Six practicing physicians licensed under chapter 18.57 or 18.71 RCW; and

(b) Five other practicing licensed health professionals who use health technology in their scope of practice.

At least two members of the committee must have professional experience treating women, children, elderly persons, and people with diverse ethnic and racial backgrounds.

(2) Members of the committee:

(a) Shall not contract with or be employed by a health technology manufacturer or a participating agency during their term or for eighteen months before their appointment.

As a condition of appointment, each person shall agree to the terms and conditions imposed by the administrator regarding conflicts of interest;

(b) Are immune from civil liability for any official acts performed in good faith as members of the committee; and

(c) Shall be compensated for participation in the work of the committee in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the committee.

(3) Meetings of the committee and any advisory group are subject to chapter 42.30 RCW, the open public meetings act, including RCW 42.30.110(1)(I), which authorizes an executive session during a regular or special meeting to consider proprietary or confidential unpublished information.

(4) Neither the committee nor any advisory group is an agency for purposes of chapter 34.05 RCW.

(5) The health care authority shall provide administrative support to the committee and any advisory group, and may adopt rules governing their operation. [2006 c 307 § 2.]

Captions not law—Conflict with federal requirements—2006 c 307: See notes following RCW 70.14.080.

70.14.100 Health technology selection and assessment. (1) The administrator, in consultation with participating agencies and the committee, shall select the health technologies to be reviewed by the committee under RCW 70.14.110. Up to six may be selected for review in the first year after June 7, 2006, and up to eight may be selected in the second year after June 7, 2006. In making the selection, priority shall be given to any technology for which:

(a) There are concerns about its safety, efficacy, or cost-effectiveness, especially relative to existing alternatives, or significant variations in its use;

(b) Actual or expected state expenditures are high, due to demand for the technology, its cost, or both; and

(c) There is adequate evidence available to conduct the complete review.

(2) A health technology for which the committee has made a determination under RCW 70.14.110 shall be considered for rereview at least once every eighteen months, beginning the date the determination is made. The administrator, in consultation with participating agencies and the committee, shall select the technology for rereview if he or she decides that evidence has since become available that could change a previous determination. Upon rereview, consideration shall be given only to evidence made available since the previous determination.

(3) Pursuant to a petition submitted by an interested party, the health technology clinical committee may select health technologies for review that have not otherwise been selected by the administrator under subsection (1) or (2) of this section.

(4) Upon the selection of a health technology for review, the administrator shall contract for a systematic evidence-based assessment of the technology's safety, efficacy, and cost-effectiveness. The contract shall:

(a) Be with an evidence-based practice center designated as such by the federal agency for health care research and quality, or other appropriate entity;

(b) Require the assessment be initiated no sooner than thirty days after notice of the selection of the health technol-

ogy for review is posted on the internet under RCW 70.14.130;

(c) Require, in addition to other information considered as part of the assessment, consideration of: (i) Safety, health outcome, and cost data submitted by a participating agency; and (ii) evidence submitted by any interested party; and

(d) Require the assessment to: (i) Give the greatest weight to the evidence determined, based on objective indicators, to be the most valid and reliable, considering the nature and source of the evidence, the empirical characteristic of the studies or trials upon which the evidence is based, and the consistency of the outcome with comparable studies; and (ii) take into account any unique impacts of the technology on specific populations based upon factors such as sex, age, ethnicity, race, or disability. [2006 c 307 § 3.]

Captions not law—Conflict with federal requirements—2006 c 307: See notes following RCW 70.14.080.

70.14.110 Health technology clinical committee determinations. (1) The committee shall determine, for each health technology selected for review under RCW 70.14.100: (a) The conditions, if any, under which the health technology will be included as a covered benefit in health care programs of participating agencies; and (b) if covered, the criteria which the participating agency administering the program must use to decide whether the technology is medically necessary, or proper and necessary treatment.

(2) In making a determination under subsection (1) of this section, the committee:

(a) Shall consider, in an open and transparent process, evidence regarding the safety, efficacy, and cost-effectiveness of the technology as set forth in the systematic assessment conducted under RCW 70.14.100(4);

(b) Shall provide an opportunity for public comment; and

(c) May establish ad hoc temporary advisory groups if specialized expertise is needed to review a particular health technology or group of health technologies, or to seek input from enrollees or clients of state purchased health care programs. Advisory group members are immune from civil liability for any official act performed in good faith as a member of the group. As a condition of appointment, each person shall agree to the terms and conditions imposed by the administrator regarding conflicts of interest.

(3) Determinations of the committee under subsection (1) of this section shall be consistent with decisions made under the federal medicare program and in expert treatment guidelines, including those from specialty physician organizations and patient advocacy organizations, unless the committee concludes, based on its review of the systematic assessment, that substantial evidence regarding the safety, efficacy, and cost-effectiveness of the technology supports a contrary determination. [2006 c 307 § 4.]

Captions not law—Conflict with federal requirements—2006 c 307: See notes following RCW 70.14.080.

70.14.120 Agency compliance with committee determination—Coverage and reimbursement determinations for nonreviewed health technologies—Appeals. (1) A participating agency shall comply with a determination of the committee under RCW 70.14.110 unless:

(a) The determination conflicts with an applicable federal statute or regulation, or applicable state statute; or

(b) Reimbursement is provided under an agency policy regarding experimental or investigational treatment, services under a clinical investigation approved by an institutional review board, or health technologies that have a humanitarian device exemption from the federal food and drug administration.

(2) For a health technology not selected for review under RCW 70.14.100, a participating agency may use its existing statutory and administrative authority to make coverage and reimbursement determinations. Such determinations shall be shared among agencies, with a goal of maximizing each agency's understanding of the basis for the other's decisions and providing opportunities for agency collaboration.

(3) A health technology not included as a covered benefit under a state purchased health care program pursuant to a determination of the health technology clinical committee under RCW 70.14.110, or for which a condition of coverage established by the committee is not met, shall not be subject to a determination in the case of an individual patient as to whether it is medically necessary, or proper and necessary treatment.

(4) Nothing in chapter 307, Laws of 2006 diminishes an individual's right under existing law to appeal an action or decision of a participating agency regarding a state purchased health care program. Appeals shall be governed by state and federal law applicable to participating agency decisions. [2006 c 307 § 5.]

Captions not law—Conflict with federal requirements—2006 c 307: See notes following RCW 70.14.080.

70.14.130 Health technology clinical committee—Public notice. (1) The administrator shall develop a centralized, internet-based communication tool that provides, at a minimum:

(a) Notification when a health technology is selected for review under RCW 70.14.100, indicating when the review will be initiated and how an interested party may submit evidence, or provide public comment, for consideration during the review;

(b) Notification of any determination made by the committee under RCW 70.14.110(1), its effective date, and an explanation of the basis for the determination; and

(c) Access to the systematic assessment completed under RCW 70.14.100(4), and reports completed under subsection (2) of this section.

(2) Participating agencies shall develop methods to report on the implementation of this section and RCW 70.14.080 through 70.14.120 with respect to health care outcomes, frequency of exceptions, cost outcomes, and other matters deemed appropriate by the administrator. [2006 c 307 § 7.]

Captions not law—Conflict with federal requirements—2006 c 307: See notes following RCW 70.14.080.

70.14.140 Applicability to health care services purchased from health carriers. RCW 70.14.080 through 70.14.130 and 41.05.013 do not apply to state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005. [2006 c 307 § 9.]

Captions not law—Conflict with federal requirements—2006 c 307:
See notes following RCW 70.14.080.

70.14.150 Data-sharing agreements—Report. (1) The department of social and health services and the health care authority shall enter into data-sharing agreements with the appropriate agencies in the states of Oregon and Idaho to assure the valid Washington state residence of applicants for health care services in Washington. Such agreements shall include appropriate safeguards related to the confidentiality of the shared information.

(2) The department of social and health services and the health care authority must jointly report on the status of the data-sharing agreements to the appropriate committees of the legislature no later than November 30, 2007. [2007 c 60 § 1.]

Chapter 70.22 RCW MOSQUITO CONTROL

Sections

70.22.005	Transfer of duties to the department of health.
70.22.010	Declaration of purpose.
70.22.020	Secretary may make inspections, investigations, and determinations and provide for control.
70.22.030	Secretary to coordinate plans.
70.22.040	Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes.
70.22.050	Powers and duties of secretary.
70.22.060	Governmental entities to cooperate with secretary.
70.22.900	Severability—1961 c 283.

70.22.005 Transfer of duties to the department of health. The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 246.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.22.010 Declaration of purpose. The purpose of this chapter is to establish a statewide program for the control or elimination of mosquitoes as a health hazard. [1961 c 283 § 1.]

Mosquito control districts: Chapter 17.28 RCW.

70.22.020 Secretary may make inspections, investigations, and determinations and provide for control. The secretary of health is hereby authorized and empowered to make or cause to be made such inspections, investigations, studies and determinations as he or she may from time to time deem advisable in order to ascertain the effect of mosquitoes as a health hazard, and, to the extent to which funds are available, to provide for the control or elimination thereof in any or all parts of the state. [1991 c 3 § 317; 1979 c 141 § 88; 1961 c 283 § 2.]

70.22.030 Secretary to coordinate plans. The secretary of health shall coordinate plans for mosquito control work which may be projected by any county, city or town, municipal corporation, taxing district, state department or agency, federal government agency, or any person, group or organization, and arrange for cooperation between any such

districts, departments, agencies, persons, groups or organizations. [1991 c 3 § 318; 1979 c 141 § 89; 1961 c 283 § 3.]

70.22.040 Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes. The secretary of health is authorized and empowered to receive funds from any county, city or town, municipal corporation, taxing district, the federal government, or any person, group or organization to carry out the purpose of this chapter. In connection therewith the secretary is authorized and empowered to contract with any such county, city, or town, municipal corporation, taxing district, the federal government, person, group or organization with respect to the construction and maintenance of facilities and other work for the purpose of effecting mosquito control or elimination, and any such county, city or town, municipal corporation, or taxing district obligated to carry out the provisions of any such contract entered into with the secretary is authorized, empowered and directed to appropriate, and if necessary, to levy taxes for and pay over such funds as its contract with the secretary may from time to time require. [1991 c 3 § 319; 1979 c 141 § 90; 1961 c 283 § 4.]

70.22.050 Powers and duties of secretary. To carry out the purpose of this chapter, the secretary of health may:

(1) Abate as nuisances breeding places for mosquitoes as defined in RCW 17.28.170;

(2) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for carrying out the purpose of this chapter;

(3) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants;

(4) Publish information or literature; and

(5) Do any and all other things necessary to carry out the purpose of this chapter: PROVIDED, That no program shall be permitted nor any action taken in pursuance thereof which may be injurious to the life or health of game or fish. [1991 c 3 § 320; 1989 c 11 § 25; 1979 c 141 § 91; 1961 c 283 § 5.]

Severability—1989 c 11: See note following RCW 9A.56.220.

70.22.060 Governmental entities to cooperate with secretary. Each state department, agency, and political subdivision shall cooperate with the secretary of health in carrying out the purposes of this chapter. [1991 c 3 § 321; 1979 c 141 § 92; 1961 c 283 § 6.]

70.22.900 Severability—1961 c 283. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 283 § 7.]

Chapter 70.24 RCW

CONTROL AND TREATMENT OF SEXUALLY TRANSMITTED DISEASES

(Formerly: Control and treatment of venereal diseases)

Center for volunteerism and citizen service: RCW 43.150.050.

Sections

70.24.005	Transfer of duties to the department of health.
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70.24.410	AIDS advisory committee—Duties, review of insurance problems—Termination.
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70.24.430	Application of chapter to persons subject to jurisdiction of department of corrections.
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70.24.900	Severability—1988 c 206.

(2008 Ed.)

70.24.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services, the department of licensing, and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 247.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.24.015 Legislative finding. The legislature declares that sexually transmitted diseases constitute a serious and sometimes fatal threat to the public and individual health and welfare of the people of the state. The legislature finds that the incidence of sexually transmitted diseases is rising at an alarming rate and that these diseases result in significant social, health, and economic costs, including infant and maternal mortality, temporary and lifelong disability, and premature death. The legislature further finds that sexually transmitted diseases, by their nature, involve sensitive issues of privacy, and it is the intent of the legislature that all programs designed to deal with these diseases afford patients privacy, confidentiality, and dignity. The legislature also finds that medical knowledge and information about sexually transmitted diseases are rapidly changing. It is therefore the intent of the legislature to provide a program that is sufficiently flexible to meet emerging needs, deals efficiently and effectively with reducing the incidence of sexually transmitted diseases, and provides patients with a secure knowledge that information they provide will remain private and confidential. [1988 c 206 § 901.]

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

(1) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(2) "Board" means the state board of health.

(3) "Department" means the department of health, or any successor department with jurisdiction over public health matters.

(4) "Health care provider" means any person who is a member of a profession under RCW 18.130.040 or other person providing medical, nursing, psychological, or other health care services regulated by the department of health.

(5) "Health care facility" means a hospital, nursing home, neuropsychiatric or mental health facility, home health agency, hospice, child care agency, group care facility, family foster home, clinic, blood bank, blood center, sperm bank, laboratory, or other social service or health care institution regulated or operated by the department of health.

(6) "HIV-related condition" means any medical condition resulting from infection with HIV including, but not limited to, seropositivity for HIV.

(7) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-related viruses which damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(8) "Test for a sexually transmitted disease" means a test approved by the board by rule.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incompetent or, in the case of a minor, a person who has legal custody of the child.

(10) "Local public health officer" means the officer directing the county health department or his or her designee who has been given the responsibility and authority to protect the health of the public within his or her jurisdiction.

(11) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or health facility.

(12) "Release of test results" means a written authorization for disclosure of any sexually transmitted disease test result which is signed, dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

(13) "Sexually transmitted disease" means a bacterial, viral, fungal, or parasitic disease, determined by the board by rule to be sexually transmitted, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for regulation and treatment. The board shall designate chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), trachomitis, genital human papilloma virus infection, syphilis, acquired immunodeficiency syndrome (AIDS), and human immunodeficiency virus (HIV) infection as sexually transmitted diseases, and shall consider the recommendations and classifications of the centers for disease control and other nationally recognized medical authorities in designating other diseases as sexually transmitted.

(14) "State public health officer" means the secretary of health or an officer appointed by the secretary. [2001 c 319 § 4; 1991 c 3 § 322; 1988 c 206 § 101.]

70.24.022 Interviews, examination, counseling, or treatment of infected persons or persons believed to be infected—Dissemination of false information—Penalty.

(1) The board shall adopt rules authorizing interviews and the state and local public health officers and their authorized representatives may interview, or cause to be interviewed, all persons infected with a sexually transmitted disease and all persons who, in accordance with standards adopted by the board by rule, are reasonably believed to be infected with such diseases for the purpose of investigating the source and spread of the diseases and for the purpose of ordering a person to submit to examination, counseling, or treatment as necessary for the protection of the public health and safety, subject to RCW 70.24.024.

(2) State and local public health officers or their authorized representatives shall investigate identified partners of persons infected with sexually transmitted diseases in accordance with procedures prescribed by the board.

(3) All information gathered in the course of contact investigation pursuant to this section shall be considered confidential.

(4) No person contacted under this section or reasonably believed to be infected with a sexually transmitted disease who reveals the name or names of sexual contacts during the

course of an investigation shall be held liable in a civil action for such revelation, unless the revelation is made with a knowing or reckless disregard for the truth.

(5) Any person who knowingly or maliciously disseminates any false information or report concerning the existence of any sexually transmitted disease under this section is guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021. [1988 c 206 § 906.]

70.24.024 Orders for examinations and counseling—Restrictive measures—Investigation—Issuance of order—Confidential notice and hearing—Exception.

(1) Subject to the provisions of this chapter, the state and local public health officers or their authorized representatives may examine and counsel or cause to be examined and counseled persons reasonably believed to be infected with or to have been exposed to a sexually transmitted disease.

(2) Orders or restrictive measures directed to persons with a sexually transmitted disease shall be used as the last resort when other measures to protect the public health have failed, including reasonable efforts, which shall be documented, to obtain the voluntary cooperation of the person who may be subject to such an order. The orders and measures shall be applied serially with the least intrusive measures used first. The burden of proof shall be on the state or local public health officer to show that specified grounds exist for the issuance of the orders or restrictive measures and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.

(3) When the state or local public health officer within his or her respective jurisdiction knows or has reason to believe, because of direct medical knowledge or reliable testimony of others in a position to have direct knowledge of a person's behavior, that a person has a sexually transmitted disease and is engaging in specified conduct, as determined by the board by rule based upon generally accepted standards of medical and public health science, that endangers the public health, he or she shall conduct an investigation in accordance with procedures prescribed by the board to evaluate the specific facts alleged, if any, and the reliability and credibility of the person or persons providing such information and, if satisfied that the allegations are true, he or she may issue an order according to the following priority to:

(a) Order a person to submit to a medical examination or testing, seek counseling, or obtain medical treatment for curable diseases, or any combination of these, within a period of time determined by the public health officer, not to exceed fourteen days.

(b) Order a person to immediately cease and desist from specified conduct which endangers the health of others by imposing such restrictions upon the person as are necessary to prevent the specified conduct that endangers the health of others only if the public health officer has determined that clear and convincing evidence exists to believe that such person has been ordered to report for counseling as provided in (a) of this subsection and continues to demonstrate behavior which endangers the health of others. Any restriction shall be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed three months, during which the order shall remain effective, the terms of the restrictions, and such other conditions as may be necessary to

protect the public health. Restrictions shall be imposed in the least-restrictive manner necessary to protect the public health.

(4)(a) Upon the issuance of any order by the state or local public health officer or an authorized representative pursuant to subsection (3) of this section or RCW 70.24.340(4), such public health officer shall give written notice promptly, personally, and confidentially to the person who is the subject of the order stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order, and notifying the person who is the subject of the order that, if he or she contests the order, he or she may appear at a judicial hearing on the enforceability of the order, to be held in superior court. He or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. The hearing shall be held within seventy-two hours of receipt of the notice, unless the person subject to the order agrees to comply. If the person contests the order, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to this subsection. If the person does not contest the order within seventy-two hours of receiving it, and the person does not comply with the order within the time period specified for compliance with the order, the state or local public health officer may request a warrant be issued by the superior court to insure appearance at the hearing. The hearing shall be within seventy-two hours of the expiration date of the time specified for compliance with the original order. The burden of proof shall be on the public health officer to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed therein are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order.

(b) If the superior court dismisses the order of the public health officer, the fact that the order was issued shall be expunged from the records of the department or local department of health.

(5) Any hearing conducted pursuant to this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by the order of the court. [1988 c 206 § 909.]

70.24.034 Detention—Grounds—Order—Hearing.

(1) When the procedures of RCW 70.24.024 have been exhausted and the state or local public health officer, within his or her respective jurisdiction, knows or has reason to believe, because of medical information, that a person has a sexually transmitted disease and that the person continues to engage in behaviors that present an imminent danger to the public health as defined by the board by rule based upon generally accepted standards of medical and public health science, the public health officer may bring an action in superior court to detain the person in a facility designated by the board for a period of time necessary to accomplish a program of

counseling and education, excluding any coercive techniques or procedures, designed to get the person to adopt nondangerous behavior. In no case may the period exceed ninety days under each order. The board shall establish, by rule, standards for counseling and education under this subsection. The public health officer shall request the prosecuting attorney to file such action in superior court. During that period, reasonable efforts will be made in a noncoercive manner to get the person to adopt nondangerous behavior.

(2) If an action is filed as outlined in subsection (1) of this section, the superior court, upon the petition of the prosecuting attorney, shall issue other appropriate court orders including, but not limited to, an order to take the person into custody immediately, for a period not to exceed seventy-two hours, and place him or her in a facility designated or approved by the board. The person who is the subject of the order shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order, and notifying the person that if he or she refuses to comply with the order he or she may appear at a hearing to review the order and that he or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. If the person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to subsection (3) of this section.

(3) The hearing shall be conducted no later than forty-eight hours after the receipt of the order. The person who is subject to the order has a right to be present at the hearing and may have an attorney appear on his or her behalf in the hearing, at public expense if necessary. If the order being contested includes detention for a period of fourteen days or longer, the person shall also have the right to a trial by jury upon request. Upon conclusion of the hearing or trial by jury, the court shall issue appropriate orders.

The court may continue the hearing upon the request of the person who is subject to the order for good cause shown for no more than five additional judicial days. If a trial by jury is requested, the court, upon motion, may continue the hearing for no more than ten additional judicial days. During the pendency of the continuance, the court may order that the person contesting the order remain in detention or may place terms and conditions upon the person which the court deems appropriate to protect public health.

(4) The burden of proof shall be on the state or local public health officer to show by clear and convincing evidence that grounds exist for the issuance of any court order pursuant to subsection (2) or (3) of this section. If the superior court dismisses the order, the fact that the order was issued shall be expunged from the records of the state or local department of health.

(5) Any hearing conducted by the superior court pursuant to subsection (2) or (3) of this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by order of the court.

(6) Any order entered by the superior court pursuant to subsection (1) or (2) of this section shall impose terms and conditions no more restrictive than necessary to protect the public health. [1988 c 206 § 910.]

70.24.050 Diagnosis of sexually transmitted diseases—Confirmation—Anonymous prevalence reports. Diagnosis of a sexually transmitted disease in every instance must be confirmed by laboratory tests or examinations in a laboratory approved or conducted in accordance with procedures and such other requirements as may be established by the board. Laboratories testing for HIV shall report anonymous HIV prevalence results to the department, for health statistics purposes, in a manner established by the board. [1988 c 206 § 907; 1919 c 114 § 6; RRS § 6105.]

70.24.070 Detention and treatment facilities. For the purpose of carrying out this chapter, the board shall have the power and authority to designate facilities for the detention and treatment of persons found to be infected with a sexually transmitted disease and to designate any such facility in any hospital or other public or private institution, other than a jail or correctional facility, having, or which may be provided with, such necessary detention, segregation, isolation, clinic and hospital facilities as may be required and prescribed by the board, and to enter into arrangements for the conduct of such facilities with the public officials or persons, associations, or corporations in charge of or maintaining and operating such institutions. [1988 c 206 § 908; 1919 c 114 § 8; RRS § 6107.]

70.24.080 Penalty. Any person who shall violate any of the provisions of this chapter or any lawful rule adopted by the board pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county or municipal public health officer, pursuant to the authority granted in this chapter, shall be deemed guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021. [1988 c 206 § 911; 1919 c 114 § 5; RRS § 6104.]

70.24.084 Violations of chapter—Aggrieved persons—Right of action. (1) Any person aggrieved by a violation of this chapter shall have a right of action in superior court and may recover for each violation:

(a) Against any person who negligently violates a provision of this chapter, one thousand dollars, or actual damages, whichever is greater, for each violation.

(b) Against any person who intentionally or recklessly violates a provision of this chapter, ten thousand dollars, or actual damages, whichever is greater, for each violation.

(c) Reasonable attorneys' fees and costs.

(d) Such other relief, including an injunction, as the court may deem appropriate.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) Nothing in this chapter limits the rights of the subject of a test for a sexually transmitted disease to recover damages or other relief under any other applicable law.

(4) Nothing in this chapter may be construed to impose civil liability or criminal sanction for disclosure of a test result for a sexually transmitted disease in accordance with any reporting requirement for a diagnosed case of sexually transmitted disease by the department or the centers for disease control of the United States public health service.

(5) It is a negligent violation of this chapter to cause an unauthorized communication of confidential sexually transmitted disease information by facsimile transmission or otherwise communicating the information to an unauthorized recipient when the sender knew or had reason to know the facsimile transmission telephone number or other transmittal information was incorrect or outdated. [2001 c 16 § 1; 1999 c 391 § 4; 1988 c 206 § 914.]

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

70.24.090 Pregnant women—Test for syphilis. Every physician attending a pregnant woman in the state of Washington during gestation shall, in the case of each woman so attended, take or cause to be taken a sample of blood of such woman at the time of first examination, and submit such sample to an approved laboratory for a standard serological test for syphilis. If the pregnant woman first presents herself for examination after the fifth month of gestation the physician or other attendant shall in addition to the above, advise and urge the patient to secure a medical examination and blood test before the fifth month of any subsequent pregnancies. [1939 c 165 § 1; RRS § 6002-1.]

70.24.095 Pregnant women—Drug treatment program participants—AIDS counseling. (1) Every health care practitioner attending a pregnant woman or a person seeking treatment of a sexually transmitted disease shall insure that AIDS counseling of the patient is conducted.

(2) AIDS counseling shall be provided to each person in a drug treatment program under *chapter 69.54 RCW. [1988 c 206 § 705.]

*Reviser's note: Chapter 69.54 RCW was repealed by 1989 c 270 § 35.

70.24.100 Syphilis laboratory tests. A standard serological test shall be a laboratory test for syphilis approved by the secretary of health and shall be performed either by a laboratory approved by the secretary of health for the performance of the particular serological test used or by the state department of health, on request of the physician free of charge. [1991 c 3 § 323; 1979 c 141 § 95; 1939 c 165 § 2; RRS § 6002-2.]

70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information. (1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this chapter.

(2) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is

positive be disclosed. This protection against disclosure of test subject, diagnosis, or treatment also applies to any information relating to diagnosis of or treatment for HIV infection and for any other confirmed sexually transmitted disease. The following persons, however, may receive such information:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(b) Any person who secures a specific release of test results or information relating to HIV or confirmed diagnosis of or treatment for any other sexually transmitted disease executed by the subject or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(c) The state public health officer, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(d) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(e) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, provided that such record was obtained by means of court ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(f) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure shall: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services, including but not limited to the written statement set forth in subsection (5) of this section;

(g) *Local law enforcement agencies to the extent provided in RCW 70.24.034;

(h) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(i) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as

defined by the board in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(j) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection shall be confidential and shall not be released or available to persons who are not involved in handling or determining medical claims payment; and

(k) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency; this information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(e) of this section, shall be governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and

receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370, shall be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure shall also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member shall also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition may not be disclosed to a staff person except as provided in subsection (2)(i) of this section and RCW 70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under subsection (2)(i) of this section and RCW 70.24.340(4).

(5) Whenever disclosure is made pursuant to this section, except for subsections (2)(a) and (6) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(6) The requirements of this section shall not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor shall they apply within

health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(7) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing. [1997 c 345 § 2; 1997 c 196 § 6; 1994 c 72 § 1; 1989 c 123 § 1; 1988 c 206 § 904.]

Reviser's note: *(1) The governor vetoed 1997 c 196 § 5, the amendment directing disclosure to local law enforcement agencies.

(2) This section was amended by 1997 c 196 § 6 and by 1997 c 345 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—1997 c 345: "(1) The legislature finds that department of corrections staff and jail staff perform essential public functions that are vital to our communities. The health and safety of these workers is often placed in jeopardy while they perform the responsibilities of their jobs. Therefore, the legislature intends that the results of any HIV tests conducted on an offender or detainee pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be disclosed to the health care administrator or infection control coordinator of the department of corrections facility or the local jail that houses the offender or detainee. The legislature intends that these test results also be disclosed to any corrections or jail staff who have been substantially exposed to the bodily fluids of the offender or detainee when the disclosure is provided by a licensed health care provider in accordance with Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens.

(2) The legislature further finds that, through the efforts of health care professionals and corrections staff, offenders in department of corrections facilities and people detained in local jails are being encouraged to take responsibility for their health by requesting voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling. The legislature does not intend, through chapter 345, Laws of 1997, to mandate disclosure of the results of voluntary and anonymous tests. The legislature intends to continue to protect the confidential exchange of medical information related to voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling as provided by chapter 70.24 RCW." [1997 c 345 § 1.]

70.24.107 Rule-making authority—1997 c 345. The department of health and the department of corrections shall each adopt rules to implement chapter 345, Laws of 1997. The department of health and the department of corrections shall cooperate with local jail administrators to obtain the information from local jail administrators that is necessary to comply with this section. [1999 c 372 § 14; 1997 c 345 § 6.]

Findings—Intent—1997 c 345: See note following RCW 70.24.105.

70.24.110 Minors—Treatment, consent, liability for payment for care. A minor fourteen years of age or older who may have come in contact with any sexually transmitted disease or suspected sexually transmitted disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section. [1988 c 206 § 912; 1969 ex.s. c 164 § 1.]

70.24.120 Sexually transmitted disease case investigators—Authority to withdraw blood. Sexually transmitted disease case investigators, upon specific authorization from a physician, are hereby authorized to perform venipuncture or skin puncture on a person for the sole purpose of withdrawing blood for use in sexually transmitted disease tests.

The term "sexually transmitted disease case investigator" shall mean only those persons who:

- (1) Are employed by public health authorities; and
- (2) Have been trained by a physician in proper procedures to be employed when withdrawing blood in accordance with training requirements established by the department of health; and
- (3) Possess a statement signed by the instructing physician that the training required by subsection (2) of this section has been successfully completed.

The term "physician" means any person licensed under the provisions of chapters 18.57 or 18.71 RCW. [1991 c 3 § 324; 1988 c 206 § 913; 1977 c 59 § 1.]

70.24.125 Reporting requirements for sexually transmitted diseases—Rules. The board shall establish reporting requirements for sexually transmitted diseases by rule. Reporting under this section may be required for such sexually transmitted diseases included under this chapter as the board finds appropriate. [1988 c 206 § 905.]

70.24.130 Adoption of rules. The board shall adopt such rules as are necessary to implement and enforce this chapter. Rules may also be adopted by the department of health for the purposes of this chapter. The rules may include procedures for taking appropriate action, in addition to any other penalty under this chapter, with regard to health care facilities or health care providers which violate this chapter or the rules adopted under this chapter. The rules shall prescribe stringent safeguards to protect the confidentiality of the persons and records subject to this chapter. The procedures set forth in chapter 34.05 RCW apply to the administration of this chapter, except that in case of conflict between chapter 34.05 RCW and this chapter, the provisions of this chapter shall control. [1991 c 3 § 325; 1988 c 206 § 915.]

70.24.140 Certain infected persons—Sexual intercourse unlawful without notification. It is unlawful for any person who has a sexually transmitted disease, except HIV infection, when such person knows he or she is infected with such a disease and when such person has been informed that he or she may communicate the disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmitted disease. [1988 c 206 § 917.]

Effective date—1988 c 206 §§ 916, 917: See note following RCW 9A.36.021.

Criminal sanctions: RCW 9A.36.021.

70.24.150 Immunity of certain public employees. Members of the state board of health and local boards of health, public health officers, and employees of the department of health and local health departments are immune from

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civil action for damages arising out of the good faith performance of their duties as prescribed by this chapter, unless such performance constitutes gross negligence. [1991 c 3 § 326; 1988 c 206 § 918.]

70.24.200 Information for the general public on sexually transmitted diseases—Emphasis. Information directed to the general public and providing education regarding any sexually transmitted disease that is written, published, distributed, or used by any public entity, and all such information paid for, in whole or in part, with any public moneys shall give emphasis to the importance of sexual abstinence, sexual fidelity, and avoidance of substance abuse in controlling disease. [1988 c 206 § 201.]

70.24.210 Information for children on sexually transmitted diseases—Emphasis. All material directed to children in grades kindergarten through twelve and providing education regarding any sexually transmitted disease that is written, published, distributed, or used by any public entity, and all such information paid for, in whole or in part, with any public moneys shall give emphasis to the importance of sexual abstinence outside lawful marriage and avoidance of substance abuse in controlling disease. [1988 c 206 § 202.]

Common school curriculum: RCW 28A.230.020.

70.24.220 AIDS education in public schools—Finding. The legislature finds that the public schools provide a unique and appropriate setting for educating young people about the pathology and prevention of acquired immunodeficiency syndrome (AIDS). The legislature recognizes that schools and communities vary throughout the state and that locally elected school directors should have a significant role in establishing a program of AIDS education in their districts. [1988 c 206 § 401.]

70.24.240 Clearinghouse for AIDS educational materials. The number of acquired immunodeficiency syndrome (AIDS) cases in the state may reach five thousand by 1991. This makes it necessary to provide our state's workforce with the resources and knowledge to deal with the epidemic. To ensure that accurate information is available to the state's workforce, a clearinghouse for all technically correct educational materials related to AIDS should be created. [1988 c 206 § 601.]

70.24.250 Office on AIDS—Repository and clearinghouse for AIDS education and training material—University of Washington duties. There is established in the department an office on AIDS. If a department of health is created, the office on AIDS shall be transferred to the department of health, and its chief shall report directly to the secretary of health. The office on AIDS shall have as its chief a physician licensed under chapter 18.57 or 18.71 RCW or a person experienced in public health who shall report directly to the assistant secretary for health. This office shall be the repository and clearinghouse for all education and training material related to the treatment, transmission, and prevention of AIDS. The office on AIDS shall have the responsibility for coordinating all publicly funded education and service

activities related to AIDS. The University of Washington shall provide the office on AIDS with appropriate training and educational materials necessary to carry out its duties. The office on AIDS shall assist state agencies with information necessary to carry out the purposes of this chapter. The department shall work with state and county agencies and specific employee and professional groups to provide information appropriate to their needs, and shall make educational materials available to private employers and encourage them to distribute this information to their employees. [1988 c 206 § 602.]

70.24.260 Emergency medical personnel—Rules for AIDS education and training. The department shall adopt rules that recommend appropriate education and training for licensed and certified emergency medical personnel under chapter 18.73 RCW on the prevention, transmission, and treatment of AIDS. The department shall require appropriate education or training as a condition of certification or license issuance or renewal. [1988 c 206 § 603.]

70.24.270 Health professionals—Rules for AIDS education and training. Each disciplining authority under chapter 18.130 RCW shall adopt rules that require appropriate education and training for licensees on the prevention, transmission, and treatment of AIDS. The disciplining authorities shall work with the office on AIDS under RCW 70.24.250 to develop the training and educational material necessary for health professionals. [1988 c 206 § 604.]

70.24.280 Board of pharmacy—Rules for AIDS education and training. The state board of pharmacy shall adopt rules that require appropriate education and training for licensees on the prevention, transmission, and treatment of AIDS. The board shall work with the office on AIDS under RCW 70.24.250 to develop the training and educational material necessary for health professionals. [1988 c 206 § 605.]

70.24.290 Public school employees—Rules for AIDS education and training. The superintendent of public instruction shall adopt rules that require appropriate education and training, to be included as part of their present continuing education requirements, for public school employees on the prevention, transmission, and treatment of AIDS. The superintendent of public instruction shall work with the office on AIDS under RCW 70.24.250 to develop the educational and training material necessary for school employees. [1988 c 206 § 606.]

70.24.300 State and local government employees—Determination of substantial likelihood of exposure—Rules for AIDS education and training. The Washington personnel resources board and each unit of local government shall determine whether any employees under their jurisdiction have a substantial likelihood of exposure in the course of their employment to the human immunodeficiency virus. If so, the agency or unit of government shall adopt rules requiring appropriate training and education for the employees on the prevention, transmission, and treatment of AIDS. The

rules shall specifically provide for such training and education for law enforcement, correctional, and health care workers. The Washington personnel resources board and each unit of local government shall work with the office on AIDS under RCW 70.24.250 to develop the educational and training material necessary for employees. [1993 c 281 § 60; 1988 c 206 § 607.]

Effective date—1993 c 281: See note following RCW 41.06.022.

70.24.310 Health care facility employees—Rules for AIDS education and training. The department shall adopt rules requiring appropriate education and training of employees of state licensed or certified health care facilities. The education and training shall be on the prevention, transmission, and treatment of AIDS and shall not be required for employees who are covered by comparable rules adopted under other sections of this chapter. In adopting rules under this section, the department shall consider infection control standards and educational materials available from appropriate professional associations and professionally prepared publications. [1988 c 206 § 608.]

70.24.320 Counseling and testing—AIDS and HIV—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Pretest counseling" means counseling aimed at helping the individual understand ways to reduce the risk of HIV infection, the nature and purpose of the tests, the significance of the results, and the potential dangers of the disease, and to assist the individual's ability to cope with the results.

(2) "Posttest counseling" means further counseling following testing usually directed toward increasing the individual's understanding of the human immunodeficiency virus infection, changing the individual's behavior, and, if necessary, encouraging the individual to notify persons with whom there has been contact capable of spreading HIV.

(3) "AIDS counseling" means counseling directed toward increasing the individual's understanding of acquired immunodeficiency syndrome and changing the individual's behavior.

(4) "HIV testing" means a test indicative of infection with the human immunodeficiency virus as specified by the board of health by rule. [1988 c 206 § 701.]

70.24.325 Counseling and testing—Insurance requirements. (1) This section shall apply to counseling and consent for HIV testing administered as part of an application for coverage authorized under Title 48 RCW.

(2) Persons subject to regulation under Title 48 RCW who are requesting an insured, a subscriber, or a potential insured or subscriber to furnish the results of an HIV test for underwriting purposes as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Provide written information to the individual prior to being tested which explains:

- (i) What an HIV test is;
- (ii) Behaviors that place a person at risk for HIV infection;

(iii) That the purpose of HIV testing in this setting is to determine eligibility for coverage;

(iv) The potential risks of HIV testing; and

(v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of the confidential treatment of the test results which limits access to the results to persons involved in handling or determining applications for coverage or claims of the applicant or claimant and to those persons designated under (c)(iii) of this subsection; and

(ii) Requirements under (c)(iii) of this subsection.

(c) Establish procedures to inform an applicant of the following:

(i) That post-test counseling, as specified under WAC 248-100-209(4), is required if an HIV test is positive or indeterminate;

(ii) That post-test counseling occurs at the time a positive or indeterminate HIV test result is given to the tested individual;

(iii) That the applicant may designate a health care provider or health care agency to whom the insurer, the health care service contractor, or health maintenance organization will provide positive or indeterminate test results for interpretation and post-test counseling. When an applicant does not identify a designated health care provider or health care agency and the applicant's test results are either positive or indeterminate, the insurer, the health care service contractor, or health maintenance organization shall provide the test results to the local health department for interpretation and post-test counseling; and

(iv) That positive or indeterminate HIV test results shall not be sent directly to the applicant. [1989 c 387 § 1.]

70.24.330 HIV testing—Consent, exceptions. No person may undergo HIV testing without the person's consent except:

(1) Pursuant to RCW 7.70.065 for incompetent persons;

(2) In seroprevalence studies where neither the persons whose blood is being tested know the test results nor the persons conducting the tests know who is undergoing testing;

(3) If the department of labor and industries determines that it is relevant, in which case payments made under Title 51 RCW may be conditioned on the taking of an HIV antibody test; or

(4) As otherwise expressly authorized by this chapter. [1988 c 206 § 702.]

70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees' substantial exposure to bodily fluids—Procedure and court orders. (1) Local health departments authorized under this chapter shall conduct or cause to be conducted pretest counseling, HIV testing, and posttest counseling of all persons:

(a) Convicted of a sexual offense under chapter 9A.44 RCW;

(b) Convicted of prostitution or offenses relating to prostitution under chapter 9A.88 RCW; or

(c) Convicted of drug offenses under chapter 69.50 RCW if the court determines at the time of conviction that the

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related drug offense is one associated with the use of hypodermic needles.

(2) Such testing shall be conducted as soon as possible after sentencing and shall be so ordered by the sentencing judge.

(3) This section applies only to offenses committed after March 23, 1988.

(4) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of corrections' staff person, jail staff person, or other categories of employment determined by the board in rule to be at risk of substantial exposure to HIV, who has experienced a substantial exposure to another person's bodily fluids in the course of his or her employment, may request a state or local public health officer to order pretest counseling, HIV testing, and posttest counseling for the person whose bodily fluids he or she has been exposed to. If the state or local public health officer refuses to order counseling and testing under this subsection, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review to determine whether the public health officer shall be required to issue the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The person who is subject to the state or local public health officer's order to receive counseling and testing shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual basis therefor. If the person who is subject to the order refuses to comply, the state or local public health officer may petition the superior court for a hearing. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review for the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The state or local public health officer shall perform counseling and testing under this subsection if he or she finds that the exposure was substantial and presents a possible risk as defined by the board of health by rule or if he or she is ordered to do so by a court.

The counseling and testing required under this subsection shall be completed as soon as possible after the substantial exposure or after an order is issued by a court, but shall begin not later than seventy-two hours after the substantial exposure or an order is issued by the court. [1997 c 345 § 3; 1988 c 206 § 703.]

Findings—Intent—1997 c 345: See note following RCW 70.24.105.

70.24.350 Prostitution and drug offenses—Voluntary testing and counseling. Local health departments, in cooperation with the regional AIDS services networks, shall make available voluntary testing and counseling services to

all persons arrested for prostitution offenses under chapter 9A.88 RCW and drug offenses under chapter 69.50 RCW. Services shall include educational materials that outline the seriousness of AIDS and encourage voluntary participation. [1988 c 206 § 704.]

70.24.360 Jail detainees—Testing and counseling of persons who present a possible risk. Jail administrators, with the approval of the local public health officer, may order pretest counseling, HIV testing, and posttest counseling for persons detained in the jail if the local public health officer determines that actual or threatened behavior presents a possible risk to the staff, general public, or other persons. Approval of the local public health officer shall be based on RCW 70.24.024(3) and may be contested through RCW 70.24.024(4). The administrator shall establish, pursuant to RCW 70.48.071, a procedure to document the possible risk which is the basis for the HIV testing. "Possible risk," as used in this section, shall be defined by the board in rule. Documentation of the behavior, or threat thereof, shall be reviewed with the person to try to assure that the person understands the basis for testing. [1988 c 206 § 706.]

70.24.370 Correction facility inmates—Counseling and testing of persons who present a possible risk—Training for administrators and superintendents—Procedure. (1) Department of corrections facility administrators may order pretest counseling, HIV testing, and posttest counseling for inmates if the secretary of corrections or the secretary's designee determines that actual or threatened behavior presents a possible risk to the staff, general public, or other inmates. The department of corrections shall establish a procedure to document the possible risk which is the basis for the HIV testing. "Possible risk," as used in this section, shall be defined by the department of corrections after consultation with the board. Possible risk, as used in the documentation of the behavior, or threat thereof, shall be reviewed with the inmate.

(2) Department of corrections administrators and superintendents who are authorized to make decisions about testing and dissemination of test information shall, at least annually, participate in training seminars on public health considerations conducted by the assistant secretary for public health or her or his designee.

(3) Administrative hearing requirements set forth in chapter 34.05 RCW do not apply to the procedure developed by the department of corrections pursuant to this section. This section shall not be construed as requiring any hearing process except as may be required under existing federal constitutional law.

(4) RCW 70.24.340 does not apply to the department of corrections or to inmates in its custody or subject to its jurisdiction. [1988 c 206 § 707.]

70.24.380 Board of health—Rules for counseling and testing. The board of health shall adopt rules establishing minimum standards for pretest counseling, HIV testing, posttest counseling, and AIDS counseling. [1988 c 206 § 709.]

70.24.400 Department to establish regional AIDS service networks—Funding—Lead counties—Regional plans—University of Washington, center for AIDS education. The department shall establish a statewide system of regional acquired immunodeficiency syndrome (AIDS) service networks as follows:

(1) The secretary of health shall direct that all state or federal funds, excluding those from federal Title XIX for services or other activities authorized in this chapter, shall be allocated to the office on AIDS established in RCW 70.24.250. The secretary shall further direct that all funds for services and activities specified in subsection (3) of this section shall be provided to lead counties through contractual agreements based on plans developed as provided in subsection (2) of this section, unless direction of such funds is explicitly prohibited by federal law, federal regulation, or federal policy. The department shall deny funding allocations to lead counties only if the denial is based upon documented incidents of nonfeasance, misfeasance, or malfeasance. However, the department shall give written notice and thirty days for corrective action in incidents of misfeasance or nonfeasance before funding may be denied. The department shall designate six AIDS service network regions encompassing the state. In doing so, the department shall use the boundaries of the regional structures in place for the community services administration on January 1, 1988.

(2) The department shall request that a lead county within each region, which shall be the county with the largest population, prepare, through a cooperative effort of local health departments within the region, a regional organizational and service plan, which meets the requirements set forth in subsection (3) of this section. Efforts should be made to use existing plans, where appropriate. The plan should place emphasis on contracting with existing hospitals, major voluntary organizations, or health care organizations within a region that have in the past provided quality services similar to those mentioned in subsection (3) of this section and that have demonstrated an interest in providing any of the components listed in subsection (3) of this section. If any of the counties within a region do not participate, it shall be the lead county's responsibility to develop the part of the plan for the nonparticipating county or counties. If all of the counties within a region do not participate, the department shall assume the responsibility.

(3) The regional AIDS service network plan shall include the following components:

(a) A designated single administrative or coordinating agency;

(b) A complement of services to include:

(i) Voluntary and anonymous counseling and testing;

(ii) Mandatory testing and/or counseling services for certain individuals, as required by law;

(iii) Notification of sexual partners of infected persons, as required by law;

(iv) Education for the general public, health professionals, and high-risk groups;

(v) Intervention strategies to reduce the incidence of HIV infection among high-risk groups, possibly including needle sterilization and methadone maintenance;

(vi) Related community outreach services for runaway youth;

- (vii) Case management;
 - (viii) Strategies for the development of volunteer networks;
 - (ix) Strategies for the coordination of related agencies within the network; and
 - (x) Other necessary information, including needs particular to the region;
 - (c) A service delivery model that includes:
 - (i) Case management services; and
 - (ii) A community-based continuum-of-care model encompassing both medical, mental health, and social services with the goal of maintaining persons with AIDS in a home-like setting, to the extent possible, in the least-expensive manner; and
 - (d) Budget, caseload, and staffing projections.
- (4) Efforts shall be made by both the counties and the department to use existing service delivery systems, where possible, in developing the networks.
- (5) The University of Washington health science program, in cooperation with the office on AIDS may, within available resources, establish a center for AIDS education, which shall be linked to the networks. The center for AIDS education is not intended to engage in state-funded research related to HIV infection, AIDS, or HIV-related conditions. Its duties shall include providing the office on AIDS with the appropriate educational materials necessary to carry out that office's duties.
- (6) The department shall implement this section, consistent with available funds, by October 1, 1988, by establishing six regional AIDS service networks whose combined jurisdictions shall include the entire state.
- (a) Until June 30, 1991, available funding for each regional AIDS service network shall be allocated as follows:
- (i) Seventy-five percent of the amount provided for regional AIDS service networks shall be allocated per capita based on the number of persons residing within each region, but in no case less than one hundred fifty thousand dollars for each regional AIDS service network per fiscal year. This amount shall be expended for testing, counseling, education, case management, notification of sexual partners of infected persons, planning, coordination, and other services required by law, except for those enumerated in (a)(ii) of this subsection.
 - (ii) Twenty-five percent of the amount provided for regional AIDS service networks shall be allocated for intervention strategies specifically addressing groups that are at a high risk of being infected with the human immunodeficiency virus. The allocation shall be made by the office on AIDS based on documented need as specified in regional AIDS network plans.
- (b) After June 30, 1991, the funding shall be allocated as provided by law.
- (7) The regional AIDS service networks shall be the official state regional agencies for AIDS information education and coordination of services. The state public health officer, as designated by the secretary of health, shall make adequate efforts to publicize the existence and functions of the networks.
- (8) If the department is not able to establish a network by an agreement solely with counties, it may contract with non-

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profit agencies for any or all of the designated network responsibilities.

(9) The department, in establishing the networks, shall study mechanisms that could lead to reduced costs and/or increased access to services. The methods shall include capitation.

(10) The department shall reflect in its departmental biennial budget request the funds necessary to implement this section.

(11) The use of appropriate materials may be authorized by regional AIDS service networks in the prevention or control of HIV infection. [1998 c 245 § 126; 1991 c 3 § 327; 1988 c 206 § 801.]

70.24.410 AIDS advisory committee—Duties, review of insurance problems—Termination. To assist the secretary of health in the development and implementation of AIDS programs, the governor shall appoint an AIDS advisory committee. Among its duties shall be a review of insurance problems as related to persons with AIDS. The committee shall terminate on June 30, 1991. [1991 c 3 § 328; 1988 c 206 § 803.]

70.24.420 Additional local funding of treatment programs not required. Nothing in this chapter may be construed to require additional local funding of programs to treat communicable disease established as of March 23, 1988. [1988 c 206 § 919.]

70.24.430 Application of chapter to persons subject to jurisdiction of department of corrections. Nothing in this chapter is intended to create a state-mandated liberty interest of any nature for offenders or inmates confined in department of corrections facilities or subject to the jurisdiction of the department of corrections. [1988 c 206 § 920.]

70.24.450 Confidentiality—Reports—Unauthorized disclosures. (1) In order to assure compliance with the protections under this chapter and the rules of the board, and to assure public confidence in the confidentiality of reported information, the department shall:

(a) Report annually to the board any incidents of unauthorized disclosure by the department, local health departments, or their employees of information protected under RCW 70.24.105. The report shall include recommendations for preventing future unauthorized disclosures and improving the system of confidentiality for reported information; and

(b) Assist health care providers, facilities that conduct tests, local health departments, and other persons involved in disease reporting to understand, implement, and comply with this chapter and the rules of the board related to disease reporting.

(2) This section is exempt from RCW 70.24.084, 70.05.070, and 70.05.120. [1999 c 391 § 3.]

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

70.24.900 Severability—1988 c 206. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1988 c 206 § 1001.]

Chapter 70.26 RCW

PANDEMIC INFLUENZA PREPAREDNESS

Sections

70.26.010	Findings—Intent.
70.26.020	Definitions.
70.26.030	Local preparedness and response plans—Requirements.
70.26.040	Local preparedness and response plans—Consultation with public, private sector—Department to provide technical assistance and disburse funds.
70.26.050	Plans to be submitted to secretary for approval, rejection—Funding—Preparedness and response activities.
70.26.060	Secretary to develop a formula for fund distribution—Requirements.
70.26.070	Secretary duties—Report.

70.26.010 Findings—Intent. The legislature finds that:

(1) Pandemic influenza is a global outbreak of disease that occurs when a new virus appears in the human population, causes serious illness, and then spreads easily from person to person.

(2) Historically, pandemic influenza has occurred on average every thirty years. Most recently, the Asian flu in 1957-58 and the Hong Kong flu in 1968-69 killed seventy thousand and thirty-four thousand, respectively, in the United States.

(3) Another influenza pandemic could emerge with little warning, affecting a large number of people. Estimates are that another pandemic influenza would cause more than two hundred thousand deaths in our country, with as many as five thousand in Washington. Our state could also expect ten thousand to twenty-four thousand people needing hospital stays, and as many as a million people requiring outpatient visits. During a severe pandemic these numbers could be much higher. The economic losses could also be substantial.

(4) The current Avian or bird flu that is spreading around the world has the potential to start a pandemic. There is yet no proven vaccine, and antiviral medication supplies are limited and of unknown effectiveness against a human version of the virus, leaving traditional public health measures as the only means to slow the spread of the disease. Given the global nature of a pandemic, as much as possible, the state must be able to respond assuming only limited outside resources and assistance will be available.

(5) An effective response to pandemic influenza in Washington must focus at the local level and will depend on preestablished partnerships and collaborative planning on a range of best-case and worst-case scenarios. It will require flexibility and real-time decision making, guided by accurate information. It will also depend on a well-informed public that understands the dangers of pandemic influenza and the steps necessary to prevent the spread of the disease.

(6) Avian flu is but one example of an infectious disease that, were an outbreak to occur, could pose a significant statewide health hazard. As such, preparation for pandemic flu will also enhance the capacity of local public health jurisdictions to respond to other emergencies.

It is therefore the intent of the legislature that adequate pandemic flu preparedness and response plans be developed and implemented by local public health jurisdictions state-

wide in order to limit the number of illnesses and deaths, preserve the continuity of essential government and other community services, and minimize social disruption and economic loss in the event of an influenza pandemic. [2006 c 63 § 1.]

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

(1) "Department" means the department of health.

(2) "Local health jurisdiction" means a local health department as established under chapter 70.05 RCW, a combined city-county health department as established under chapter 70.08 RCW, or a health district established under chapter 70.05 or 70.46 RCW.

(3) "Secretary" means the secretary of the department of health. [2006 c 63 § 2.]

70.26.030 Local preparedness and response plans—Requirements. (1) The secretary shall establish requirements and performance standards, consistent with any requirements or standards established by the United States department of health and human services, regarding the development and implementation of local pandemic flu preparedness and response plans.

(2) To the extent state or federal funds are provided for this purpose, by November 1, 2006, each local health jurisdiction shall develop a pandemic flu preparedness and response plan, consistent with requirements and performance standards established in subsection (1) of this section, for the purpose of:

(a) Defining preparedness activities that should be undertaken before a pandemic occurs that will enhance the effectiveness of response measures;

(b) Describing the response, coordination, and decision-making structure that will incorporate the local health jurisdiction, the local health care system, other local response agencies, and state and federal agencies during the pandemic;

(c) Defining the roles and responsibilities for the local health jurisdiction, local health care partners, and local response agencies during all phases of a pandemic;

(d) Describing public health interventions in a pandemic response and the timing of such interventions;

(e) Serving as a guide for local health care system partners, response agencies, and businesses in the development of pandemic influenza response plans; and

(f) Providing technical support and information on which preparedness and response actions are based.

Each plan shall be developed based on an assessment by the local health jurisdiction of its current capacity to respond to pandemic flu and otherwise meet department outcome measures related to infectious disease outbreaks of statewide significance. [2006 c 63 § 3.]

70.26.040 Local preparedness and response plans—Consultation with public, private sector—Department to provide technical assistance and disburse funds. (1) Each local health jurisdiction shall develop its pandemic flu preparedness and response plan based on the requirements and performance standards established under RCW 70.26.030(1)

and an assessment of the jurisdiction's current capacity to respond to pandemic flu. The plan shall be developed in consultation with appropriate public and private sector partners, including departments of emergency management, law enforcement, school districts, hospitals and medical professionals, tribal governments, and business organizations. At a minimum, each plan shall address:

(a) Strategies to educate the public about the consequences of influenza pandemic and what each person can do to prepare, including the adoption of universal infectious disease prevention practices and maintaining appropriate emergency supplies;

(b) Jurisdiction-wide disease surveillance programs, coordinated with state and federal efforts, to detect pandemic influenza strains in humans and animals, including health care provider compliance with reportable conditions requirements, and investigation and analysis of reported illness or outbreaks;

(c) Communication systems, including the availability of and access to specialized communications equipment by health officials and community leaders, and the use of mass media outlets;

(d) Mass vaccination plans and protocols to rapidly administer vaccine and monitor vaccine effectiveness and safety;

(e) Guidelines for the utilization of antiviral medications for the treatment and prevention of influenza;

(f) Implementation of nonmedical measures to decrease the spread of the disease as guided by the epidemiology of the pandemic, including increasing adherence to public health advisories, voluntary social isolation during outbreaks, and health officer orders related to quarantines;

(g) Medical system mobilization, including improving the linkages and coordination of emergency responses across health care organizations, and assuring the availability of adequate facilities and trained personnel;

(h) Strategies for maintaining social order and essential community services while limiting the spread of disease throughout the duration of the pandemic; and

(i) The jurisdiction's relative priorities related to implementation of the above activities, based on available funding.

(2) To the extent state or federal funds are provided for this purpose, the department, in consultation with the state director of emergency management, shall provide technical assistance and disburse funds as needed, based on the formula developed under RCW 70.26.060, to support local health jurisdictions in developing their pandemic flu preparedness and response plans. [2006 c 63 § 4.]

70.26.050 Plans to be submitted to secretary for approval, rejection—Funding—Preparedness and response activities. Local health jurisdictions shall submit their pandemic flu preparedness and response plans to the secretary by November 1, 2006. Upon receipt of a plan, the secretary shall approve or reject the plan. When the plan is determined by the department to comply with the requirements and integrate the performance standards established under RCW 70.26.030(1), any additional state or federal funding appropriated in the budget shall be provided to the local health jurisdiction to support the preparedness response activities identified in the plan, based upon a formula devel-

oped by the secretary under RCW 70.26.060. Preparedness and response activities include but are not limited to:

(1) Education, information, and outreach, in multiple languages, to increase community preparedness and reduce the spread of the disease should it occur;

(2) Development of materials and systems to be used in the event of a pandemic to keep the public informed about the influenza, the course of the pandemic, and response activities;

(3) Development of the legal documents necessary to facilitate and support the necessary government response;

(4) Training and response drills for local health jurisdiction staff, law enforcement, health care providers, and others with responsibilities identified in the plan;

(5) Enhancement of the communicable disease surveillance system; and

(6) Development of coordination and communication systems among responding agencies.

Where appropriate, these activities shall be coordinated and funded on a regional or statewide basis. The secretary, in consultation with the state director of emergency management, shall provide implementation support and assistance to a local health jurisdiction when the secretary or the local health jurisdiction has concerns regarding a jurisdiction's progress toward implementing its plan. [2006 c 63 § 5.]

70.26.060 Secretary to develop a formula for fund distribution—Requirements. The secretary shall develop a formula for distribution of any federal and state funds appropriated in the omnibus appropriations act on or before July 1, 2006, to local health jurisdictions for development and implementation of their pandemic flu preparedness and response plans. The formula developed by the secretary shall ensure that each local health jurisdiction receives a minimum amount of funds for plan development and that any additional funds for plan development be distributed equitably, including consideration of population and factors that increase susceptibility to an outbreak, upon soliciting the advice of the local health jurisdictions. [2006 c 63 § 6.]

70.26.070 Secretary duties—Report. The secretary shall:

(1) Develop a process for assessing the compliance of each local health jurisdiction with the requirements and performance standards developed under RCW 70.26.030(1) at least biannually;

(2) By November 15, 2008, report to the legislature on the level of compliance with the performance standards established under RCW 70.26.030(1). The report shall consider the extent to which local health jurisdictions comply with each performance standard and any impediments to meeting the expected level of performance. [2006 c 63 § 7.]

Chapter 70.28 RCW

CONTROL OF TUBERCULOSIS

Sections

70.28.005	Health officials, broad powers to protect public health.
70.28.008	Definitions.
70.28.010	Health care providers required to report cases.
70.28.020	Record of reports.

- 70.28.025 Secretary's administrative responsibility—Scope.
 70.28.031 Powers and duties of health officers.
 70.28.032 Due process standards for testing, treating, detaining—Reporting requirements—Training and scope for skin test administration.
 70.28.033 Treatment, isolation, or examination order of health officer—Violation—Penalty.
 70.28.035 Order of health officer—Refusal to obey—Application for superior court order.
 70.28.037 Superior court order for confinement of individuals having active tuberculosis.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.28.005 Health officials, broad powers to protect public health. (1) Tuberculosis has been and continues to be a threat to the public's health in the state of Washington.

(2) While it is important to respect the rights of individuals, the legitimate public interest in protecting the public health and welfare from the spread of a deadly infectious disease outweighs incidental curtailment of individual rights that may occur in implementing effective testing, treatment, and infection control strategies.

(3) To protect the public's health, it is the intent of the legislature that local health officials provide culturally sensitive and medically appropriate early diagnosis, treatment, education, and follow-up to prevent tuberculosis. Further, it is imperative that public health officials and their staff have the necessary authority and discretion to take actions as are necessary to protect the health and welfare of the public, subject to the constitutional protection required under the federal and state constitutions. Nothing in this chapter shall be construed as in any way limiting the broad powers of health officials to act as necessary to protect the public health. [1994 c 145 § 1.]

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

- (1) "Department" means the department of health;
 (2) "Secretary" means the secretary of the department of health or his or her designee;
 (3) "Tuberculosis control" refers to the procedures administered in the counties for the control, prevention, and treatment of tuberculosis. [1999 c 172 § 7; 1991 c 3 § 330; 1983 c 3 § 171; 1971 ex.s. c 277 § 15. Formerly RCW 70.33.010.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

70.28.010 Health care providers required to report cases. All practicing health care providers in the state are hereby required to report to the local health department cases of every person having tuberculosis who has been attended by, or who has come under the observation of, the health care provider within one day thereof. [1999 c 172 § 2; 1996 c 209 § 1; 1967 c 54 § 1; 1899 c 71 § 1; RRS § 6109.]

Finding—1999 c 172: "The legislature finds that current statutes relating to the reporting, treatment, and payment for tuberculosis are outdated, and not in concert with current clinical practice and tuberculosis care management. Updating reporting requirements for local health departments will benefit providers, local health, and individuals requiring treatment for tuberculosis." [1999 c 172 § 1.]

Severability—1999 c 172: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 172 § 13.]

Severability—1967 c 54: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 54 § 20.]

70.28.020 Record of reports. All local health departments in this state are hereby required to receive and keep a record, for a period of ten years from the date of the report, of the reports required by RCW 70.28.010 to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper inspection of other local health departments and of the department of health alone, and such records shall not be published nor made public. [1999 c 172 § 3; 1967 c 54 § 2; 1899 c 71 § 2; RRS § 6110.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

70.28.025 Secretary's administrative responsibility—Scope. The secretary shall have responsibility for establishing standards for the control, prevention, and treatment of tuberculosis and hospitals approved to treat tuberculosis in the state operated under this chapter and chapter 70.30 RCW and for providing, either directly or through agreement, contract, or purchase, appropriate facilities and services for persons who are, or may be suffering from tuberculosis except as otherwise provided by RCW 70.30.061 or this section.

Under that responsibility, the secretary shall have the following powers and duties:

- (1) To develop and enter into such agreements, contracts, or purchase arrangements with counties and public and private agencies or institutions to provide for hospitalization, nursing home, or other appropriate facilities and services, including laboratory services, for persons who are or may be suffering from tuberculosis;
 (2) Adopt such rules as are necessary to assure effective patient care and treatment of tuberculosis. [1999 c 172 § 8; 1983 c 3 § 172; 1973 1st ex.s. c 213 § 2; 1971 ex.s. c 277 § 16. Formerly RCW 70.33.020.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

70.28.031 Powers and duties of health officers. Each health officer is hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of tuberculosis in the infectious stages within his or her jurisdiction and to ascertain the sources of such infections. In carrying out such investigations, each health officer is hereby invested with full powers of inspection, examination, treatment, and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for treatment or periodic follow-up examinations and is hereby directed:

- (a) To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and to isolate and treat or isolate, treat, and

quarantine such persons, whenever deemed necessary for the protection of the public health.

(b) To make such examinations as deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations.

(c) Follow local rules and regulations regarding examinations, treatment, quarantine, or isolation, and all rules, regulations, and orders of the state board and of the department in carrying out such examination, treatment, quarantine, or isolation.

(d) Whenever the health officer shall determine on reasonable grounds that an examination or treatment of any person is necessary for the preservation and protection of the public health, he or she shall make an examination order in writing, setting forth the name of the person to be examined, the time and place of the examination, the treatment, and such other terms and conditions as may be necessary to protect the public health. Nothing contained in this subdivision shall be construed to prevent any person whom the health officer determines should have an examination or treatment for infectious tuberculosis from having such an examination or treatment made by a physician of his or her own choice who is licensed to practice osteopathic medicine and surgery under chapter 18.57 RCW or medicine and surgery under chapter 18.71 RCW under such terms and conditions as the health officer shall determine on reasonable grounds to be necessary to protect the public health.

(e) Whenever the health officer shall determine that quarantine, treatment, or isolation in a particular case is necessary for the preservation and protection of the public health, he or she shall make an order to that effect in writing, setting forth the name of the person, the period of time during which the order shall remain effective, the place of treatment, isolation, or quarantine, and such other terms and conditions as may be necessary to protect the public health.

(f) Upon the making of an examination, treatment, isolation, or quarantine order as provided in this section, a copy of such order shall be served upon the person named in such order.

(g) Upon the receipt of information that any examination, treatment, quarantine, or isolation order, made and served as herein provided, has been violated, the health officer shall advise the prosecuting attorney of the county in which such violation has occurred, in writing, and shall submit to such prosecuting attorney the information in his or her possession relating to the subject matter of such examination, treatment, isolation, or quarantine order, and of such violation or violations thereof.

(h) Any and all orders authorized under this section shall be made by the health officer or his or her tuberculosis control officer.

(i) Nothing in this chapter shall be construed to abridge the right of any person to rely exclusively on spiritual means alone through prayer to treat tuberculosis in accordance with the tenets and practice of any well-recognized church or religious denomination, nor shall anything in this chapter be deemed to prohibit a person who is inflicted with tuberculosis from being isolated or quarantined in a private place of his own choice, provided, it is approved by the local health officer, and all laws, rules and regulations governing control,

sanitation, isolation, and quarantine are complied with. [1996 c 209 § 2; 1996 c 178 § 21; 1967 c 54 § 4.]

Reviser's note: This section was amended by 1996 c 178 § 21 and by 1996 c 209 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1996 c 178: See note following RCW 18.35.110.

70.28.032 Due process standards for testing, treating, detaining—Reporting requirements—Training and scope for skin test administration. (1) The state board of health shall adopt rules establishing the requirements for:

(a) Reporting confirmed or suspected cases of tuberculosis by health care providers and reporting of laboratory results consistent with tuberculosis by medical test sites;

(b) Due process standards for health officers exercising their authority to involuntarily detain, test, treat, or isolate persons with suspected or confirmed tuberculosis under RCW 70.28.031 and 70.05.070 that provide for release from any involuntary detention, testing, treatment, or isolation as soon as the health officer determines the patient no longer represents a risk to the public's health;

(c) Training of persons to perform tuberculosis skin testing and to administer tuberculosis medications.

(2) Notwithstanding any other provision of law, persons trained under subsection (1)(c) of this section may perform skin testing and administer medications if doing so as part of a program established by a state or local health officer to control tuberculosis. [1996 c 209 § 3; 1994 c 145 § 2.]

70.28.033 Treatment, isolation, or examination order of health officer—Violation—Penalty. Inasmuch as the order provided for by RCW 70.28.031 is for the protection of the public health, any person who, after service upon him or her of an order of a health officer directing his or her treatment, isolation, or examination as provided for in RCW 70.28.031, violates or fails to comply with the same or any provision thereof, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any and all other penalties which may be imposed by law upon such conviction, may be ordered by the court confined until such order of such health officer shall have been fully complied with or terminated by such health officer, but not exceeding six months from the date of passing judgment upon such conviction: PROVIDED, That the court, upon suitable assurances that such order of such health officer will be complied with, may place any person convicted of a violation of such order of such health officer upon probation for a period not to exceed two years, upon condition that the said order of said health officer be fully complied with: AND PROVIDED FURTHER, That upon any subsequent violation of such order of such health officer, such probation shall be terminated and confinement as herein provided ordered by the court. [1996 c 209 § 4; 1967 c 54 § 5.]

70.28.035 Order of health officer—Refusal to obey—Application for superior court order. In addition to the proceedings set forth in RCW 70.28.031, where a local health officer has reasonable cause to believe that an individual has tuberculosis as defined in the rules and regulations of the state board of health, and the individual refuses to obey the

order of the local health officer to appear for an initial examination or a follow-up examination or an order for treatment, isolation, or quarantine, the health officer may apply to the superior court for an order requiring the individual to comply with the order of the local health officer. [1996 c 209 § 5; 1967 c 54 § 6.]

70.28.037 Superior court order for confinement of individuals having active tuberculosis. Where it has been determined after an examination as prescribed in this chapter that an individual has active tuberculosis, upon application to the superior court by the local health officer, the superior court shall order the sheriff to transport the individual to a designated facility for isolation, treatment, and care until such time as the local health officer or designee determines that the patient's condition is such that it is safe for the patient to be discharged from the facility. [1999 c 172 § 4; 1967 c 54 § 7.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

Chapter 70.30 RCW

TUBERCULOSIS HOSPITALS, FACILITIES, AND FUNDING

(Formerly: Tuberculosis hospitals and facilities)

Sections

- 70.30.015 Definitions.
- 70.30.045 Expenditures for tuberculosis control directed—Standards—Payment for treatment.
- 70.30.055 County budget for tuberculosis facilities.
- 70.30.061 Admissions to facility.
- 70.30.081 Annual inspections.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

County hospitals: Chapter 36.62 RCW.

Hospital's lien: Chapter 60.44 RCW.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

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

- (1) "Department" means the department of health.
- (2) "Secretary" means the secretary of the department of health or his or her designee.
- (3) "Tuberculosis control" refers to the procedures administered in the counties for the control, prevention, and treatment of tuberculosis. [1999 c 172 § 10.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

70.30.045 Expenditures for tuberculosis control directed—Standards—Payment for treatment. Tuberculosis is a communicable disease and tuberculosis prevention, treatment, control, and follow up of known cases of tuberculosis are the basic steps in the control of this major health problem. In order to carry on such work effectively in accordance with the standards set by the secretary under RCW 70.28.025, the legislative authority of each county shall budget a sum to be used for the control of tuberculosis, including

case finding, prevention, treatment, and follow up of known cases of tuberculosis. Under no circumstances should this section be construed to mean that the legislative authority of each county shall budget sums to provide tuberculosis treatment when the patient has the ability to pay for the treatment. Each patient's ability to pay for the treatment shall be assessed by the local health department. [1999 c 172 § 6; 1975 1st ex.s. c 291 § 3; 1973 1st ex.s. c 195 § 79; 1971 ex.s. c 277 § 21; 1970 ex.s. c 47 § 7; 1967 ex.s. c 110 § 11; 1959 c 117 § 1; 1945 c 66 § 1; 1943 c 162 § 1; Rem. Supp. 1945 § 6113-1. Formerly RCW 70.32.010.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

County budget for tuberculosis facilities: RCW 70.30.055.

County treasurer: Chapter 36.29 RCW.

70.30.055 County budget for tuberculosis facilities.

In order to maintain adequate facilities and services for the residents of the state of Washington who are or may be suffering from tuberculosis and to assure their proper care, the legislative authority of each county shall budget annually a sum to provide such services in the county.

The funds may be retained by the county for operating its own services for the prevention and treatment of tuberculosis. None of the counties shall be required to make any payments to the state or any other agency from these funds except as authorized by the local health department. However, if the counties do not comply with the adopted standards of the department, the secretary shall take action to provide the required services and to charge the affected county directly for the provision of these services by the state. [1999 c 172 § 9; 1975 1st ex.s. c 291 § 4. Prior: 1973 1st ex.s. c 213 § 4; 1973 1st ex.s. c 195 § 81; 1971 ex.s. c 277 § 18. Formerly RCW 70.33.040.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Expenditures for tuberculosis control directed—Standards—Payment for treatment: RCW 70.30.045.

70.30.061 Admissions to facility. Any person residing in the state and needing treatment for tuberculosis may apply in person to the local health officer or to any licensed physician, advanced registered nurse practitioner, or licensed physician assistant for examination and if that health care provider has reasonable cause to believe that the person is suffering from tuberculosis in any form he or she may apply to the local health officer or designee for admission of the person to an appropriate facility for the care and treatment of tuberculosis. [1999 c 172 § 5; 1973 1st ex.s. c 213 § 1; 1972 ex.s. c 143 § 2.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

70.30.081 Annual inspections. All hospitals established or maintained for the treatment of persons suffering

from tuberculosis shall be subject to annual inspection, or more frequently if required by federal law, by agents of the department of health, and the medical director shall admit such agents into every part of the facility and its buildings, and give them access on demand to all records, reports, books, papers, and accounts pertaining to the facility. [1991 c 3 § 329; 1972 ex.s. c 143 § 4.]

Chapter 70.37 RCW
HEALTH CARE FACILITIES

Sections

70.37.010 Declaration of public policies—Purpose.
 70.37.020 Definitions.
 70.37.030 Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Compensation and travel expenses.
 70.37.040 Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds.
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70.37.010 Declaration of public policies—Purpose.

The good health of the people of our state is a most important public concern. The state has a direct interest in seeing to it that health care facilities adequate for good public health are established and maintained in sufficient numbers and in proper locations. The rising costs of care of the infirm constitute a grave challenge not only to health care providers but to our state and the people of our state who will seek such care. It is hereby declared to be the public policy of the state of Washington to assist and encourage the building, providing and utilization of modern, well equipped and reasonably priced health care facilities, and the improvement, expansion and modernization of health care facilities in a manner that will minimize the capital costs of construction, financing and use thereof and thereby the costs to the public of the use of such facilities, and to contribute to improving the quality of health care available to our citizens. In order to accomplish these and related purposes this chapter is adopted and shall be liberally construed to carry out its purposes and objects. [1974 ex.s. c 147 § 1.]

70.37.020 Definitions. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent and the singular of any term shall encompass the plural and the plural the singular unless the context indicates otherwise:

- (1) "Authority" means the Washington health care facilities authority created by RCW 70.37.030 or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority shall be given by law.
- (2) "Bonds" mean bonds, notes or other evidences of indebtedness of the authority issued pursuant hereto.

(3) "Health care facility" means any land, structure, system, machinery, equipment or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services, and shall include research and support facilities of a comprehensive cancer center, but excluding, however, any facility which is maintained by a participant primarily for rental or lease to self-employed health care professionals or as an independent nursing home or other facility primarily offering domiciliary care.

(4) "Participant" means any city, county or other municipal corporation or agency or political subdivision of the state or any corporation, hospital, comprehensive cancer center, or health maintenance organization authorized by law to operate nonprofit health care facilities, or any affiliate, as defined by regulations promulgated by the director of the department of financial institutions pursuant to RCW 21.20.450, which is a nonprofit corporation acting for the benefit of any entity described in this subsection.

(5) "Project" means a specific health care facility or any combination of health care facilities, constructed, purchased, acquired, leased, used, owned or operated by a participant, and alterations, additions to, renovations, enlargements, betterments and reconstructions thereof. [1994 c 92 § 505; 1989 c 65 § 1; 1983 c 210 § 3; 1974 ex.s. c 147 § 2.]

70.37.030 Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Compensation and travel expenses.

There is hereby established a public body corporate and politic, with perpetual corporate succession, to be known as the Washington health care facilities authority. The authority shall constitute a political subdivision of the state established as an instrumentality exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010. The authority shall consist of the governor who shall serve as chairman, the lieutenant governor, the insurance commissioner, the secretary of health, and one member of the public who shall be appointed by the governor, subject to confirmation by the senate, on the basis of the member's interest or expertise in health care delivery, for a term expiring on the fourth anniversary of the date of appointment. In the event that any of the offices referred to shall be abolished the resulting vacancy on the authority shall be filled by the officer who shall succeed substantially to the powers and duties thereof. The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses incurred in the discharge of their duties under this chapter, subject to the provisions of RCW 43.03.050 and 43.03.060. A majority shall constitute a quorum.

The governor and the insurance commissioner each may designate an employee of his or her office to act on his or her behalf during the absence of the governor or the insurance commissioner at one or more of the meetings of the authority.

The vote of the designee shall have the same effect as if cast by the governor or the insurance commissioner if the designation is in writing and is presented to the person presiding at the meetings included within the designation.

The governor may designate a member to preside during the governor's absence. [2002 c 91 § 1; 1989 1st ex.s. c 9 § 261; 1984 c 287 § 103; 1983 c 210 § 1; 1975-'76 2nd ex.s. c 34 § 157; 1974 ex.s. c 147 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.37.040 Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds. (1) The authority is hereby empowered to issue bonds for the construction, purchase, acquisition, rental, leasing or use by participants of projects for which bonds to provide funds therefor have been approved by the authority. Such bonds shall be issued in the name of the authority. They shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. They shall contain a recital on their face that their payment and the payment of interest thereon shall be a valid claim only as against the special fund relating thereto derived by the authority in whole or in part from the revenues received by the authority from the operation by the participant of the health care facilities for which the bonds are issued but that they shall constitute a prior charge over all other charges or claims whatever against such special fund. The lien of any such pledge on such revenues shall attach thereto immediately on their receipt by the authority and shall be valid and binding as against parties having claims of any kind in tort, contract or otherwise against the participant, without recordation thereof and whether or not they have notice thereof. For inclusion in such special funds and for other uses in or for such projects of participants the authority is empowered to accept and receive funds, grants, gifts, pledges, guarantees, mortgages, trust deeds and other security instruments, and property from the federal government or the state of Washington or other public body, entity or agency and from any public or private institution, association, corporation or organization, including participants, except that it shall not accept or receive from the state or any taxing agency any money derived from taxes save money to be devoted to the purposes of a project of the state or taxing agency.

(2) For the purposes outlined in subsection (1) of this section the authority is empowered to provide for the issuance of its special fund bonds and other limited obligation security instruments subordinate to the first and prior lien bonds, if any, relating to a project or projects of a participant and to create special funds relating thereto against which such subordinate securities shall be liens, but the authority shall not have power to incur general obligations with respect thereto.

(3) The authority may also issue special fund bonds to redeem or to fund or refund outstanding bonds or any part thereof at maturity, or before maturity if subject to prior

redemption, with the right in the authority to include various series and issues of such outstanding special fund bonds in a single issue of funding or refunding special fund bonds and to pay any redemption premiums out of the proceeds thereto. Such funding or refunding bonds shall be limited special fund bonds issued in accordance with the provisions of this chapter, including this section and shall not be general obligations of the authority.

(4) Such special fund bonds of either first lien or subordinate lien nature may also be issued by the authority, the proceeds of which may be used to refund already existing mortgages or other obligations on health care facilities already constructed and operating incurred by a participant in the construction, purchase or acquisition thereof.

(5) The authority may also lease to participants, lease to them with option to purchase, or sell to them, facilities which it has acquired by construction, purchase, devise, gift, or leasing: PROVIDED, That the terms thereof shall at least fully reimburse the authority for its costs with respect to such facilities, including costs of financing, and provide fully for the debt service on any bonds issued by the authority to finance acquisition by it of the facilities. To pay the cost of acquiring or improving such facilities or to refund any bonds issued for such purpose, the authority may issue its revenue bonds secured solely by revenues derived from the sale or lease of the facility, but which may additionally be secured by mortgage, lease, pledge or assignment, trust agreement or other security device. Such bonds and such security devices shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. Such health care facilities may be acquired, constructed, reconstructed, and improved and may be leased, sold or otherwise disposed of in the manner determined by the authority in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of the state, or any agency thereof, is not applicable to any action so taken by the authority. [1974 ex.s. c 147 § 4.]

70.37.050 Requests for financing—Financing plan—Bond issue, special fund authorized. The authority shall establish rules concerning its exercise of the powers authorized by this chapter. The authority shall receive from applicants requests for the providing of bonds for financing of health care facilities and shall investigate and determine the need and the feasibility of providing such bonds. Whenever the authority deems it necessary or advisable for the benefit of the public health to provide financing for a health care facility, it shall adopt a financing plan therefor and shall declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for the expenses incurred in the financing as well as in the construction or purchase or other acquisition or in connection with the rental or other payment for the use thereof, interest during construction, reserve funds and any funds necessary for initial start-up costs, and shall issue and sell its bonds for the purposes of carrying out the proposed financing plan: PROVIDED, That if a certificate of need is required for the proposed project, no such financing plan shall be adopted until such certificate has

been issued pursuant to chapter 70.38 RCW by the secretary of the department of social and health services. The authority shall have power as a part of such plan to create a special fund or funds for the purpose of defraying the cost of such project and for other projects of the same participant subsequently or at the same time approved by it and for their maintenance, improvement, reconstruction, remodeling and rehabilitation, into which special fund or funds it shall obligate and bind the participant to set aside and pay from the gross revenues of the project or from other sources an amount sufficient to pay the principal and interest of the bonds being issued, reserves and other requirements of the special fund and to issue and sell bonds payable as to both principal and interest out of such fund or funds relating to the project or projects of such participant.

Such bonds shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, or both, as provided in RCW 39.46.030, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, bear such fixed or variable rate or rates of interest, and be sold in such manner, at such price, as the authority shall determine. Such bonds shall be executed by the chairman, by either its duly elected secretary or its executive director, and by the trustee if the authority determines to utilize a trustee for the bonds. Execution of the bonds may be by manual or facsimile signature: PROVIDED, That at least one signature placed thereon shall be manually subscribed. Any interest coupons appurtenant to the bonds shall be executed by facsimile or manual signature or signatures, as the authority shall determine. [1983 c 210 § 2; 1983 c 167 § 171; 1981 c 121 § 1; 1974 ex.s. c 147 § 5.]

Reviser's note: This section was amended by 1983 c 167 § 171 and by 1983 c 210 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

70.37.060 Bond issues—Terms—Payment—Legal investment, etc. The bonds of the authority shall be subject to such terms, conditions and covenants and protective provisions as shall be found necessary or desirable by the authority, which may include but shall not be limited to provisions for the establishment and maintenance by the participant of rates for health services of the project, fees and other charges of every kind and nature sufficient in amount and adequate, over and above costs of operation and maintenance and all other costs other than costs and expenses of capital, associated with the project, to pay the principal of and interest on the bonds payable out of the special fund or funds of the project, to set aside and maintain reserves as determined by the authority to secure the payment of such principal and interest, to set aside and maintain reserves for repairs and replacement, to maintain coverage which may be agreed upon over and above the requirements of payment of principal and interest, and for other needs found by the authority to be required for the security of the bonds. When issuing bonds the authority may provide for the future issuance of addi-

tional bonds on a parity with outstanding bonds, and the terms and conditions of their issuance.

All bonds issued under the authority of this chapter shall constitute legal investments for trustees and other fiduciaries and for savings and loan associations, banks, and insurance companies doing business in this state. All such bonds and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the negotiable instruments law of this state. [1974 ex.s. c 147 § 6.]

70.37.070 Bond issues—Special trust fund—Payments—Status—Administration of fund. All revenues received by the authority from a participant derived from a particular project of such participant to be applied on principal and interest of bonds or for other bond requirements such as reserves and all other funds for the bond requirements of a particular project received from contributions or grants or in any other form shall be deposited by the authority in qualified public depositories to the credit of a special trust fund to be designated as the authority special bond fund for the particular project or projects producing such revenue or to which the contribution or grant relates. Such fund shall not be or constitute funds of the state of Washington but at all times shall be kept segregated and set apart from other funds. From such funds, the authority shall make payment of principal and interest of the bonds of the particular project or projects; and the authority may set up subaccounts in the bond fund for reserve accounts for payment of principal and interest, for repairs and replacement and for other special requirements of the bonds of the project or projects as determined by the authority. In lieu of itself receiving and handling these moneys as here outlined the authority may appoint trustees, depositories and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the bondholders. [1974 ex.s. c 147 § 7.]

70.37.080 Bond issues—Disposition of proceeds—Special fund. Proceeds from the sale of all bonds of a project issued under the provisions of this chapter received by the authority shall be deposited forthwith by the authority in qualified public depositories in a special fund for the particular project for which the bonds were issued and sold, which money shall not be funds of the state of Washington. Such fund shall at all times be segregated and set apart from all other funds and in trust for the purposes of purchase, construction, acquisition, leasing, or use of a project or projects, and for other special needs of the project declared by the authority, including the manner of disposition of any money not finally needed in the construction, purchase, or other acquisition. Money other than bond sale proceeds received by the authority for these same purposes, such as contributions from a participant or a grant from the federal government may be deposited in the same project fund. Proceeds received from the sale of the bonds may also be used to defray the expenses of the authority in connection with and incidental to the issuance and sale of bonds for the project, as well as expenses for studies, surveys, estimates, inspections and examinations of or relating to the particular project, and other costs advanced therefor by the participant or by the authority.

In lieu of itself receiving and handling these moneys in the manner here outlined the authority may appoint trustees, depositaries and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the participants and of bondholders. [1974 ex.s. c 147 § 8.]

70.37.090 Payment of authority for expenses incurred in investigating and financing projects. The authority shall have power to require persons applying for its assistance in connection with the investigation and financing of projects to pay fees and charges to provide the authority with funds for investigation, financial feasibility studies, expenses of issuance and sale of bonds and other charges for services provided by the authority in connection with such projects. All other expenses of the authority including compensation of its employees and consultants, expenses of administration and conduct of its work and business and other expenses shall be paid out of such fees and charges, out of contributions and grants to it, out of the proceeds of bonds issued for projects of participants or out of revenues of such projects; none by the state of Washington. The authority shall have power to establish special funds into which such money shall be received and out of which it may be disbursed by the persons and with the procedure and in the manner established by the authority. [1974 ex.s. c 147 § 9.]

70.37.100 Powers of authority. The authority may make contracts, employ or engage engineers, architects, attorneys, an executive director, and other technical or professional assistants, and such other personnel as are necessary. It may delegate to the executive director or other appropriate persons the power to execute legal instruments on its behalf. It may enter into contracts with the United States, accept gifts for its purposes, and exercise any other power reasonably required to implement the principal powers granted in this chapter. No provision of this chapter shall be construed so as to limit the power of the authority to provide bond financing to more than one participant and/or project by means of a single issue of revenue bonds utilizing a single bond fund and/or a single special fund into which proceeds of such bonds are deposited. The authority shall have no power to levy any taxes of any kind or nature and no power to incur obligations on behalf of the state of Washington. [1982 c 10 § 14. Prior: 1981 c 121 § 2; 1981 c 31 § 1; 1974 ex.s. c 147 § 10.]

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

70.37.110 Advancements and contributions by political subdivisions. Any city, county or other political subdivision of this state and any public health care facility is hereby authorized to advance or contribute to the authority real property, money, and other personal property of any kind towards the expense of preliminary surveys and studies and other preliminary expenses of projects which they are by other statutes of this state authorized to own or operate which are a part of a plan or system which has been submitted by them and is under consideration by the authority for assistance under the provisions of this chapter. [1974 ex.s. c 147 § 11.]

70.37.900 Severability—1974 ex.s. c 147. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 147 § 12.]

Chapter 70.38 RCW

HEALTH PLANNING AND DEVELOPMENT

Sections

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70.38.015 Declaration of public policy. It is declared to be the public policy of this state:

(1) That strategic health planning efforts must be supported by appropriately tailored regulatory activities that can effectuate the goals and principles of the statewide health resources strategy developed pursuant to chapter 43.370 RCW. The implementation of the strategy can promote, maintain, and assure the health of all citizens in the state, provide accessible health services, health manpower, health facilities, and other resources while controlling increases in costs, and recognize prevention as a high priority in health programs. Involvement in health planning from both consumers and providers throughout the state should be encouraged;

(2) That the certificate of need program is a component of a health planning regulatory process that is consistent with the statewide health resources strategy and public policy goals that are clearly articulated and regularly updated;

(3) That the development and maintenance of adequate health care information, statistics and projections of need for

health facilities and services is essential to effective health planning and resources development;

(4) That the development of nonregulatory approaches to health care cost containment should be considered, including the strengthening of price competition; and

(5) That health planning should be concerned with public health and health care financing, access, and quality, recognizing their close interrelationship and emphasizing cost control of health services, including cost-effectiveness and cost-benefit analysis. [2007 c 259 § 55; 1989 1st ex.s. c 9 § 601; 1983 c 235 § 1; 1980 c 139 § 1; 1979 ex.s. c 161 § 1.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.38.018 Statewide health resources strategy—Consistency—Waivers. (1) For the purposes of this section and RCW 70.38.015 and 70.38.135, "statewide health resource strategy" or "strategy" means the statewide health resource strategy developed by the office of financial management pursuant to chapter 43.370 RCW.

(2) Effective January 1, 2010, for those facilities and services covered by the certificate of need programs, certificate of need determinations must be consistent with the statewide health resources strategy developed pursuant to RCW 43.370.030, including any health planning policies and goals identified in the statewide health resources strategy in effect at the time of application. The department may waive specific terms of the strategy if the applicant demonstrates that consistency with those terms will create an undue burden on the population that a particular project would serve, or in emergency circumstances which pose a threat to public health. [2007 c 259 § 56.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.38.025 Definitions. When used in this chapter, the terms defined in this section shall have the meanings indicated.

(1) "Board of health" means the state board of health created pursuant to chapter 43.20 RCW.

(2) "Capital expenditure" is an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor) which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been made by purchase, such expenditure shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility which if acquired directly by such facility would be subject to certificate of need review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made

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shall be included in determining the amount of the expenditure.

(3) "Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service. A "continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(4) "Department" means the department of health.

(5) "Expenditure minimum" means, for the purposes of the certificate of need program, one million dollars adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule.

(6) "Health care facility" means hospices, hospice care centers, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, and home health agencies, and includes such facilities when owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or any health facility or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. In addition, the term does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not charge fees for such services; and (c) if not contrary to federal law as necessary to the receipt of federal funds by the state.

(7) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, section 1310(d) of the Public Health Services Act; or

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, X-ray, emergency, and preventive services, and out-of-area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in (b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through

arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(8) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services and as defined in federal law.

(9) "Health service area" means a geographic region appropriate for effective health planning which includes a broad range of health services.

(10) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(11) "Provider" generally means a health care professional or an organization, institution, or other entity providing health care but the precise definition for this term shall be established by rule of the department, consistent with federal law.

(12) "Public health" means the level of well-being of the general population; those actions in a community necessary to preserve, protect, and promote the health of the people for which government is responsible; and the governmental system developed to guarantee the preservation of the health of the people.

(13) "Secretary" means the secretary of health or the secretary's designee.

(14) "Tertiary health service" means a specialized service that meets complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

(15) "Hospital" means any health care institution which is required to qualify for a license under *RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW. [2000 c 175 § 22; 1997 c 210 § 2; 1991 c 158 § 1; 1989 1st ex.s. c 9 § 602; 1988 c 20 § 1; 1983 1st ex.s. c 41 § 43; 1983 c 235 § 2; 1982 c 119 § 1; 1980 c 139 § 2; 1979 ex.s. c 161 § 2.]

*Reviser's note: RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

70.38.095 Public disclosure. Public accessibility to records shall be accorded by health systems agencies pursuant to Public Law 93-641 and chapter 42.56 RCW. A health systems agency shall be considered a "public agency" for the sole purpose of complying with the public records act, chapter 42.56 RCW. [2005 c 274 § 332; 1979 ex.s. c 161 § 9.]

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

70.38.105 Health services and facilities requiring certificate of need—Fees. (1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure, however, other additional repairs, remodeling, or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from certificate of need review except as otherwise permitted by (d)(vi) of this subsection or RCW 70.38.115(13);

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction or renovation at an existing nursing home which involves physical plant facilities, including administrative, dining areas, kitchen, laundry, therapy areas, and support facilities, by an existing licensee who has operated the beds for at least one year;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months, or a change in bed capacity of a rural health care facility licensed under RCW 70.175.100 that increases the total number of nursing home beds or redistributes beds from acute care or boarding home care to nursing home care if the bed redistribution is to be effective for a period in excess of six months. A health care facility certified as a critical access hospital under 42 U.S.C. 1395i-4 may increase its total number of licensed beds to the total number of beds permitted under 42 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under 42 U.S.C. 1395i-4 among acute care and nursing home care without being subject to certificate of need review. If there is

a nursing home licensed under chapter 18.51 RCW within twenty-seven miles of the critical access hospital, the critical access hospital is subject to certificate of need review except for:

(i) Critical access hospitals which had designated beds to provide nursing home care, in excess of five swing beds, prior to December 31, 2003; or

(ii) Up to five swing beds.

Critical access hospital beds not subject to certificate of need review under this subsection (4)(e) will not be counted as either acute care or nursing home care for certificate of need review purposes. If a health care facility ceases to be certified as a critical access hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the type and number of licensed hospital beds as it had when it requested critical access hospital designation;

(f) Any new tertiary health services which are offered in or through a health care facility or rural health care facility licensed under RCW 70.175.100, and which were not offered on a regular basis by, in, or through such health care facility or rural health care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section. [2004 c 261 § 6; 1996 c 50 § 1; 1992 c 27 § 1; 1991 sp.s. c 8 § 4; 1989 1st ex.s. c 9 § 603; 1984 c 288 § 21; 1983 c 235 § 7; 1982 c 119 § 2; 1980 c 139 § 7; 1979 ex.s. c 161 § 10.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Severability—1984 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 288 § 27.]

Effective date—1980 c 139: See RCW 70.38.916.

Effective dates—1979 ex.s. c 161: See RCW 70.38.915.

70.38.111 Certificates of need—Exemptions. (1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the

organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization; if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facil-

ity (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements only to the offering of inpatient tertiary health services and then only to the extent that such offering is not exempt under the provisions of this section.

(5)(a) The department shall not require a certificate of need for the construction, development, or other establishment of a nursing home, or the addition of beds to an existing nursing home, that is owned and operated by a continuing care retirement community that:

(i) Offers services only to contractual members;

(ii) Provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some assistance with daily living activities;

(iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;

(iv) Has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;

(vi) Does not operate, and has not undertaken a project that would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has obtained a professional review of pricing and long-term solvency within the prior five years which was fully disclosed to members.

(b) A continuing care retirement community shall not be exempt under this subsection from obtaining a certificate of need unless:

(i) It has submitted an application for exemption at least thirty days prior to commencing construction of, is submitting an application for the licensure of, or is commencing operation of a nursing home, whichever comes first; and

(ii) The application documents to the department that the continuing care retirement community qualifies for exemption.

(c) The sale, lease, acquisition, or use of part or all of a continuing care retirement community nursing home that qualifies for exemption under this subsection shall require prior certificate of need approval to qualify for licensure as a nursing home unless the department determines such sale, lease, acquisition, or use is by a continuing care retirement community that meets the conditions of (a) of this subsection.

(6) A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of beds licensed under chapter 70.41 RCW, increase the number of licensed beds to no more than the previously licensed number without being subject to the provisions of this chapter.

(7) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under chapter 70.41 RCW may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be subject to the requirements of RCW 70.38.105(4)(a) as the construction, development, or other establishment of a new hospital, provided there is no increase in the number of beds previously licensed under chapter 70.41 RCW and there is no redistribution in the number of beds used for acute care or long-term care, the rural health care facility has been in continuous operation, and the rural health care facility has not been purchased or leased.

(8)(a) A nursing home that voluntarily reduces the number of its licensed beds to provide assisted living, licensed boarding home care, adult day care, adult day health, respite care, hospice, outpatient therapy services, congregate meals, home health, or senior wellness clinic, or to reduce to one or two the number of beds per room or to otherwise enhance the quality of life for residents in the nursing home, may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds without obtaining a certificate of need under this chapter, provided the facility has been in continuous operation and has not been purchased or leased. Any conversion to the original licensed bed capacity, or to any portion thereof, shall comply with the same life and safety code requirements as existed at the time the nursing home voluntarily reduced its licensed beds; unless waivers from such requirements were issued, in which case the converted beds shall reflect the conditions or standards that then existed pursuant to the approved waivers.

(b) To convert beds back to nursing home beds under this subsection, the nursing home must:

(i) Give notice of its intent to preserve conversion options to the department of health no later than thirty days after the effective date of the license reduction; and

(ii) Give notice to the department of health and to the department of social and health services of the intent to convert beds back. If construction is required for the conversion of beds back, the notice of intent to convert beds back must be given, at a minimum, one year prior to the effective date of license modification reflecting the restored beds; otherwise, the notice must be given a minimum of ninety days prior to the effective date of license modification reflecting the restored beds. Prior to any license modification to convert beds back to nursing home beds under this section, the licensee must demonstrate that the nursing home meets the certificate of need exemption requirements of this section.

The term "construction," as used in (b)(ii) of this subsection, is limited to those projects that are expected to equal or exceed the expenditure minimum amount, as determined under this chapter.

(c) Conversion of beds back under this subsection must be completed no later than four years after the effective date of the license reduction. However, for good cause shown, the four-year period for conversion may be extended by the department of health for one additional four-year period.

(d) Nursing home beds that have been voluntarily reduced under this section shall be counted as available nursing home beds for the purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long as the facility retains the ability to convert them back to nursing home use under the terms of this section.

(e) When a building owner has secured an interest in the nursing home beds, which are intended to be voluntarily reduced by the licensee under (a) of this subsection, the applicant shall provide the department with a written statement indicating the building owner's approval of the bed reduction. [1997 c 210 § 1; 1995 1st sp.s. c 18 § 71; 1993 c 508 § 5; 1992 c 27 § 2; 1991 c 158 § 2; 1989 1st ex.s. c 9 § 604; 1982 c 119 § 3; 1980 c 139 § 9.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Section captions—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

70.38.115 Certificates of need—Procedures—Rules—Criteria for review—Conditional certificates of need—Concurrent review—Review periods—Hearing—Adjudicative proceeding—Amended certificates of need.

(1) Certificates of need shall be issued, denied, suspended, or revoked by the designee of the secretary in accord with the provisions of this chapter and rules of the department which establish review procedures and criteria for the certificate of need program.

(2) Criteria for the review of certificate of need applications, except as provided in subsection (3) of this section for health maintenance organizations, shall include but not be limited to consideration of the following:

(a) The need that the population served or to be served by such services has for such services;

(b) The availability of less costly or more effective alternative methods of providing such services;

(c) The financial feasibility and the probable impact of the proposal on the cost of and charges for providing health services in the community to be served;

(d) In the case of health services to be provided, (i) the availability of alternative uses of project resources for the provision of other health services, (ii) the extent to which such proposed services will be accessible to all residents of the area to be served, and (iii) the need for and the availability in the community of services and facilities for osteopathic physicians and surgeons and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathic medicine and surgery and medicine at the student, internship, and residency training levels;

(e) In the case of a construction project, the costs and methods of the proposed construction, including the cost and methods of energy provision, and the probable impact of the construction project reviewed (i) on the cost of providing health services by the person proposing such construction project and (ii) on the cost and charges to the public of providing health services by other persons;

(f) The special needs and circumstances of osteopathic hospitals, nonallopathic services and children's hospitals;

(g) Improvements or innovations in the financing and delivery of health services which foster cost containment and serve to promote quality assurance and cost-effectiveness;

(h) In the case of health services proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(i) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past;

(j) In the case of hospital certificate of need applications, whether the hospital meets or exceeds the regional average level of charity care, as determined by the secretary; and

(k) In the case of nursing home applications:

(i) The availability of other nursing home beds in the planning area to be served; and

(ii) The availability of other services in the community to be served. Data used to determine the availability of other services will include but not be limited to data provided by the department of social and health services.

(3) A certificate of need application of a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds:

(a) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(b) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

A health care facility, or any part thereof, with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired unless the department issues a certificate of need approving the sale, acquisition, or lease.

(4) Until the final expiration of the state health plan as provided under *RCW 70.38.919, the decision of the department on a certificate of need application shall be consistent with the state health plan in effect, except in emergency circumstances which pose a threat to the public health. The department in making its final decision may issue a conditional certificate of need if it finds that the project is justified only under specific circumstances. The conditions shall directly relate to the project being reviewed. The conditions may be released if it can be substantiated that the conditions are no longer valid and the release of such conditions would be consistent with the purposes of this chapter.

(5) Criteria adopted for review in accordance with subsection (2) of this section may vary according to the purpose for which the particular review is being conducted or the type of health service reviewed.

(6) The department shall specify information to be required for certificate of need applications. Within fifteen days of receipt of the application, the department shall request additional information considered necessary to the application or start the review process. Applicants may decline to submit requested information through written notice to the department, in which case review starts on the date of receipt of the notice. Applications may be denied or limited because of failure to submit required and necessary information.

(7) Concurrent review is for the purpose of comparative analysis and evaluation of competing or similar projects in order to determine which of the projects may best meet identified needs. Categories of projects subject to concurrent review include at least new health care facilities, new services, and expansion of existing health care facilities. The department shall specify time periods for the submission of applications for certificates of need subject to concurrent review, which shall not exceed ninety days. Review of concurrent applications shall start fifteen days after the conclusion of the time period for submission of applications subject to concurrent review. Concurrent review periods shall be limited to one hundred fifty days, except as provided for in rules adopted by the department authorizing and limiting amendment during the course of the review, or for an unresolved pivotal issue declared by the department.

(8) Review periods for certificate of need applications other than those subject to concurrent review shall be limited to ninety days. Review periods may be extended up to thirty days if needed by a review agency, and for unresolved pivotal issues the department may extend up to an additional thirty days. A review may be extended in any case if the applicant agrees to the extension.

(9) The department or its designee, shall conduct a public hearing on a certificate of need application if requested unless the review is expedited or subject to emergency review. The department by rule shall specify the period of time within which a public hearing must be requested and requirements

related to public notice of the hearing, procedures, record-keeping and related matters.

(10)(a) Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked has the right to an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act.

(b) Any health care facility or health maintenance organization that: (i) Provides services similar to the services provided by the applicant and under review pursuant to this subsection; (ii) is located within the applicant's health service area; and (iii) testified or submitted evidence at a public hearing held pursuant to subsection (9) of this section, shall be provided an opportunity to present oral or written testimony and argument in a proceeding under this subsection: PROVIDED, That the health care facility or health maintenance organization had, in writing, requested to be informed of the department's decisions.

(c) If the department desires to settle with the applicant prior to the conclusion of the adjudicative proceeding, the department shall so inform the health care facility or health maintenance organization and afford them an opportunity to comment, in advance, on the proposed settlement.

(11) An amended certificate of need shall be required for the following modifications of an approved project:

(a) A new service requiring review under this chapter;

(b) An expansion of a service subject to review beyond that originally approved;

(c) An increase in bed capacity;

(d) A significant reduction in the scope of a nursing home project without a commensurate reduction in the cost of the nursing home project, or a cost increase (as represented in bids on a nursing home construction project or final cost estimates acceptable to the person to whom the certificate of need was issued) if the total of such increases exceeds twelve percent or fifty thousand dollars, whichever is greater, over the maximum capital expenditure approved. The review of reductions or cost increases shall be restricted to the continued conformance of the nursing home project with the review criteria pertaining to financial feasibility and cost containment.

(12) An application for a certificate of need for a nursing home capital expenditure which is determined by the department to be required to eliminate or prevent imminent safety hazards or correct violations of applicable licensure and accreditation standards shall be approved.

(13)(a) Replacement of existing nursing home beds in the same planning area by an existing licensee who has operated the beds for at least one year shall not require a certificate of need under this chapter. The licensee shall give written notice of its intent to replace the existing nursing home beds to the department and shall provide the department with information as may be required pursuant to rule. Replacement of the beds by a party other than the licensee is subject to certificate of need review under this chapter, except as otherwise permitted by subsection (14) of this section.

(b) When an entire nursing home ceases operation, the licensee or any other party who has secured an interest in the beds may reserve his or her interest in the beds for eight years or until a certificate of need to replace them is issued, whichever occurs first. However, the nursing home, licensee, or any

other party who has secured an interest in the beds must give notice of its intent to retain the beds to the department of health no later than thirty days after the effective date of the facility's closure. Certificate of need review shall be required for any party who has reserved the nursing home beds except that the need criteria shall be deemed met when the applicant is the licensee who had operated the beds for at least one year, who has operated the beds for at least one year immediately preceding the reservation of the beds, and who is replacing the beds in the same planning area.

(14) In the event that a licensee, who has provided the department with notice of his or her intent to replace nursing home beds under subsection (13)(a) of this section, engages in unprofessional conduct or becomes unable to practice with reasonable skill and safety by reason of mental or physical condition, pursuant to chapter 18.130 RCW, or dies, the building owner shall be permitted to complete the nursing home bed replacement project, provided the building owner has secured an interest in the beds. [1996 c 178 § 22; 1995 1st sp.s. c 18 § 72; 1993 c 508 § 6. Prior: 1989 1st ex.s. c 9 § 605; 1989 c 175 § 126; 1984 c 288 § 22; 1983 c 235 § 8; 1980 c 139 § 8; 1979 ex.s. c 161 § 11.]

*Reviser's note: RCW 70.38.919 was repealed by 2007 c 259 § 67.

Effective date—1996 c 178: See note following RCW 18.35.110.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Section captions—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1984 c 288: See note following RCW 70.38.105.

Effective date—1980 c 139: See RCW 70.38.916.

Effective dates—1979 ex.s. c 161: See RCW 70.38.915.

70.38.118 Certificates of need—Applications submitted by hospice agencies. All certificate of need applications submitted by hospice agencies for the construction, development, or other establishment of a facility to be licensed as either a hospital under chapter 70.41 RCW or as a nursing home under chapter 18.51 RCW, for the purpose of operating the functional equivalent of a hospice care center shall not require a separate certificate of need for a hospice care center provided the certificate of need application was declared complete prior to July 1, 2001, the applicant has been issued a certificate of need, and has applied for and received an in-home services agency license by July 1, 2002. [2000 c 175 § 23.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.38.125 Certificates of need—Issuance—Duration—Penalties for violations. (1) A certificate of need shall be valid for two years. One six-month extension may be made if it can be substantiated that substantial and continuing progress toward commencement of the project has been made as defined by regulations to be adopted pursuant to this chapter.

(2) A project for which a certificate of need has been issued shall be commenced during the validity period for the certificate of need.

(3) The department shall monitor the approved projects to assure conformance with certificates of need that have

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been issued. Rules and regulations adopted shall specify when changes in the project require reevaluation of the project. The department may require applicants to submit periodic progress reports on approved projects or other information as may be necessary to effectuate its monitoring responsibilities.

(4) The secretary, in the case of a new health facility, shall not issue any license unless and until a prior certificate of need shall have been issued by the department for the offering or development of such new health facility.

(5) Any person who engages in any undertaking which requires certificate of need review without first having received from the department either a certificate of need or an exception granted in accordance with this chapter shall be liable to the state in an amount not to exceed one hundred dollars a day for each day of such unauthorized offering or development. Such amounts of money shall be recoverable in an action brought by the attorney general on behalf of the state in the superior court of any county in which the unauthorized undertaking occurred. Any amounts of money so recovered by the attorney general shall be deposited in the state general fund.

(6) The department may bring any action to enjoin a violation or the threatened violation of the provisions of this chapter or any rules and regulations adopted pursuant to this chapter, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county. [1989 1st ex.s. c 9 § 606; 1983 c 235 § 9; 1980 c 139 § 10; 1979 ex.s. c 161 § 12.]

Effective date—1980 c 139: See RCW 70.38.916.

Effective date—1979 ex.s. c 161: See RCW 70.38.915.

70.38.128 Certificates of need—Elective percutaneous coronary interventions—Rules. To promote the stability of Washington's cardiac care delivery system, by July 1, 2008, the department of health shall adopt rules establishing criteria for the issuance of a certificate of need under this chapter for the performance of elective percutaneous coronary interventions at hospitals that do not otherwise provide on-site cardiac surgery.

Prior to initiating rule making, the department shall contract for an independent evidence-based review of the circumstances under which elective percutaneous coronary interventions should be allowed in Washington at hospitals that do not otherwise provide on-site cardiac surgery. The review shall address, at a minimum, factors related to access to care, patient safety, quality outcomes, costs, and the stability of Washington's cardiac care delivery system and of existing cardiac care providers, and ensure that elective coronary intervention volumes at the University of Washington academic medical center are maintained at levels required for training of cardiologists consistent with applicable accreditation requirements. The department shall consider the results of this review, and any associated recommendations, in adopting these rules. [2007 c 440 § 1.]

70.38.135 Services and surveys—Rules. The secretary shall have authority to:

(1) Provide when needed temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee-for-service basis;

(2) Make or cause to be made such on-site surveys of health care or medical facilities as may be necessary for the administration of the certificate of need program;

(3) Upon review of recommendations, if any, from the board of health or the office of financial management as contained in the Washington health resources strategy:

(a) Promulgate rules under which health care facilities providers doing business within the state shall submit to the department such data related to health and health care as the department finds necessary to the performance of its functions under this chapter;

(b) Promulgate rules pertaining to the maintenance and operation of medical facilities which receive federal assistance under the provisions of Title XVI;

(c) Promulgate rules in implementation of the provisions of this chapter, including the establishment of procedures for public hearings for predecisions and post-decisions on applications for certificate of need;

(d) Promulgate rules providing circumstances and procedures of expedited certificate of need review if there has not been a significant change in existing health facilities of the same type or in the need for such health facilities and services;

(4) Grant allocated state funds to qualified entities, as defined by the department, to fund not more than seventy-five percent of the costs of regional planning activities, excluding costs related to review of applications for certificates of need, provided for in this chapter or approved by the department; and

(5) Contract with and provide reasonable reimbursement for qualified entities to assist in determinations of certificates of need. [2007 c 259 § 57; 1989 1st ex.s. c 9 § 607; 1983 c 235 § 10; 1979 ex.s. c 161 § 13.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.38.155 Certificates of need—Savings—1979 ex.s. c 161. The enactment of this chapter shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to *the effective date of this act. [1979 ex.s. c 161 § 15.]

***Reviser's note:** For "the effective date of this act," see RCW 70.38.915.

70.38.156 Certificates of need—Savings—1980 c 139. The enactment of this chapter as amended shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to *the effective date of this 1980 act. [1980 c 139 § 11.]

***Reviser's note:** For "the effective date of this 1980 act," see RCW 70.38.916.

70.38.157 Certificates of need—Savings—1983 c 235. The enactment of amendments to chapter 70.38 RCW by chapter 235, Laws of 1983 shall not have the effect of terminating or in any way modifying the validity of a certificate of

need which was issued prior to *the effective date of this 1983 act. [1983 c 235 § 11.]

***Reviser's note:** "the effective date of this 1983 act" [1983 c 235] for sections 16 and 17 of that act was May 17, 1983. For all other sections of that act the effective date was July 24, 1983.

70.38.158 Certificates of need—Savings—1989 1st ex.s. c 9 §§ 601 through 607. The enactment of *sections 601 through 607 of this act shall not have the effect of terminating, or in any way modifying, the validity of any certificate of need which shall already have been issued prior to July 1, 1989. [1989 1st ex.s. c 9 § 608.]

***Reviser's note:** "Sections 601 through 607 of this act" consist of the 1989 1st ex.s. c 9 amendments to RCW 70.38.015, 70.38.025, 70.38.105, 70.38.111, 70.38.115, 70.38.125, and 70.38.135.

70.38.220 Ethnic minorities—Nursing home beds that reflect cultural differences. (1) The legislature recognizes that in this state ethnic minorities currently use nursing home care at a lower rate than the general population. The legislature also recognizes and supports the federal mandate that nursing homes receiving federal funds provide residents with a homelike environment. The legislature finds that certain ethnic minorities have special cultural, language, dietary, and other needs not generally met by existing nursing homes which are intended to serve the general population. Accordingly, the legislature further finds that there is a need to foster the development of nursing homes designed to serve the special cultural, language, dietary, and other needs of ethnic minorities.

(2) The department shall establish a separate pool of no more than two hundred fifty beds for nursing homes designed to serve the special needs of ethnic minorities. The pool shall be made up of nursing home beds that become available on or after March 15, 1991, due to:

(a) Loss of license or reduction in licensed bed capacity if the beds are not otherwise obligated for replacement; or

(b) Expiration of a certificate of need.

(3) The department shall develop procedures for the fair and efficient award of beds from the special pool. In making its decisions regarding the award of beds from the pool, the department shall consider at least the following:

(a) The relative degree to which the long-term care needs of an ethnic minority are not otherwise being met;

(b) The percentage of low-income persons who would be served by the proposed nursing home;

(c) The financial feasibility of the proposed nursing home; and

(d) The impact of the proposal on the area's total need for nursing home beds.

(4) To be eligible to apply for or receive an award of beds from the special pool, an application must be to build a new nursing home, or add beds to a nursing home, that:

(a) Will be owned and operated by a nonprofit corporation, and at least fifty percent of the board of directors of the corporation are members of the ethnic minority the nursing home is intended to serve;

(b) Will be designed, managed, and administered to serve the special cultural, language, dietary, and other needs of an ethnic minority; and

(c) Will not discriminate in admissions against persons who are not members of the ethnic minority whose special needs the nursing home is designed to serve.

(5) If a nursing home or portion of a nursing home that is built as a result of an award from the special pool is sold or leased within ten years to a party not eligible under subsection (4) of this section:

(a) The purchaser or lessee may not operate those beds as nursing home beds without first obtaining a certificate of need for new beds under this chapter; and

(b) The beds that had been awarded from the special pool shall be returned to the special pool.

(6) The department shall initially award up to one hundred beds before that number of beds are actually in the special pool, provided that the number of beds so awarded are subtracted from the total of two hundred fifty beds that can be awarded from the special pool. [1991 c 271 § 1.]

70.38.230 Residential hospice care centers—Defined—Change in bed capacity—Applicability of chapter. (1) A change in bed capacity at a residential hospice care center shall not be subject to certificate of need review under this chapter if the department determined prior to June 1994 that the construction, development, or other establishment of the residential hospice care center was not subject to certificate of need review under this chapter.

(2) For purposes of this section, a "residential hospice care center" means any building, facility, place, or equivalent that opened in December 1996 and is organized, maintained, and operated specifically to provide beds, accommodations, facilities, and services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease that is expected to lead to death. [1998 c 322 § 50.]

Severability—1998 c 322: See RCW 74.46.907.

70.38.250 Redistribution and addition of beds—Determination. (1) The need for projects identified in *RCW 70.38.240 shall be determined using the individual planning area's estimated nursing home bed need ratio and includes but is not limited to the following criteria:

(a) The current capacity of nursing homes and other long-term care services;

(b) The occupancy rates of nursing homes and other long-term care services over the previous two-year period; and

(c) The ability of the other long-term care services to serve all people regardless of payor source.

(2) For the purposes of this section, nursing home beds include long-term care units or distinct part long-term care units located in a hospital that is licensed under chapter 70.41 RCW. [1999 c 376 § 2.]

***Reviser's note:** RCW 70.38.240 expired June 30, 2004.

Effective date—1999 c 376: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 376 § 4.]

70.38.905 Conflict with federal law—Construction. In any case where the provisions of this chapter may directly (2008 Ed.)

conflict with federal law, or regulations promulgated thereunder, the federal law shall supersede and be paramount as necessary to the receipt of federal funds by the state. [1983 c 235 § 12; 1979 ex.s. c 161 § 16.]

70.38.910 Severability—1983 c 235; 1979 ex.s. c 161. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1983 c 235 § 13; 1979 ex.s. c 161 § 17.]

70.38.911 Severability—1980 c 139. If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 139 § 12.]

70.38.912 Severability—1989 1st ex.s. c 9. See RCW 43.70.920.

70.38.914 Pending certificates of need—1983 c 235. A certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to *the effective date of this act, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to *the effective date of this act, and the rules adopted thereunder. [1983 c 235 § 14.]

***Reviser's note:** For "the effective date of this act," see note following RCW 70.38.157.

70.38.915 Effective dates—Pending certificates of need—1979 ex.s. c 161. (1) *Sections 10, 11, 12, and 21 shall take effect on January 1, 1980.

(2) Any certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to January 1, 1980, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to **the effective date of this 1979 act, and the regulations adopted thereunder. [1979 ex.s. c 161 § 19.]

Reviser's note: *(1) Sections 10, 11, and 12 are codified as RCW 70.38.105, 70.38.115, and 70.38.125. Section 21 was a repealer which repealed RCW 70.38.020, 70.38.110 through 70.38.190, and 70.38.210.

** (2) The effective date of those remaining sections of 1979 ex.s. c 161 which do not have a specific effective date indicated in this section is September 1, 1979.

70.38.916 Effective date—1980 c 139. *Sections 7, 8, and 10 of this 1980 act shall take effect January 1, 1981. [1980 c 139 § 14.]

Reviser's note: *(1) "Sections 7, 8, and 10 of this 1980 act" consist of amendments to RCW 70.38.105, 70.38.115, and 70.38.125.

(2) The effective date of those remaining sections of 1980 c 139 is June 12, 1980.

70.38.917 Effective date—1989 1st ex.s. c 9. See RCW 43.70.910.

70.38.918 Effective dates—Pending certificates of need—1989 1st ex.s. c 9. Any certificate of need application which was submitted and declared complete, but upon which

final action had not been taken prior to July 1, 1989, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to July 1, 1989, and the rules adopted thereunder. [1989 1st ex.s. c 9 § 609.]

70.38.920 Short title. This act may be cited as the "State Health Planning and Resources Development Act". [1979 ex.s. c 161 § 22.]

Chapter 70.40 RCW

HOSPITAL AND MEDICAL FACILITIES SURVEY AND CONSTRUCTION ACT

Sections

70.40.005	Transfer of duties to the department of health.
70.40.010	Short title.
70.40.020	Definitions.
70.40.030	Section of hospital and medical facility survey and construction established—Duties.
70.40.040	General duties of the secretary.
70.40.060	Development of program for construction of facilities needed.
70.40.070	Distribution of facilities.
70.40.080	Federal funds—Application for—Deposit, use.
70.40.090	State plan—Publication—Hearing—Approval by surgeon general—Modifications.
70.40.100	Plan shall provide for construction in order of relative needs.
70.40.110	Minimum standards for maintenance and operation.
70.40.120	Applications for construction projects—Diagnostic, treatment centers.
70.40.130	Hearing—Approval.
70.40.140	Inspection of project under construction—Certification as to federal funds due.
70.40.150	Hospital and medical facility construction fund—Deposits, use.
70.40.900	Severability—1949 c 197.

70.40.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 248.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.40.010 Short title. This chapter may be cited as the "Washington Hospital and Medical Facilities Survey and Construction Act." [1959 c 252 § 1; 1949 c 197 § 1; Rem. Supp. 1949 § 6090-60.]

70.40.020 Definitions. As used in this chapter:

- (1) "Secretary" means the secretary of the state department of health;
- (2) "The federal act" means Title VI of the public health service act, as amended, or as hereafter amended by congress;
- (3) "The surgeon general" means the surgeon general of the public health service of the United States;
- (4) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;
- (5) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers;

(6) "Nonprofit hospital" and "nonprofit medical facility" means any hospital or medical facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(7) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act. [1991 c 3 § 331; 1979 c 141 § 96; 1959 c 252 § 2; 1949 c 197 § 2; Rem. Supp. 1949 § 6090-61.]

70.40.030 Section of hospital and medical facility survey and construction established—Duties. There is hereby established in the state department of health a "section of hospital and medical facility survey and construction" which shall be administered by a full time salaried head under the supervision and direction of the secretary. The state department of health, through such section, shall constitute the sole agency of the state for the purpose of:

(1) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital and medical facility construction; and

(2) Developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in this chapter. [1991 c 3 § 332; 1979 c 141 § 97; 1959 c 252 § 3; 1949 c 197 § 3; Rem. Supp. 1949 § 6090-62.]

70.40.040 General duties of the secretary. In carrying out the purposes of the chapter the secretary is authorized and directed:

(1) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(2) To provide such methods of administration, appoint a head and other personnel of the section and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(3) To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee for service basis and do not involve the performance of administrative duties;

(4) To the extent that he considers desirable to effectuate the purposes of this chapter, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions public or private;

(5) To accept on behalf of the state and to deposit with the state treasurer, any grant, gift, or contribution made to assist in meeting the cost of carrying out the purposes of this chapter, and to expend the same for such purpose; and

(6) To make an annual report to the governor on activities pursuant to this chapter, including recommendations for such additional legislation as the secretary considers appropriate to furnish adequate hospital and medical facilities to the people of this state. [1979 c 141 § 98; 1977 c 75 § 83; 1959 c 252 § 4; 1949 c 197 § 4; Rem. Supp. 1949 § 6090-63.]

70.40.060 Development of program for construction of facilities needed. The secretary is authorized and directed to make an inventory of existing hospitals and medical facilities, including public nonprofit and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and medical facility services to all the people of the state. [1979 c 141 § 99; 1959 c 252 § 6; 1949 c 197 § 6; Rem. Supp. 1949 § 6090-65.]

70.40.070 Distribution of facilities. The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital and medical facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility service reasonably accessible to all persons in the state. [1959 c 252 § 7; 1949 c 197 § 7; Rem. Supp. 1949 § 6090-66.]

70.40.080 Federal funds—Application for—Deposit, use. The secretary is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited with the state treasurer and shall be available to the secretary for expenditure in carrying out the purposes of this part. Any such funds received and not expended for such purposes shall be repaid to the treasurer of the United States. [1979 c 141 § 100; 1949 c 197 § 8; Rem. Supp. 1949 § 6090-67.]

70.40.090 State plan—Publication—Hearing—Approval by surgeon general—Modifications. The secretary shall prepare and submit to the surgeon general a state plan which shall include the hospital and medical facility construction program developed under this chapter and which shall provide for the establishment, administration, and operation of hospital and medical facility construction activities in accordance with the requirements of the federal act and the regulations thereunder. The secretary shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the secretary shall publish a general description of the provisions thereof in at least one newspaper having general circulation in the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The secretary shall from time to time review the hospital and medical facility construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal act, as he may deem

advisable. [1979 c 141 § 101; 1959 c 252 § 8; 1949 c 197 § 9; Rem. Supp. 1949 § 6090-68.]

70.40.100 Plan shall provide for construction in order of relative needs. The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need. [1949 c 197 § 11; Rem. Supp. 1949 § 6090-70.]

70.40.110 Minimum standards for maintenance and operation. The secretary shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and medical facilities which receive federal aid for construction under the state plan. [1979 c 141 § 102; 1959 c 252 § 9; 1949 c 197 § 10; Rem. Supp. 1949 § 6090-69.]

70.40.120 Applications for construction projects—Diagnostic, treatment centers. Applications for hospital and medical facility construction projects for which federal funds are requested shall be submitted to the secretary and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or medical facility: PROVIDED, That except as may be permitted by federal law no application for a diagnostic or treatment center shall be approved unless the applicant is (1) a state, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital. Each application for a construction project shall conform to federal and state requirements. [1979 c 141 § 103; 1959 c 252 § 10; 1949 c 197 § 12; Rem. Supp. 1949 § 6090-71.]

70.40.130 Hearing—Approval. The secretary shall afford to every applicant for a construction project an opportunity for a fair hearing. If the secretary, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of RCW 70.40.120 and is otherwise in conformity with the state plan, he shall approve such application and shall recommend and forward it to the surgeon general. [1979 c 141 § 104; 1949 c 197 § 13; Rem. Supp. 1949 § 6090-72.]

70.40.140 Inspection of project under construction—Certification as to federal funds due. From time to time the secretary shall inspect each construction project approved by the surgeon general, and, if the inspection so warrants, the secretary shall certify to the surgeon general that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant. [1979 c 141 § 105; 1949 c 197 § 14; Rem. Supp. 1949 § 6090-73.]

70.40.150 Hospital and medical facility construction fund—Deposits, use. The secretary is hereby authorized to

receive federal funds in behalf of, and transmit them to, such applicants or to approve applicants for federal funds and authorize the payment of such funds directly to such applicants as may be allowed by federal law. To achieve that end there is hereby established, separate and apart from all public moneys and funds of this state, a trust fund to be known as the "hospital and medical facility construction fund", of which the state treasurer shall ex officio be custodian. Moneys received from the federal government for construction projects approved by the surgeon general shall be deposited to the credit of this fund, shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Vouchers covering all payments from the hospital and medical facility construction fund shall be prepared by the department of health and shall bear the signature of the secretary or his or her duly authorized agent for such purpose, and warrants therefor shall be signed by the state treasurer. [1991 c 3 § 333; 1973 c 106 § 31; 1959 c 252 § 11; 1949 c 197 § 15; Rem. Supp. 1949 § 6090-74.]

70.40.900 Severability—1949 c 197. If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1949 c 197 § 16; no RRS.]

Chapter 70.41 RCW

HOSPITAL LICENSING AND REGULATION

Sections

70.41.005	Transfer of duties to the department of health.
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70.41.020	Definitions.
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70.41.420	Nurse staffing committee.
70.41.900	Severability—1955 c 267.

Actions for negligence against hospitals, evidence and proof required to prevail: RCW 4.24.290.

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Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

Records of hospital committee or board, immunity from process: RCW 4.24.250.

Standards and procedures for hospital staff membership or privileges: Chapter 70.43 RCW.

70.41.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 249.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.41.010 Declaration of purpose. The primary purpose of this chapter is to promote safe and adequate care of individuals in hospitals through the development, establishment and enforcement of minimum hospital standards for maintenance and operation. To accomplish these purposes, this chapter provides for:

- (1) The licensing and inspection of hospitals;
- (2) The establishment of a Washington state hospital advisory council;
- (3) The establishment by the department of standards, rules and regulations for the construction, maintenance and operation of hospitals;
- (4) The enforcement by the department of the standards, rules, and regulations established under this chapter. [1985 c 213 § 15; 1979 c 141 § 106; 1955 c 267 § 1.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.020 Definitions. Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

(1) "Department" means the Washington state department of health.

(2) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

(3) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including but not limited to administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

(4) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations.

(5) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(6) "Secretary" means the secretary of health.

(7) "Sexual assault" has the same meaning as in RCW 70.125.030.

(8) "Victim of sexual assault" means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient. [2002 c 116 § 2; 1991 c 3 § 334; 1985 c 213 § 16; 1971 ex.s. c 189 § 8; 1955 c 267 § 2.]

Findings—2002 c 116: See note following RCW 70.41.350.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.030 Standards and rules. The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of

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hospitals, and rescind, amend, or modify such rules from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. To the extent possible, the department shall endeavor to make such minimum standards and rules consistent in format and general content with the applicable hospital survey standards of the joint commission on the accreditation of health care organizations. The department shall adopt standards that are at least equal to recognized applicable national standards pertaining to medical gas piping systems. [1995 c 282 § 1; 1989 c 175 § 127; 1985 c 213 § 17; 1971 ex.s. c 189 § 9; 1955 c 267 § 3.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.040 Enforcement of chapter—Personnel—Merit system. The enforcement of the provisions of this chapter and the standards, rules and regulations established under this chapter, shall be the responsibility of the department which shall cooperate with the joint commission on the accreditation of health care organizations. The department shall advise on the employment of personnel and the personnel shall be under the merit system or its successor. [1995 c 282 § 3; 1985 c 213 § 18; 1955 c 267 § 4.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.045 Hospital surveys or audits—Frequent problems to be posted on agency web sites—Hospital evaluation of survey or audit, form—Notice. (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Agency" means a department of state government created under RCW 43.17.010 and the office of the state auditor.

(b) "Audit" means an examination of records or financial accounts to evaluate accuracy and monitor compliance with statutory or regulatory requirements.

(c) "Hospital" means a hospital licensed under chapter 70.41 RCW.

(d) "Survey" means an inspection, examination, or site visit conducted by an agency to evaluate and monitor the compliance of a hospital or hospital services or facilities with statutory or regulatory requirements.

(2) By July 1, 2004, each state agency which conducts hospital surveys or audits shall post to its agency web site a list of the most frequent problems identified in its hospital surveys or audits along with information on how to avoid or address the identified problems, and a person within the agency that a hospital may contact with questions or for further assistance.

(3) By July 1, 2004, the department of health, in cooperation with other state agencies which conduct hospital surveys or audits, shall develop an instrument, to be provided to every hospital upon completion of a state survey or audit, which allows the hospital to anonymously evaluate the survey or audit process in terms of quality, efficacy, and the extent to which it supported improved patient care and compliance with state law without placing an unnecessary admin-

istrative burden on the hospital. The evaluation may be returned to the department of health for distribution to the appropriate agency. The department of health shall annually compile the evaluations in a report to the legislature.

(4) Except when responding to complaints or immediate public health and safety concerns or when such prior notice would conflict with other state or federal law, any state agency that provides notice of a hospital survey or audit must provide such notice to the hospital no less than four weeks prior to the date of the survey or audit. [2004 c 261 § 2.]

70.41.080 Fire protection. Standards for fire protection and the enforcement thereof, with respect to all hospitals to be licensed hereunder shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt, after approval by the department, the recognized standards applicable to hospitals for the protection of life against the cause and spread of fire and fire hazards adopted by the federal centers for medicare and medicaid services for hospitals that care for medicare or medicaid beneficiaries. The standards used for an inspection of an existing hospital, or existing portion thereof, shall be standards for existing buildings and not standards for new construction. The department upon receipt of an application for a license, shall submit to the director of fire protection in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the hospital to be licensed during the department's inspection. If it is found that the premises do not comply with the required safety standards and fire regulations as adopted pursuant to this chapter, the director of fire protection, or his or her deputy, shall promptly make a written report to the department listing the corrective actions required. The department shall incorporate the written report into the department's final inspection report. The applicant or licensee shall submit corrections to comply with the fire protection standards along with any other licensing inspection corrections to the department. The department shall submit the section of the statement of corrections from the applicant or licensee regarding fire protection standards to the director of fire protection. If extensive and serious corrections are required, the director of fire protection, or his or her deputy, may reinspect the premises. The director of fire protection, or his or her deputy, shall utilize the scope and severity matrix developed by the centers for medicare and medicaid services when determining what corrections will require a reinspection. Whenever the hospital to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department, in a timely manner so the license will not be delayed, a written report approving the hospital with respect to fire protection, and such report is required before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such hospitals on average at least once every eighteen months. Inspections conducted by the joint commission on hospitals accredited by it shall be deemed equivalent to an inspection by the chief of the Washington state patrol, through the director of fire pro-

tection, for purposes of meeting the requirements for the inspections specified in this section.

The director of fire protection shall designate one lead deputy state fire marshal on a regional basis to provide consistency with each of the department's survey teams for the purpose of conducting the fire protection inspection during the department's licensing inspection. The director of fire protection shall ensure deputy state fire marshals are provided orientation with the department on the unique environment of hospitals before they conduct fire protection inspections in hospitals. The orientation shall include, but not be limited to: Clinical environment of hospitals; operating room environment; fire protection practices in hospitals; full participation in a complete licensing inspection of at least one urban hospital; and full participation in a complete licensing inspection of at least one rural hospital.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the code for hospitals adopted by the chief of the Washington state patrol, through the director of fire protection, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, through the director of fire protection, or his or her deputy and they shall jointly approve the premises before a full license can be issued. [2008 c 155 § 1; 2004 c 261 § 3; 1995 c 369 § 40; 1986 c 266 § 94; 1985 c 213 § 19; 1955 c 267 § 8.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

State fire protection: Chapter 43.44 RCW.

70.41.090 Hospital license required—Certificate of need required. (1) No person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, shall establish, maintain, or conduct a hospital in this state, or use the word "hospital" to describe or identify an institution, without a license under this chapter: PROVIDED, That the provisions of this section shall not apply to state mental institutions and psychiatric hospitals which come within the scope of chapter 71.12 RCW.

(2) After June 30, 1989, no hospital shall initiate a tertiary health service as defined in RCW 70.38.025(14) unless it has received a certificate of need as provided in RCW 70.38.105 and 70.38.115.

(3) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under this chapter may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be required to meet certificate of need requirements under chapter 70.38 RCW as a new health care facility and not be required to meet new construction requirements as a new hospital under this chapter. These exceptions are subject to the following: The facility at the time of initial conversion was considered by the department to be in compliance with the hospital licensing rules and the condition of

the physical plant and equipment is equal to or exceeds the level of compliance that existed at the time of conversion to a rural health care facility. The department shall inspect and determine compliance with the hospital rules prior to reissuing a hospital license.

A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of licensed beds, increase the number of beds licensed under this chapter to no more than the previously licensed number of beds without being subject to the provisions of chapter 70.38 RCW and without being required to meet new construction requirements under this chapter. These exceptions are subject to the following: The facility at the time of the reduction in licensed beds was considered by the department to be in compliance with the hospital licensing rules and the condition of the physical plant and equipment is equal to or exceeds the level of compliance that existed at the time of the reduction in licensed beds. The department may inspect and determine compliance with the hospital rules prior to increasing the hospital license. [1992 c 27 § 3; 1989 1st ex.s. c 9 § 611; 1955 c 267 § 9.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.41.100 Applications for licenses and renewals—

Fees. An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires which may include affirmative evidence of ability to comply with the standards, rules, and regulations as are lawfully prescribed hereunder. An application for renewal of license shall be made to the department upon forms provided by it and submitted thirty days prior to the date of expiration of the license. Each application for a license or renewal thereof by a hospital as defined by this chapter shall be accompanied by a fee as established by the department under RCW 43.20B.110. [1987 c 75 § 8; 1982 c 201 § 9; 1955 c 267 § 10.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

70.41.110 Licenses, provisional licenses—Issuance, duration, assignment, posting. Upon receipt of an application for license and the license fee, the department shall issue a license or a provisional license if the applicant and the hospital facilities meet the requirements of this chapter and the standards, rules and regulations established by the department. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department: PROVIDED, That no license issued pursuant to this chapter shall exceed thirty-six months in duration. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

If there be a failure to comply with the provisions of this chapter or the standards, rules and regulations promulgated pursuant thereto, the department may in its discretion issue to

an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the hospital for a period to be determined by the department. [1985 c 213 § 20; 1982 c 201 § 12; 1971 ex.s. c 247 § 3; 1955 c 267 § 11.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.115 Specialty hospitals—Licenses—Exemptions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(b) "General hospital" means a hospital that provides general acute care services, including emergency services.

(c) "Specialty hospital" means a subclass of hospital that is primarily or exclusively engaged in the care and treatment of one of the following categories: (i) Patients with a cardiac condition; (ii) patients with an orthopedic condition; (iii) patients receiving a surgical procedure; and (iv) any other specialized category of services that the secretary of health and human services designates as a specialty hospital.

(d) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a general hospital providing emergency services and for continuity of care for that patient.

(e) "Health service area" has the same meaning as in RCW 70.38.025.

(2) To be licensed under this chapter, a specialty hospital shall:

(a) Be significantly engaged in providing inpatient care;

(b) Comply with all standards and rules adopted by the department for hospitals;

(c) Provide appropriate discharge planning;

(d) Provide staff proficient in resuscitation and respiration maintenance twenty-four hours per day, seven days per week;

(e) Participate in the medicare and medicaid programs and provide at least the same percentage of services to medicare and medicaid beneficiaries, as a percent of gross revenues, as the lowest percentage of services provided to medicare and medicaid beneficiaries by a general hospital in the same health service area. The lowest percentage of services provided to medicare and medicaid beneficiaries shall be determined by the department in consultation with the general hospitals in the health service area but shall not be the percentage of medicare and medicaid services of a hospital that serves primarily members of a particular health plan or government sponsor;

(f) Provide at least the same percentage of charity care, as a percent of gross revenues, as the lowest percentage of

charity care provided by a general hospital in the same health service area. The lowest percentage of charity care shall be determined by the department in consultation with the general hospitals in the health service area but shall not be the percentage of charity care of a hospital that serves primarily members of a particular health plan or government sponsor;

(g) Require any physician owner to: (i) In accordance with chapter 19.68 RCW, disclose a financial interest in the specialty hospital and provide a list of alternative hospitals before referring a patient to the specialty hospital; and (ii) if the specialty hospital does not have an intensive care unit, notify the patient that if intensive care services are required, the patient will be transferred to another hospital;

(h) Provide emergency services twenty-four hours per day, seven days per week in a designated area of the hospital, and comply with requirements for emergency facilities that are established by the department;

(i) Establish procedures to stabilize a patient with an emergency medical condition until the patient is transported or transferred to another hospital if emergency services cannot be provided at the specialty hospital to meet the needs of the patient in an emergency, and maintain a transfer agreement with a general hospital in the same health service area that establishes a process for patient transfers in a situation in which the specialty hospital cannot provide continuing care for a patient because of the specialty hospital's scope of services and for the transfer of patients; and

(j) Accept the transfer of patients from general hospitals when the patients require the category of care or treatment provided by the specialty hospital.

(3) This section does not apply to:

(a) A specialty hospital that provides only psychiatric, pediatric, long-term acute care, cancer, or rehabilitative services; or

(b) A hospital that was licensed under this chapter before January 1, 2007. [2007 c 102 § 2.]

Finding—2007 c 102: "The legislature finds that specialty hospitals jeopardize the financial balance of community hospitals by selectively providing care to less ill patients, treating fewer medicare, medicaid, and uninsured patients, providing primarily care that is profitable to investors, and reducing community hospital staffing. To assure that private and public hospitals in Washington remain financially viable institutions able to provide general acute care in their communities and maintain the capacity to respond to local, state, and national emergencies, the legislature has concluded that specialty hospitals must meet certain conditions in order to be licensed. These conditions will ensure that specialty hospitals and community hospitals compete on a level playing field and, therefore, will minimize the adverse impacts of specialty hospitals on community general hospitals while assuring quality patient care." [2007 c 102 § 1.]

70.41.120 Inspection of hospitals—Alterations or additions, new facilities—Coordination with state and local agencies—Notice of inspection. The department shall make or cause to be made an inspection of all hospitals on average at least every eighteen months. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder. Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addi-

tion or new construction, comply with the regulations prescribed by the department.

No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals.

To avoid unnecessary duplication in inspections, the department shall coordinate with the department of social and health services, the office of the state fire marshal, and local agencies when inspecting facilities over which each agency has jurisdiction, the facilities including but not necessarily being limited to hospitals with both acute care and skilled nursing or psychiatric nursing functions. The department shall notify the office of the state fire marshal and the relevant local agency at least four weeks prior to any inspection conducted under this section and invite their attendance at the inspection, and shall provide a copy of its inspection report to each agency upon completion. [2005 c 447 § 1; 2004 c 261 § 4; 1995 c 282 § 4; 1985 c 213 § 21; 1955 c 267 § 12.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.122 Exemption from RCW 70.41.120 for hospitals accredited by the joint commission on the accreditation of health care organizations or the American osteopathic association. Surveys conducted by the joint commission on the accreditation of health care organizations or the American osteopathic association on hospitals accredited by those bodies shall be deemed equivalent to a department survey for purposes of meeting the requirements for the survey specified in RCW 70.41.120 if the department determines that the applicable survey standards of the joint commission on the accreditation of health care organizations or the American osteopathic association are substantially equivalent to its own.

(1) Hospitals so surveyed shall provide to the department within thirty days of learning the result of a survey documentary evidence that the hospital has been certified as a result of a survey and the date of the survey.

(2) Hospitals shall make available to department surveyors the written reports of such surveys during department surveys, upon request. [2005 c 447 § 2; 1999 c 41 § 1; 1995 c 282 § 6.]

70.41.125 Hospital construction review process—Coordination with state and local agencies. (1) The department shall coordinate its hospital construction review process with other state and local agencies having similar review responsibilities, including the department of labor and industries, the office of the state fire marshal, and local building and fire officials. Inconsistencies or conflicts among the agencies shall be identified and eliminated. The department shall provide local agencies with relevant information derived from its construction review process.

(2) By September 1, 2004, the department shall report to the legislature regarding its implementation of subsection (1) of this section. [2004 c 261 § 5.]

70.41.130 Denial, suspension, revocation, modification of license—Procedure. The department is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 335; 1989 c 175 § 128; 1985 c 213 § 22; 1955 c 267 § 13.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.150 Denial, suspension, revocation of license—Disclosure of information. Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter, may be disclosed publicly, as permitted under chapter 42.56 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the hospital has received the resulting assessment report;

(2) Information regarding administrative action against the license shall, as requested, be disclosed after the hospital has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the hospital and the complainant that the complaint did not warrant an investigation. If requested, the individual complainant shall receive information on other like complaints that have been reported against the hospital; and

(4) Information disclosed pursuant to this section shall not disclose individual names. [2005 c 274 § 333; 2000 c 6 § 1; 1985 c 213 § 24; 1955 c 267 § 15.]

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

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.155 Duty to investigate patient well-being. Any complaint against a hospital and event notification required by the department that concerns patient well-being shall be investigated. [2000 c 6 § 2.]

70.41.160 Remedies available to department—Duty of attorney general. Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a hospital without a license under this law. [1985 c 213 § 25; 1955 c 267 § 16.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

(2008 Ed.)

70.41.170 Operating or maintaining unlicensed hospital or unapproved tertiary health service—Penalty. Any person operating or maintaining a hospital without a license under this chapter, or, after June 30, 1989, initiating a tertiary health service as defined in RCW 70.38.025(14) that is not approved under RCW 70.38.105 and 70.38.115, shall be guilty of a misdemeanor, and each day of operation of an unlicensed hospital or unapproved tertiary health service, shall constitute a separate offense. [1989 1st ex.s. c 9 § 612; 1955 c 267 § 17.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.41.180 Physicians' services. Nothing contained in this chapter shall in any way authorize the department to establish standards, rules and regulations governing the professional services rendered by any physician. [1985 c 213 § 26; 1955 c 267 § 18.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.190 Medical records of patients—Retention and preservation. Unless specified otherwise by the department, a hospital shall retain and preserve all medical records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a hospital ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The department shall by regulation define the type of records and the information required to be included in the medical records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW. [1985 c 213 § 27; 1975 1st ex.s. c 175 § 1.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

Medical records, disclosure: Chapter 70.02 RCW.

70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing. (Effective until July 1, 2009.) (1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved

in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable

patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se. [2007 c 261 § 3. Prior: 2005 c 291 § 3; 2005 c 33 § 7; 2004 c 145 § 3; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

Findings—2007 c 261: See note following RCW 43.70.056.

Findings—2005 c 33: See note following RCW 18.20.390.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.245.

Board of osteopathic medicine and surgery: Chapter 18.57 RCW.

Medical quality assurance commission: Chapter 18.71 RCW.

70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing. (Effective July 1, 2009.) (1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care

services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any

civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one

coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se. [2007 c 273 § 22; 2007 c 261 § 3. Prior: 2005 c 291 § 3; 2005 c 33 § 7; 2004 c 145 § 3; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

Reviser's note: This section was amended by 2007 c 261 § 3 and by 2007 c 273 § 22, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Finding—2007 c 261: See note following RCW 43.70.056.

Findings—2005 c 33: See note following RCW 18.20.390.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.245.

Board of osteopathic medicine and surgery: Chapter 18.57 RCW.

Medical quality assurance commission: Chapter 18.71 RCW.

70.41.210 Duty to report restrictions on health care practitioners' privileges based on unprofessional conduct—Penalty. (1) The chief administrator or executive officer of a hospital shall report to the department when the practice of a health care practitioner as defined in subsection (2) of this section is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the hospital that the health care practitioner has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care practitioner as defined in subsection (2) of this section while the practitioner is under investigation or the subject of a proceeding by the hospital regarding unprofessional conduct, or in return for the hospital not conducting such an investigation or proceeding or not taking action. The department will forward the report to the appropriate disciplining authority.

(2) The reporting requirements apply to the following health care practitioners: Pharmacists as defined in chapter 18.64 RCW; advanced registered nurse practitioners as defined in chapter 18.79 RCW; dentists as defined in chapter 18.32 RCW; naturopaths as defined in chapter 18.36A RCW;

optometrists as defined in chapter 18.53 RCW; osteopathic physicians and surgeons as defined in chapter 18.57 RCW; osteopathic physicians' assistants as defined in chapter 18.57A RCW; physicians as defined in chapter 18.71 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric physicians and surgeons as defined in chapter 18.22 RCW; and psychologists as defined in chapter 18.83 RCW.

(3) Reports made under subsection (1) of this section shall be made within fifteen days of the date: (a) A conviction, determination, or finding is made by the hospital that the health care practitioner has committed an action defined as unprofessional conduct under RCW 18.130.180; or (b) the voluntary restriction or termination of the practice of a health care practitioner, including his or her voluntary resignation, while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180 is accepted by the hospital.

(4) Failure of a hospital to comply with this section is punishable by a civil penalty not to exceed five hundred dollars.

(5) A hospital, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging the conviction, determination, finding, or report was not made in good faith, shall be entitled to recover the costs of litigation, including reasonable attorneys' fees.

(6) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify a hospital that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of charges, take informal action, or close the complaint without action against a practitioner. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by hospitals under subsection (1) of this section.

(7) The department shall not increase hospital license fees to carry out this section before July 1, 2008. [2008 c 134 § 14; 2005 c 470 § 1; 1994 sp.s. c 9 § 743; 1986 c 300 § 7.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.245.

Medical quality assurance commission: Chapter 18.71 RCW.

70.41.220 Duty to keep records of restrictions on practitioners' privileges—Penalty. Each hospital shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records shall be made available to the board within thirty days of a request and all information so gained shall remain confidential in accor-

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dance with RCW 70.41.200 and 70.41.230 and shall be protected from the discovery process. Failure of a hospital to comply with this section is punishable by [a] civil penalty not to exceed two hundred fifty dollars. [1986 c 300 § 8.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.245.

70.41.230 Duty of hospital to request information on physicians granted privileges. (1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from the physician and the physician shall provide the following information:

(a) The name of any hospital or facility with or at which the physician had or has any association, employment, privileges, or practice;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician deems appropriate;

(e) A waiver by the physician of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician that the information provided by the physician is accurate and complete.

(2) Prior to granting privileges or association to any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician had or has privileges, was associated, or was employed, the following information concerning the physician:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.71.0195.

(3) The medical quality assurance commission shall be advised within thirty days of the name of any physician denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(6) Hospitals shall be granted access to information held by the medical quality assurance commission and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [1994 sp.s. c 9 § 744; 1993 c 492 § 416; 1991 c 3 § 337; 1987 c 269 § 6; 1986 c 300 § 11.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.245.

Medical quality assurance commission: Chapter 18.71 RCW.

70.41.235 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited. A hospital that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the hospital, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board. [1995 c 64 § 3.]

70.41.240 Information regarding conversion of hospitals to nonhospital health care facilities. The department of health shall compile and make available to the public

information regarding medicare health care facility certification options available to hospitals licensed under this title that desire to convert to nonhospital health care facilities. The information provided shall include standards and requirements for certification and procedures for acquiring certification. [1991 c 3 § 338; 1988 c 207 § 3.]

Resources and staffing—1988 c 207: "The department of community development, department of trade and economic development, department of employment security, and department of social and health services are expected to use their present resources and staffing to carry out the requirements of this act." [1988 c 207 § 4.]

70.41.250 Cost disclosure to health care providers.

(1) The legislature finds that the spiraling costs of health care continue to surmount efforts to contain them, increasing at approximately twice the inflationary rate. The causes of this phenomenon are complex. By making physicians and other health care providers with hospital admitting privileges more aware of the cost consequences of health care services for consumers, these providers may be inclined to exercise more restraint in providing only the most relevant and cost-beneficial hospital services, with a potential for reducing the utilization of those services. The requirement of the hospital to inform physicians and other health care providers of the charges of the health care services that they order may have a positive effect on containing health costs. Further, the option of the physician or other health care provider to inform the patient of these charges may strengthen the necessary dialogue in the provider-patient relationship that tends to be diminished by intervening third-party payers.

(2) The chief executive officer of a hospital licensed under this chapter and the superintendent of a state hospital shall establish and maintain a procedure for disclosing to physicians and other health care providers with admitting privileges the charges of all health care services ordered for their patients. Copies of hospital charges shall be made available to any physician and/or other health care provider ordering care in hospital inpatient/outpatient services. The physician and/or other health care provider may inform the patient of these charges and may specifically review them. Hospitals are also directed to study methods for making daily charges available to prescribing physicians through the use of interactive software and/or computerized information thereby allowing physicians and other health care providers to review not only the costs of present and past services but also future contemplated costs for additional diagnostic studies and therapeutic medications. [1993 c 492 § 265.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.41.300 Long-term care—Definitions. "Cost-effective care" and "long-term care services," where used in RCW 70.41.310 and 70.41.320, shall have the same meaning as that given in *RCW 74.39A.008. [1995 1st sp.s. c 18 § 4.]

***Reviser's note:** RCW 74.39A.008 was repealed by 1997 c 392 § 530.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.41.310 Long-term care—Program information to be provided to hospitals—Information on options to be provided to patients. (1)(a) The department of social and health services, in consultation with hospitals and acute care facilities, shall promote the most appropriate and cost-effective use of long-term care services by developing and distributing to hospitals and other appropriate health care settings information on the various chronic long-term care programs that it administers directly or through contract. The information developed by the department of social and health services shall, at a minimum, include the following:

- (i) An identification and detailed description of each long-term care service available in the state;
- (ii) Functional, cognitive, and medicaid eligibility criteria that may be required for placement or admission to each long-term care service; and
- (iii) A long-term care services resource manual for each hospital, that identifies the long-term care services operating within each hospital's patient service area. The long-term care services resource manual shall, at a minimum, identify the name, address, and telephone number of each entity known to be providing long-term care services; a brief description of the programs or services provided by each of the identified entities; and the name or names of a person or persons who may be contacted for further information or assistance in accessing the programs or services at each of the identified entities.

(b) The information required in (a) of this subsection shall be periodically updated and distributed to hospitals by the department of social and health services so that the information reflects current long-term care service options available within each hospital's patient service area.

(2) To the extent that a patient will have continuing care needs, once discharged from the hospital setting, hospitals shall, during the course of the patient's hospital stay, promote each patient's family member's and/or legal representative's understanding of available long-term care service discharge options by, at a minimum:

- (a) Discussing the various and relevant long-term care services available, including eligibility criteria;
- (b) Making available, to patients, their family members, and/or legal representative, a copy of the most current long-term care services resource manual;
- (c) Responding to long-term care questions posed by patients, their family members, and/or legal representative;
- (d) Assisting the patient, their family members, and/or legal representative in contacting appropriate persons or entities to respond to the question or questions posed; and
- (e) Linking the patient and family to the local, state-designated aging and long-term care network to ensure effective transitions to appropriate levels of care and ongoing support.

[1995 1st sp.s. c 18 § 3.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.41.320 Long-term care—Patient discharge requirements for hospitals and acute care facilities—Pilot projects. (1) Hospitals and acute care facilities shall:

- (a) Work cooperatively with the department of social and health services, area agencies on aging, and local long-term care information and assistance organizations in the planning

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and implementation of patient discharges to long-term care services.

(b) Establish and maintain a system for discharge planning and designate a person responsible for system management and implementation.

(c) Establish written policies and procedures to:

- (i) Identify patients needing further nursing, therapy, or supportive care following discharge from the hospital;
- (ii) Develop a documented discharge plan for each identified patient, including relevant patient history, specific care requirements, and date such follow-up care is to be initiated;
- (iii) Coordinate with patient, family, caregiver, and appropriate members of the health care team;
- (iv) Provide any patient, regardless of income status, written information and verbal consultation regarding the array of long-term care options available in the community, including the relative cost, eligibility criteria, location, and contact persons;
- (v) Promote an informed choice of long-term care services on the part of patients, family members, and legal representatives; and

(vi) Coordinate with the department and specialized case management agencies, including area agencies on aging and other appropriate long-term care providers, as necessary, to ensure timely transition to appropriate home, community residential, or nursing facility care.

(d) Work in cooperation with the department which is responsible for ensuring that patients eligible for medicaid long-term care receive prompt assessment and appropriate service authorization.

(2) In partnership with selected hospitals, the department of social and health services shall develop and implement pilot projects in up to three areas of the state with the goal of providing information about appropriate in-home and community services to individuals and their families early during the individual's hospital stay.

The department shall not delay hospital discharges but shall assist and support the activities of hospital discharge planners. The department also shall coordinate with home health and hospice agencies whenever appropriate. The role of the department is to assist the hospital and to assist patients and their families in making informed choices by providing information regarding home and community options.

In conducting the pilot projects, the department shall:

- (a) Assess and offer information regarding appropriate in-home and community services to individuals who are medicaid clients or applicants; and
- (b) Offer assessment and information regarding appropriate in-home and community services to individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility. [1998 c 245 § 127; 1995 1st sp.s. c 18 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.41.330 Hospital complaint toll-free telephone number. Every hospital shall post in conspicuous locations a notice of the department's hospital complaint toll-free telephone number. The form of the notice shall be approved by the department. [2000 c 6 § 4.]

70.41.340 Investigation of hospital complaints—

Rules. The department is authorized to adopt rules necessary to implement RCW 70.41.150, 70.41.155, and 70.41.330. [2000 c 6 § 6.]

70.41.350 Emergency care provided to victims of sexual assault—Development of informational materials on emergency contraception—Rules. (1) Every hospital providing emergency care to a victim of sexual assault shall:

(a) Provide the victim with medically and factually accurate and unbiased written and oral information about emergency contraception;

(b) Orally inform each victim of sexual assault of her option to be provided emergency contraception at the hospital; and

(c) If not medically contraindicated, provide emergency contraception immediately at the hospital to each victim of sexual assault who requests it.

(2) The secretary, in collaboration with community sexual assault programs and other relevant stakeholders, shall develop, prepare, and produce informational materials relating to emergency contraception for the prevention of pregnancy in rape victims for distribution to and use in all emergency rooms in the state, in quantities sufficient to comply with the requirements of this section. The secretary, in collaboration with community sexual assault programs and other relevant stakeholders, may also approve informational materials from other sources for the purposes of this section. The informational materials must be clearly written and readily comprehensible in a culturally competent manner, as the secretary, in collaboration with community sexual assault programs and other relevant stakeholders, deems necessary to inform victims of sexual assault. The materials must explain the nature of emergency contraception, including that it is effective in preventing pregnancy, treatment options, and where they can be obtained.

(3) The secretary shall adopt rules necessary to implement this section. [2002 c 116 § 3.]

Findings—2002 c 116: "(1) The legislature finds that:

(a) Each year, over three hundred thousand women are sexually assaulted in the United States;

(b) Nationally, over thirty-two thousand women become pregnant each year as a result of sexual assault. Approximately fifty percent of these pregnancies end in abortion;

(c) Approximately thirty-eight percent of women in Washington are sexually assaulted over the course of their lifetime. This is twenty percent more than the national average;

(d) Only fifteen percent of sexual assaults in Washington are reported; however, even the numbers of reported attacks are staggering. For example, last year, two thousand six hundred fifty-nine rapes were reported in Washington, this is more than seven rapes per day.

(2) The legislature deems it essential that all hospital emergency rooms provide emergency contraception as a treatment option to any woman who seeks treatment as a result of a sexual assault." [2002 c 116 § 1.]

70.41.360 Emergency care provided to victims of sexual assault—Department to respond to violations—Task force. The department must respond to complaints of violations of RCW 70.41.350. The department shall convene a task force, composed of representatives from community sexual assault programs and other relevant stakeholders including advocacy agencies, medical agencies, and hospital associations, to provide input into the development and eval-

uation of the education materials and rule development. The task force shall expire on January 1, 2004. [2002 c 116 § 4.]

Findings—2002 c 116: See note following RCW 70.41.350.

70.41.370 Investigation of complaints of violations concerning nursing technicians. The department shall investigate complaints of violations of RCW 18.79.350 and 18.79.360 by an employer. The department shall maintain records of all employers that have violated RCW 18.79.350 and 18.79.360. [2003 c 258 § 8.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

70.41.380 Notice of unanticipated outcomes. Hospitals shall have in place policies to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgement or admission of liability, nor can the fact of notification, the content disclosed, or any and all statements, affirmations, gestures, or conduct expressing apology be introduced as evidence in a civil action. [2005 c 118 § 1.]

Policy to be in place beginning January 1, 2006—2005 c 118: "Beginning January 1, 2006, the department shall, during the survey of a hospital, ensure that the policy required in RCW 70.41.380 is in place." [2005 c 118 § 2.]

70.41.390 Safe patient handling. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(b) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistive devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring, and repositioning health care patients and residents.

(c) "Musculoskeletal disorders" means conditions that involve the nerves, tendons, muscles, and supporting structures of the body.

(2) By February 1, 2007, each hospital must establish a safe patient handling committee either by creating a new committee or assigning the functions of a safe patient handling committee to an existing committee. The purpose of the committee is to design and recommend the process for implementing a safe patient handling program. At least half of the members of the safe patient handling committee shall be frontline nonmanagerial employees who provide direct care to patients unless doing so will adversely affect patient care.

(3) By December 1, 2007, each hospital must establish a safe patient handling program. As part of this program, a hospital must:

(a) Implement a safe patient handling policy for all shifts and units of the hospital. Implementation of the safe patient handling policy may be phased-in with the acquisition of equipment under subsection (4) of this section;

(b) Conduct a patient handling hazard assessment. This assessment should consider such variables as patient-han-

dling tasks, types of nursing units, patient populations, and the physical environment of patient care areas;

(c) Develop a process to identify the appropriate use of the safe patient handling policy based on the patient's physical and medical condition and the availability of lifting equipment or lift teams. The policy shall include a means to address circumstances under which it would be medically contraindicated to use lifting or transfer aids or assistive devices for particular patients;

(d) Conduct an annual performance evaluation of the program to determine its effectiveness, with the results of the evaluation reported to the safe patient handling committee. The evaluation shall determine the extent to which implementation of the program has resulted in a reduction in musculoskeletal disorder claims and days of lost work attributable to musculoskeletal disorder caused by patient handling, and include recommendations to increase the program's effectiveness; and

(e) When developing architectural plans for constructing or remodeling a hospital or a unit of a hospital in which patient handling and movement occurs, consider the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

(4) By January 30, 2010, each hospital must complete, at a minimum, acquisition of their choice of: (a) One readily available lift per acute care unit on the same floor unless the safe patient handling committee determines a lift is unnecessary in the unit; (b) one lift for every ten acute care available inpatient beds; or (c) equipment for use by lift teams. Hospitals must train staff on policies, equipment, and devices at least annually.

(5) Nothing in this section precludes lift team members from performing other duties as assigned during their shift.

(6) A hospital shall develop procedures for hospital employees to refuse to perform or be involved in patient handling or movement that the hospital employee believes in good faith will expose a patient or a hospital employee to an unacceptable risk of injury. A hospital employee who in good faith follows the procedure developed by the hospital in accordance with this subsection shall not be the subject of disciplinary action by the hospital for the refusal to perform or be involved in the patient handling or movement. [2006 c 165 § 2.]

Findings—2006 c 165: "The legislature finds that:

(1) Patients are not at optimum levels of safety while being lifted, transferred, or repositioned manually. Mechanical lift programs can reduce skin tears suffered by patients by threefold. Nurses, thirty-eight percent of whom have previous back injuries, can drop patients if their pain thresholds are triggered.

(2) According to the bureau of labor statistics, hospitals in Washington have a nonfatal employee injury incidence rate that exceeds the rate of construction, agriculture, manufacturing, and transportation.

(3) The physical demands of the nursing profession lead many nurses to leave the profession. Research shows that the annual prevalence rate for nursing back injury is over forty percent and many nurses who suffer a back injury do not return to nursing. Considering the present nursing shortage in Washington, measures must be taken to protect nurses from disabling injury.

(4) Washington hospitals have made progress toward implementation of safe patient handling programs that are effective in decreasing employee injuries. It is not the intent of this act to place an undue financial burden on hospitals." [2006 c 165 § 1.]

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70.41.400 Patient billing—Written statement describing who may be billing the patient required—Contact phone numbers—Exceptions. (1) Prior to or upon discharge, a hospital must furnish each patient receiving inpatient services a written statement providing a list of physician groups and other professional partners that commonly provide care for patients at the hospital and from whom the patient may receive a bill, along with contact phone numbers for those groups. The statement must prominently display a phone number that a patient can call for assistance if the patient has any questions about any of the bills they receive after discharge that relate to their hospital stay.

(2) This section does not apply to any hospital owned or operated by a health maintenance organization under chapter 48.46 RCW when providing prepaid health care services to enrollees of the health maintenance organization or any of its wholly owned subsidiary carriers. [2006 c 60 § 2.]

Findings—Intent—2006 c 60: "The legislature finds that the implementation of health information technologies in hospitals, including electronic medical records, has the potential to significantly reduce cost, improve patient outcomes, and simplify the administration of health care. Further, the legislature finds that the number of and complexity of the bills that result from a hospital stay can be confusing to patients. Therefore, it is the intent of the legislature to encourage hospitals to design the implementation of health information technologies so as to allow the hospital to provide the patient, prior to or upon discharge, clearly understandable information about the services provided during the hospital stay, and the bills the patient is likely to receive related to each of those services. Recognizing that complete implementation of the technologies required to achieve this goal will take a number of years, the legislature intends to require that hospitals immediately begin working toward the goal by compiling and communicating information to assist patients in understanding their bills." [2006 c 60 § 1.]

70.41.410 Nurse staffing committee—Definitions. The definitions in this section apply throughout this section and RCW 70.41.420 unless the context clearly requires otherwise.

(1) "Hospital" has the same meaning as defined in RCW 70.41.020, and also includes state hospitals as defined in RCW 72.23.010.

(2) "Intensity" means the level of patient need for nursing care, as determined by the nursing assessment.

(3) "Nursing personnel" means registered nurses, licensed practical nurses, and unlicensed assistive nursing personnel providing direct patient care.

(4) "Nurse staffing committee" means the committee established by a hospital under RCW 70.41.420.

(5) "Patient care unit" means any unit or area of the hospital that provides patient care by registered nurses.

(6) "Skill mix" means the number and relative percentages of registered nurses, licensed practical nurses, and unlicensed assistive personnel among the total number of nursing personnel. [2008 c 47 § 2.]

Findings—Intent—2008 c 47: "(1) The legislature finds that:

(a) Research evidence demonstrates that registered nurses play a critical role in patient safety and quality of care. The ever-worsening shortage of nurses available to provide care in acute care hospitals has necessitated multiple strategies to generate more nurses and improve the recruitment and retention of nurses in hospitals; and

(b) Evidence-based nurse staffing that can help ensure quality and safe patient care while increasing nurse satisfaction in the work environment is key to solving an urgent public health issue in Washington state. Hospitals and nursing organizations recognize a mutual interest in patient safety initiatives that create a healthy environment for nurses and safe care for patients.

(2) In order to protect patients and to support greater retention of registered nurses, and to promote evidence-based nurse staffing, the legislature

intends to establish a mechanism whereby direct care nurses and hospital management shall participate in a joint process regarding decisions about nurse staffing." [2008 c 47 § 1.]

70.41.420 Nurse staffing committee. (1) By September 1, 2008, each hospital shall establish a nurse staffing committee, either by creating a new committee or assigning the functions of a nurse staffing committee to an existing committee. At least one-half of the members of the nurse staffing committee shall be registered nurses currently providing direct patient care and up to one-half of the members shall be determined by the hospital administration. The selection of the registered nurses providing direct patient care shall be according to the collective bargaining agreement if there is one in effect at the hospital. If there is no applicable collective bargaining agreement, the members of the nurse staffing committee who are registered nurses providing direct patient care shall be selected by their peers.

(2) Participation in the nurse staffing committee by a hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. Nurse staffing committee members shall be relieved of all other work duties during meetings of the committee.

(3) Primary responsibilities of the nurse staffing committee shall include:

(a) Development and oversight of an annual patient care unit and shift-based nurse staffing plan, based on the needs of patients, to be used as the primary component of the staffing budget. Factors to be considered in the development of the plan should include, but are not limited to:

(i) Census, including total numbers of patients on the unit on each shift and activity such as patient discharges, admissions, and transfers;

(ii) Level of intensity of all patients and nature of the care to be delivered on each shift;

(iii) Skill mix;

(iv) Level of experience and specialty certification or training of nursing personnel providing care;

(v) The need for specialized or intensive equipment;

(vi) The architecture and geography of the patient care unit, including but not limited to placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment; and

(vii) Staffing guidelines adopted or published by national nursing professional associations, specialty nursing organizations, and other health professional organizations;

(b) Semiannual review of the staffing plan against patient need and known evidence-based staffing information, including the nursing sensitive quality indicators collected by the hospital;

(c) Review, assessment, and response to staffing concerns presented to the committee.

(4) In addition to the factors listed in subsection (3)(a) of this section, hospital finances and resources may be taken into account in the development of the nurse staffing plan.

(5) The staffing plan must not diminish other standards contained in state or federal law and rules, or the terms of an applicable collective bargaining agreement, if any, between the hospital and a representative of the nursing staff.

(6) The committee will produce the hospital's annual nurse staffing plan. If this staffing plan is not adopted by the

hospital, the chief executive officer shall provide a written explanation of the reasons why to the committee.

(7) Each hospital shall post, in a public area on each patient care unit, the nurse staffing plan and the nurse staffing schedule for that shift on that unit, as well as the relevant clinical staffing for that shift. The staffing plan and current staffing levels must also be made available to patients and visitors upon request.

(8) A hospital may not retaliate against or engage in any form of intimidation of:

(a) An employee for performing any duties or responsibilities in connection with the nurse staffing committee; or

(b) An employee, patient, or other individual who notifies the nurse staffing committee or the hospital administration of his or her concerns on nurse staffing.

(9) This section is not intended to create unreasonable burdens on critical access hospitals under 42 U.S.C. Sec. 1395i-4. Critical access hospitals may develop flexible approaches to accomplish the requirements of this section that may include but are not limited to having nurse staffing committees work by telephone or electronic mail. [2008 c 47 § 3.]

Findings—Intent—2008 c 47: See note following RCW 70.41.410.

70.41.900 Severability—1955 c 267. If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part can then be administered for the purpose of establishing and maintaining standards for hospitals. [1955 c 267 § 21.]

Chapter 70.42 RCW MEDICAL TEST SITES

Sections

70.42.005	Intent—Construction.
70.42.010	Definitions.
70.42.020	License required.
70.42.030	Waiver of license—Conditions.
70.42.040	Sites approved under federal law—Automatic licensure.
70.42.050	Permission to perform tests not covered by license—License amendment.
70.42.060	Quality control, quality assurance, recordkeeping, and personnel standards.
70.42.070	Proficiency testing program.
70.42.080	Test site supervisor.
70.42.090	Fees—Account.
70.42.100	Applicants—Requirements.
70.42.110	Issuance of license—Renewal.
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70.42.190	Petition of superior court for review of disciplinary action.
70.42.200	Persons who may not own or operate test site.
70.42.210	Confidentiality of certain information.
70.42.220	Rules.
70.42.900	Effective dates—1989 c 386.

70.42.005 Intent—Construction. The legislature intends that medical test sites meet criteria known to promote accurate and reliable analysis, thus improving health care

through uniform test site licensure and regulation including quality control, quality assurance, and proficiency testing. The legislature also intends to meet the requirements of federal laws licensing and regulating medical testing.

The legislature intends that nothing in this chapter shall be interpreted to place any liability whatsoever on the state for the action or inaction of test sites or test site personnel. The legislature further intends that nothing in this chapter shall be interpreted to expand the state's role regarding medical testing beyond the provisions of this chapter. [1989 c 386 § 1.]

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

(1) "Department" means the *department of health if enacted, otherwise the department of social and health services.

(2) "Designated test site supervisor" means the available individual who is responsible for the technical functions of the test site and who meets the department's qualifications set out in rule by the department.

(3) "Person" means any individual, or any public or private organization, agent, agency, corporation, firm, association, partnership, or business.

(4) "Proficiency testing program" means an external service approved by the department which provides samples to evaluate the accuracy, reliability and performance of the tests at each test site.

(5) "Quality assurance" means a comprehensive set of policies, procedures, and practices to assure that a test site's results are accurate and reliable. Quality assurance means a total program of internal and external quality control, equipment preventative maintenance, calibration, recordkeeping, and proficiency testing evaluation, including a written quality assurance plan.

(6) "Quality control" means internal written procedures and day-to-day analysis of laboratory reference materials at each test site to insure precision and accuracy of test methodology, equipment, and results.

(7) "Test" means any examination or procedure conducted on a sample taken from the human body, including screening.

(8) "Test site" means any facility or site, public or private, which analyzes materials derived from the human body for the purposes of health care, treatment, or screening. A test site does not mean a facility or site, including a residence, where a test approved for home use by the federal food and drug administration is used by an individual to test himself or herself without direct supervision or guidance by another and where this test is not part of a commercial transaction. [1989 c 386 § 2.]

*Reviser's note: 1989 1st ex.s. c 14 created the department of health.

70.42.020 License required. After July 1, 1990, no person may advertise, operate, manage, own, conduct, open, or maintain a test site without first obtaining a license for the tests to be performed, except as provided in RCW 70.42.030. [1989 c 386 § 3.]

(2008 Ed.)

70.42.030 Waiver of license—Conditions. (1) As a part of the application for licensure, a test site may request a waiver from licensure under this chapter if the test site performs only examinations which are determined to have insignificant risk of an erroneous result, including those which (a) are approved by the federal food and drug administration for home use; (b) are so simple and accurate as to render the likelihood of erroneous results negligible; or (c) pose no reasonable risk of harm to the patient if performed incorrectly.

(2) The department shall determine by rule which tests meet the criteria in subsection (1) of this section and shall be exempt from coverage of this chapter. The standards applied in developing the list shall be consistent with federal law and regulations.

(3) The department shall grant a waiver from licensure for two years for a valid request based on subsections (1) and (2) of this section.

(4) Any test site which has received a waiver under subsection (3) of this section shall report to the department any changes in the type of tests it intends to perform thirty days in advance of the changes. In no case shall a test site with a waiver perform tests which require a license under this chapter. [1989 c 386 § 4.]

70.42.040 Sites approved under federal law—Automatic licensure. Test sites accredited, certified, or licensed by an organization or agency approved by the department consistent with federal law and regulations shall receive a license under RCW 70.42.110. [1989 c 386 § 5.]

70.42.050 Permission to perform tests not covered by license—License amendment. A licensee that desires to perform tests for which it is not currently licensed shall notify the department. To the extent allowed by federal law and regulations, upon notification and pending the department's determination, the department shall grant the licensee temporary permission to perform the additional tests. The department shall amend the license if it determines that the licensee meets all applicable requirements. [1989 c 386 § 6.]

70.42.060 Quality control, quality assurance, recordkeeping, and personnel standards. The department shall adopt standards established in rule governing test sites for quality control, quality assurance, recordkeeping, and personnel consistent with federal laws and regulations. "Recordkeeping" for purposes of this chapter means books, files, or records necessary to show compliance with the quality control and quality assurance requirements adopted by the department. [1989 c 386 § 7.]

70.42.070 Proficiency testing program. (1) Except where there is no reasonable proficiency test, each licensed test site must participate in a department-approved proficiency testing program appropriate to the test or tests which it performs. The department may approve proficiency testing programs offered by private or public organizations when the program meets the standards set by the department. Testing shall be conducted quarterly except as otherwise provided for in rule.

(2) The department shall establish proficiency testing standards by rule which include a measure of acceptable performance for tests, and a system for grading proficiency testing performance for tests. The standards may include an evaluation of the personnel performing tests. [1989 c 386 § 8.]

70.42.080 Test site supervisor. A test site shall have a designated test site supervisor who shall meet the qualifications determined by the department in rule. The designated test site supervisor shall be responsible for the testing functions of the test site. [1989 c 386 § 9.]

70.42.090 Fees—Account. (1) The department shall establish a schedule of fees for license applications, renewals, amendments, and waivers. In fixing said fees, the department shall set the fees at a sufficient level to defray the cost of administering the licensure program. All such fees shall be fixed by rule adopted in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. In determining the fee schedule, the department shall consider the following: (a) Complexity of the license required; (b) number and type of tests performed at the test site; (c) degree of supervision required from the department staff; (d) whether the license is granted under RCW 70.42.040; and (e) general administrative costs of the test site licensing program established under this chapter. For each category of license, fees charged shall be related to program costs.

(2) The medical test site licensure account is created in the state treasury. The state treasurer shall transfer into the medical test site licensure account all revenue received from medical test site license fees. Funds for this account may only be appropriated for the support of the activities defined under this chapter.

(3) The department may establish separate fees for repeat inspections and repeat audits it performs under RCW 70.42.170. [1989 c 386 § 10.]

70.42.100 Applicants—Requirements. An applicant for issuance or renewal of a medical test site license shall:

(1) File a written application on a form provided by the department;

(2) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(3) Cooperate with any on-site review which may be conducted by the department prior to licensure or renewal. [1989 c 386 § 11.]

70.42.110 Issuance of license—Renewal. Upon receipt of an application for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. All persons operating test sites before July 1, 1990, shall submit applications by July 1, 1990. A license issued under this chapter shall not be transferred or assigned without thirty days' prior notice to the department and the department's timely approval. A license, unless suspended or revoked, shall be effective for a period of two years. The department may establish penalty fees or take other appropriate action pursuant to this chapter for failure to apply for licensure or renewal as required by this chapter. [1989 c 386 § 12.]

70.42.120 Denial of license. Under this chapter, and chapter 34.05 RCW, the department may deny a license to any applicant who:

(1) Refuses to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Was the holder of a license under this chapter which was revoked for cause and never reissued by the department;

(3) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(4) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(5) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department; or

(6) Misrepresented, or was fraudulent in, any aspect of the applicant's business. [1989 c 386 § 13.]

70.42.130 Conditions upon license. Under this chapter, and chapter 34.05 RCW, the department may place conditions on a license which limit or cancel a test site's authority to conduct any of the tests or groups of tests of any licensee who:

(1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;

(5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter; or

(6) Misrepresented, or was fraudulent in, any aspect of the licensee's business. [1989 c 386 § 14.]

70.42.140 Suspension of license. Under this chapter, and chapter 34.05 RCW, the department may suspend the license of any licensee who:

(1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;

(5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter;

- (6) Misrepresented, or was fraudulent in, any aspect of the licensee's business;
- (7) Used false or fraudulent advertising; or
- (8) Failed to pay any civil monetary penalty assessed by the department under this chapter within twenty-eight days after the assessment becomes final. [1989 c 386 § 15.]

70.42.150 Revocation of license. Under this chapter, and chapter 34.05 RCW, the department may revoke the license of any licensee who:

- (1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;
- (2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;
- (3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;
- (4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;
- (5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter;
- (6) Misrepresented, or was fraudulent in, any aspect of the licensee's business;
- (7) Used false or fraudulent advertising; or
- (8) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within twenty-eight days after the assessment becomes final.

The department may summarily revoke a license when it finds continued licensure of a test site immediately jeopardizes the public health, safety, or welfare. [1989 c 386 § 16.]

70.42.160 Penalties—Acts constituting violations. Under this chapter, and chapter 34.05 RCW, the department may assess monetary penalties of up to ten thousand dollars per violation in addition to or in lieu of conditioning, suspending, or revoking a license. A violation occurs when a licensee:

- (1) Fails or refuses to comply with the requirements of this chapter or the standards or rules adopted under this chapter;
- (2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;
- (3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;
- (4) Willfully prevents, interferes with, or attempts to impede in any way the work of any representative of the department;
- (5) Willfully prevents or interferes with preservation of evidence of any known violation of this chapter or the rules adopted under this chapter;
- (6) Misrepresents or was fraudulent in any aspect of the applicant's business; or
- (7) Uses advertising which is false or fraudulent.

(2008 Ed.)

Each day of a continuing violation is a separate violation. [1989 c 386 § 17.]

70.42.170 On-site reviews. The department may at any time conduct an on-site review of a licensee or applicant in order to determine compliance with this chapter. When the department has reason to believe a waived site is conducting tests requiring a license, the department may conduct an on-site review of the waived site in order to determine compliance. The department may also examine and audit records necessary to determine compliance with this chapter. The right to conduct an on-site review and audit and examination of records shall extend to any premises and records of persons whom the department has reason to believe are opening, owning, conducting, maintaining, managing, or otherwise operating a test site without a license.

Following an on-site review, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the reasons for noncompliance and inform the licensee or applicant or test site operator that it shall comply within a specified reasonable time. If the licensee or applicant or test site operator fails to comply, the department may take disciplinary action under RCW 70.42.120 through 70.42.150, or further action as authorized by this chapter. [1989 c 386 § 18.]

70.42.180 Operating without a license—Injunctions or other remedies—Penalty. Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a test site without a license under this chapter. It is a misdemeanor to own, operate, or maintain a test site without a license. [1989 c 386 § 19.]

70.42.190 Petition of superior court for review of disciplinary action. Any test site which has had a denial, condition, suspension, or revocation of its license, or a civil monetary penalty upheld after administrative review under chapter 34.05 RCW, may, within sixty days of the administrative determination, petition the superior court for review of the decision. [1989 c 386 § 20.]

70.42.200 Persons who may not own or operate test site. No person who has owned or operated a test site that has had its license revoked may own or operate a test site within two years of the final adjudication of a license revocation. [1989 c 386 § 21.]

70.42.210 Confidentiality of certain information. All information received by the department through filed reports, audits, or on-site reviews, as authorized under this chapter shall not be disclosed publicly in any manner that would identify persons who have specimens of material from their bodies at a test site, absent a written release from the person, or a court order. [1989 c 386 § 22.]

70.42.220 Rules. The department shall adopt rules under chapter 34.05 RCW necessary to implement the purposes of this chapter. [1989 c 386 § 23.]

70.42.900 Effective dates—1989 c 386. (1) RCW 70.42.005 through 70.42.210 shall take effect July 1, 1990.

(2) RCW 70.42.220 is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989. [1989 c 386 § 25.]

Chapter 70.43 RCW

HOSPITAL STAFF MEMBERSHIP OR PRIVILEGES

Sections

- 70.43.010 Applications for membership or privileges—Standards and procedures.
- 70.43.020 Applications for membership or privileges—Discrimination based on type of license prohibited—Exception.
- 70.43.030 Violations of RCW 70.43.010 or 70.43.020—Injunctive relief.

70.43.010 Applications for membership or privileges—Standards and procedures. Within one hundred eighty days of June 11, 1986, the governing body of every hospital licensed under chapter 70.41 RCW shall set standards and procedures to be applied by the hospital and its medical staff in considering and acting upon applications for staff membership or professional privileges. [1986 c 205 § 1.]

70.43.020 Applications for membership or privileges—Discrimination based on type of license prohibited—Exception. The governing body of any hospital, except any hospital which employs its medical staff, in considering and acting upon applications for staff membership or professional privileges within the scope of the applicants' respective licenses, shall not discriminate against a qualified person solely on the basis of whether such person is licensed under chapters 18.71, 18.57, or 18.22 RCW. [1986 c 205 § 2.]

70.43.030 Violations of RCW 70.43.010 or 70.43.020—Injunctive relief. Any person may apply to superior court for a preliminary or permanent injunction restraining a violation of RCW 70.43.010 or 70.43.020. This action is an additional remedy not dependent on the adequacy of the remedy at law. Nothing in this chapter shall require a hospital to grant staff membership or professional privileges until a final determination is made upon the merits by the hospital governing body. [1986 c 205 § 3.]

Chapter 70.44 RCW

PUBLIC HOSPITAL DISTRICTS

Sections

- 70.44.003 Purpose.
- 70.44.007 Definitions.
- 70.44.010 Districts authorized.
- 70.44.015 Validation of existing districts.
- 70.44.016 Validation of districts.
- 70.44.020 Resolution—Petition for county-wide district—Conduct of elections.
- 70.44.028 Limitation on legal challenges.

- 70.44.030 Petition for lesser district—Procedure.
- 70.44.035 Petition for district lying in more than one county—Procedure.
- 70.44.040 Elections—Commissioners, terms, districts.
- 70.44.041 Validity of appointment or election of commissioners—Compliance with 1994 c 223.
- 70.44.042 Commissioner districts—Resolution to abolish—Proposition to reestablish.
- 70.44.045 Commissioners—Vacancies.
- 70.44.047 Redrawn boundaries—Assignment of commissioners to districts.
- 70.44.050 Commissioners—Compensation and expenses—Insurance—Resolutions by majority vote—Officers—Rules.
- 70.44.053 Increase in number of commissioners—Proposition to voters.
- 70.44.054 Increase in number of commissioners—Commissioner districts.
- 70.44.056 Increase in number of commissioners—Appointments—Election—Terms.
- 70.44.059 Chaplains—Authority to employ.
- 70.44.060 Powers and duties.
- 70.44.062 Commissioners' meetings, proceedings, and deliberations concerning health care providers' clinical or staff privileges to be confidential—Final action in public session.
- 70.44.065 Levy for emergency medical care and services.
- 70.44.067 Community revitalization financing—Public improvements.
- 70.44.070 Superintendent—Appointment—Removal—Compensation.
- 70.44.080 Superintendent—Powers.
- 70.44.090 Superintendent—Duties.
- 70.44.110 Plan to construct or improve—General obligation bonds.
- 70.44.130 Bonds—Payment—Security for deposits.
- 70.44.140 Contracts for material and work—Call for bids—Alternative procedures—Exemptions.
- 70.44.171 Treasurer—Duties—Funds—Depositaries—Surety bonds, cost.
- 70.44.185 Change of district boundary lines to allow farm units to be wholly within one hospital district—Notice.
- 70.44.190 Consolidation of districts.
- 70.44.200 Annexation of territory.
- 70.44.210 Alternate method of annexation—Contents of resolution calling for election.
- 70.44.220 Alternate method of annexation—Publication and contents of notice of hearing—Hearing—Resolution—Special election.
- 70.44.230 Alternate method of annexation—Conduct and canvass of election—Notice—Ballot.
- 70.44.235 Withdrawal or reannexation of areas.
- 70.44.240 Contracting or joining with other districts, hospitals, corporations, or individuals to provide services or facilities.
- 70.44.260 Contracts for purchase of real or personal property.
- 70.44.300 Sale of surplus real property.
- 70.44.310 Lease of surplus real property.
- 70.44.315 Evaluation criteria and requirements for acquisition of district hospitals.
- 70.44.320 Disposal of surplus personal property.
- 70.44.350 Dividing a district.
- 70.44.360 Dividing a district—Plan.
- 70.44.370 Dividing a district—Petition to court, hearing, order.
- 70.44.380 Dividing a district—Election—Creation of new districts—Challenges.
- 70.44.400 Withdrawal of territory from public hospital district.
- 70.44.450 Rural public hospital districts—Cooperative agreements and contracts.
- 70.44.460 Rural public hospital district defined.
- 70.44.470 Chapter not applicable to certain transfers of property.
- 70.44.900 Severability—Construction—1945 c 264.
- 70.44.901 Severability—Construction—1974 ex.s. c 165.
- 70.44.902 Severability—1982 c 84.
- 70.44.903 Savings—1982 c 84.
- 70.44.910 Construction—1945 c 264.

County hospitals: Chapter 36.62 RCW.

Limitation of indebtedness prescribed: RCW 39.36.020.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

70.44.003 Purpose. The purpose of chapter 70.44 RCW is to authorize the establishment of public hospital districts to own and operate hospitals and other health care facilities and to provide hospital services and other health care services for the residents of such districts and other persons. [1982 c 84 § 1.]

70.44.007 Definitions. As used in this chapter, the following words have the meanings indicated:

(1) "Other health care facilities" means nursing home, extended care, long-term care, outpatient and rehabilitative facilities, ambulances, and such other facilities as are appropriate to the health needs of the population served.

(2) "Other health care services" means nursing home, extended care, long-term care, outpatient, rehabilitative, health maintenance, and ambulance services and such other services as are appropriate to the health needs of the population served.

(3) "Public hospital district" or "district" means public health care service district. [1997 c 332 § 15; 1982 c 84 § 12; 1974 ex.s. c 165 § 5.]

Severability—1997 c 332: See RCW 70.45.900.

70.44.010 Districts authorized. Municipal corporations, to be known as public hospital districts, are hereby authorized and may be established within the several counties of the state as hereinafter provided. [1947 c 225 § 1; 1945 c 264 § 2; Rem. Supp. 1947 § 6090-31. FORMER PART OF SECTION: 1945 c 264 § 1 now codified as RCW 70.44.005.]

70.44.015 Validation of existing districts. Each and all of the respective areas of land heretofore attempted to be organized into public hospital districts under the provisions of this chapter are validated and declared to be duly existing hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question, and by the files of such districts. [1955 c 135 § 2.]

70.44.016 Validation of districts. Each and all of the respective areas of land attempted to be organized into public hospital districts prior to June 10, 1982, under the provisions of chapter 70.44 RCW where the canvass of the election on the proposition of creating a public hospital district shows the passage of the proposition are validated and declared to be duly existing public hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the legislative authority of the county in question, and by the files of such districts. [1982 c 84 § 10.]

70.44.020 Resolution—Petition for county-wide district—Conduct of elections. At any general election or at any special election which may be called for that purpose the county legislative authority of a county may, or on petition of ten percent of the registered voters of the county based on the total vote cast in the last general county election, shall, by resolution, submit to the voters of the county the proposition of creating a public hospital district coextensive with the limits of the county. The petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereon and certify to the sufficiency thereof, and for that purpose the auditor shall have access to all registration books in the possession of election officers in the county. If the petition is found to be insufficient, it shall be returned to the persons filing it, who may amend or add names thereto for ten days, when it shall be returned to the auditor, who shall have

an additional fifteen days to examine it and attach the certificate thereto. No person signing the petition may withdraw his or her name therefrom after filing. When the petition is certified as sufficient, the auditor shall forthwith transmit it, together with the certificate of sufficiency attached thereto, to the county legislative authority, who shall immediately transmit the proposition to the supervisor of elections or other election officer of the county, and he shall submit the proposition to the voters at the next general election or if such petition so requests, shall call a special election on such proposition in accordance with *RCW 29.13.010 and 29.13.020. The notice of the election shall state the boundaries of the proposed district and the object of the election, and shall in other respects conform to the requirements of law governing the time and manner of holding elections. In submitting the question to the voters, the proposition shall be expressed on the ballot substantially in the following terms:

For public hospital district No.

Against public hospital district No.

[1990 c 259 § 38; 1955 c 135 § 1; 1945 c 264 § 3; Rem. Supp. 1945 § 6090-32.]

***Reviser's note:** RCW 29.13.010 and 29.13.020 were recodified as RCW 29A.04.320 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

70.44.028 Limitation on legal challenges. Unless commenced within thirty days after the date of the filing of the certificate of the canvass of an election on the proposition of creating a new public hospital district pursuant to chapter 70.44 RCW, no lawsuit whatever may be maintained challenging in any way the legal existence of such district or the validity of the proceedings had for the organization and creation thereof. If the creation of a district is not challenged within the period specified in this section, the district conclusively shall be deemed duly and regularly organized under the laws of this state. [1982 c 84 § 9.]

70.44.030 Petition for lesser district—Procedure. Any petition for the formation of a public hospital district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed containing not less than ten percent of the voters of the proposed district who voted at the last general election, certified by the auditor in like manner as for a county-wide district, the board of county commissioners shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when such petition will be heard. Such publications required by this chapter shall be in a newspaper published in the proposed or established public hospital district, or, if there be no such newspaper, then in a newspaper published in the county in which such district is situated, and of general circulation in such county. The hearing on such petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners shall find

that any lands have been unjustly or improperly included within the proposed public hospital district the said board shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public hospital district: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of such lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public hospital district including an entire county, except that the petition and election shall be confined solely to the lesser public hospital district. [1945 c 264 § 4; Rem. Supp. 1945 § 6090-33.]

70.44.035 Petition for district lying in more than one county—Procedure. Any petition for the formation of a public hospital district may describe an area lying in more than one county, the boundaries of which shall follow the then existing precinct boundaries and not divide a voting precinct; and if a petition is filed with the county auditor of the respective counties in which a portion of the proposed district is located, containing not less than ten percent of the voters of that area of each county of the proposed district who voted at the last general election, certified by the said respective auditors in like manner as for a county-wide district, the board of county commissioners of each of the counties in which a portion of the proposed district is located shall fix a date for a hearing on the petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the hearing, together with a notice stating the time of the meeting when the petition will be heard. The publication required by this chapter shall be in a newspaper published in the portion of each county lying within the proposed district, or if there be no such newspaper published in any such portion of a county, then in one published in the county wherein such portion of said district is situated, and of general circulation in the county. The hearing before the respective county commissioners may be adjourned from time to time not exceeding four weeks in all. If upon the final hearing the respective boards of county commissioners find that any land has been unjustly or improperly included within the proposed district they may change and fix the boundary lines of the portion of said district located within their respective counties in such manner as they deem reasonable and just and conducive to the welfare and convenience, and enter an order establishing and defining the boundary lines of the proposed district located within their respective counties: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of the land to be so included. Thereafter the same procedure shall be followed as prescribed for the formation of a district including an entire county, except that the petition and election shall be confined solely to the portions of each county lying within the proposed district. [1953 c 267 § 1.]

70.44.040 Elections—Commissioners, terms, districts. (1) The provisions of Title 29A RCW relating to elec-

tions shall govern public hospital districts, except as provided in this chapter.

A public hospital district shall be created when the ballot proposition authorizing the creation of the district is approved by a simple majority vote of the voters of the proposed district voting on the proposition and the total vote cast upon the proposition exceeds forty percent of the total number of votes cast in the proposed district at the preceding state general election.

A public hospital district initially may be created with three, five, or seven commissioner districts. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three, five, or seven commissioners shall be elected from either three, five, or seven commissioner districts, or at-large positions, or both, as determined by resolution of the county commissioners of the county or counties in which the proposed public hospital district is located, all in accordance with RCW 70.44.054. The election of the initial commissioners shall be null and void if the district is not authorized to be created.

No primary shall be held. A special filing period shall be opened as provided in RCW 29A.24.171 and 29A.24.181. The person receiving the greatest number of votes for the commissioner of each commissioner district or at-large position shall be elected as the commissioner of that district. The terms of office of the initial public hospital district commissioners shall be staggered, with the length of the terms assigned so that the person or persons who are elected receiving the greater number of votes being assigned a longer term or terms of office and each term of an initial commissioner running until a successor assumes office who is elected at one of the next three following district general elections the first of which occurs at least one hundred twenty days after the date of the election where voters approved the ballot proposition creating the district, as follows:

(a) If the public hospital district will have three commissioners, the successor to one initial commissioner shall be elected at such first following district general election, the successor to one initial commissioner shall be elected at the second following district general election, and the successor to one initial commissioner shall be elected at the third following district general election;

(b) If the public hospital district will have five commissioners, the successor to one initial commissioner shall be elected at such first following district general election, the successors to two initial commissioners shall be elected at the second following district general election, and the successors to two initial commissioners shall be elected at the third following district general election;

(c) If the public hospital district will have seven commissioners, the successors to two initial commissioners shall be elected at such first following district general election, the successors to two initial commissioners shall be elected at the second following district general election, and the successors to three initial commissioners shall be elected at the third following district general election.

The initial commissioners shall take office immediately when they are elected and qualified. The term of office of each successor shall be six years. Each commissioner shall serve until a successor is elected and qualified and assumes office in accordance with RCW 29A.20.040.

(2) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district. Voters of the entire public hospital district may vote at a primary or general election to elect a person as a commissioner of the commissioner district.

If the proposed public hospital district initially will have three commissioner districts and the public hospital district is county-wide, and if the county has three county legislative authority districts, the county legislative authority districts shall be used as public hospital district commissioner districts. In all other instances the county auditor of the county in which all or the largest portion of the proposed public hospital district is located shall draw the initial public hospital district commissioner districts and designate at-large positions, if appropriate, as provided in RCW 70.44.054. Each of the commissioner positions shall be numbered consecutively and associated with the commissioner district or at-large position of the same number.

The commissioners of a public hospital district that is not coterminous with the boundaries of a county that has three county legislative authority districts shall at the times required in chapter 29A.76 RCW and may from time to time redraw commissioner district boundaries in a manner consistent with chapter 29A.76 RCW.

(3) No person may hold office as a commissioner while serving as an employee of the public hospital district. [2006 c 322 § 1; 1997 c 99 § 1; 1994 c 223 § 78; 1990 c 259 § 39; 1979 ex.s. c 126 § 41; 1957 c 11 § 1; 1955 c 82 § 1; 1953 c 267 § 2; 1947 c 229 § 1; 1945 c 264 § 5; Rem. Supp. 1947 § 6090-34.]

Effective date—1997 c 99: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 99 § 8.]

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

70.44.041 Validity of appointment or election of commissioners—Compliance with 1994 c 223. No appointment to fill a vacant position on or election to the board of commissioners of any public hospital district made after June 9, 1994, and before April 21, 1997, is deemed to be invalid solely due to the public hospital district's failure to redraw its commissioner district boundaries if necessary to comply with chapter 223, Laws of 1994. [1997 c 99 § 7.]

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.042 Commissioner districts—Resolution to abolish—Proposition to reestablish. Notwithstanding any provision in RCW 70.44.040 to the contrary, any board of public hospital district commissioners may, by resolution, abolish commissioner districts and permit candidates for any position on the board to reside anywhere in the public hospital district.

At any general or special election which may be called for that purpose, the board of public hospital district commissioners may, or on petition of ten percent of the voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition to reestablish commissioner districts. [1997 c 99 § 2; 1967 c 227 § 2.]

(2008 Ed.)

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.045 Commissioners—Vacancies. A vacancy in the office of commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the commission for sixty days, unless excused by the commission. A vacancy shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 79; 1982 c 84 § 13; 1955 c 82 § 2.]

70.44.047 Redrawn boundaries—Assignment of commissioners to districts. If, as the result of redrawing the boundaries of commissioner districts as permitted or required under the provisions of this chapter, *chapter 29.70 RCW, or any other statute, more than the correct number of commissioners who are associated with commissioner districts reside in the same commissioner district, a commissioner or commissioners residing in that redrawn commissioner district equal in number to the number of commissioners in excess of the correct number shall be assigned to the drawn commissioner district or districts in which less than the correct number of commissioners associated with commissioner districts reside. The commissioner or commissioners who are so assigned shall be those with the shortest unexpired term or terms of office, but if the number of such commissioners with the same terms of office exceeds the number that are to be assigned, the board of commissioners shall select by lot from those commissioners which one or ones are assigned. A commissioner who is so assigned shall be deemed to be a resident of the commissioner district to which he or she is assigned for purposes of determining whether a position is vacant. [1997 c 99 § 6.]

***Reviser's note:** Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.050 Commissioners—Compensation and expenses—Insurance—Resolutions by majority vote—Officers—Rules. Each commissioner shall receive ninety dollars for each day or portion thereof spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district, to include meetings of the commission of his or her own district, or meetings attended by one or more commissioners of two or more districts called to consider business common to them, except that the total compensation paid to such commissioner during any one year shall not exceed eight thousand six hundred forty dollars. The commissioners may not be compensated for services performed of a ministerial or professional nature.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioners with the same coverage. Each commissioner shall be reimbursed for re-

sonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence. No resolution shall be adopted without a majority vote of the whole commission. The commission shall organize by election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2008 c 31 § 2; 2007 c 469 § 7; 1998 c 121 § 7; 1985 c 330 § 7; 1982 c 84 § 14; 1975 c 42 § 1; 1965 c 157 § 1; 1945 c 264 § 15; Rem. Supp. 1945 § 6090-44.]

70.44.053 Increase in number of commissioners—Proposition to voters. At any general or special election which may be called for that purpose the board of public hospital district commissioners may, or on petition of ten percent of the voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition increasing the number of commissioners to either five or seven members. The petition or resolution shall specify whether it is proposed to increase the number of commissioners to either five or seven members. [1997 c 99 § 3; 1994 c 223 § 80; 1967 c 77 § 2.]

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.054 Increase in number of commissioners—Commissioner districts. If the voters of the district approve the ballot proposition authorizing the increase in the number of commissioners to either five or seven members, the additional commissioners shall be elected at large from the entire

district; provided that, the board of commissioners of the district may by resolution redistrict the public hospital district into five commissioner districts if the district has five commissioners or seven commissioner districts if the district has seven commissioners. The board of commissioners shall draw the boundaries of each commissioner district to include as nearly as possible equal portions of the total population of the public hospital district.

If the board of commissioners increases the number of commissioner districts as provided in this section, one commissioner shall be elected from each commissioner district, and no commissioner may be elected from a commissioner district in which another commissioner resides. [1997 c 99 § 4.]

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.056 Increase in number of commissioners—Appointments—Election—Terms. In all existing public hospital districts in which an increase in the number of district commissioners is proposed, the additional commissioner positions shall be deemed to be vacant and the board of commissioners of the public hospital district shall appoint qualified persons to fill those vacancies in accordance with RCW 42.12.070.

Each person who is appointed shall serve until a qualified person is elected at the next general election of the district occurring one hundred twenty days or more after the date of the election at which the voters of the district approved the ballot proposition authorizing the increase in the number of commissioners. If needed, special filing periods shall be authorized as provided in *RCW 29.15.170 and 29.15.180 for qualified persons to file for the vacant office. A primary shall be held to nominate candidates if sufficient time exists to hold a primary and more than two candidates file for the vacant office. Otherwise, no primary shall be held and the candidate receiving the greatest number of votes for each position shall be elected. Except for the initial terms of office, persons elected to each of these additional commissioner positions shall be elected to a six-year term. The newly elected commissioners shall assume office as provided in *RCW 29.04.170.

The initial terms of the new commissioners shall be staggered as follows: (1) When the number of commissioners is increased from three to five, the person elected receiving the greatest number of votes shall be elected to a six-year term of office, and the other person shall be elected to a four-year term; (2) when the number of commissioners is increased from three or five to seven, the terms of the new commissioners shall be staggered over the next three district general elections so that two commissioners will be elected at the first district general election following the election where the additional commissioners are elected, two commissioners will be at the second district general election after the election of the additional commissioners, and three commissioners will be elected at the third district general election following the election of the additional commissioners, with the persons elected receiving the greatest number of votes elected to serve the longest terms. [1997 c 99 § 5.]

***Reviser's note:** RCW 29.15.170, 29.15.180, and 29.04.170 were recodified as RCW 29A.24.170, 29A.24.180, and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and

29A.24.180 were subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.24.170 and 29A.24.180, see RCW 29A.24.171 and 29A.24.181.

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.059 Chaplains—Authority to employ. Public hospital districts may employ chaplains for their hospitals, health care facilities, and hospice programs. [1993 c 234 § 1.]

Contingent effective date—1993 c 234: "This act shall take effect on January 1, 1994, if the proposed amendment to Article I, section 11 of the state Constitution authorizing the legislature to permit public hospital districts to employ chaplains is validly submitted to and is approved and ratified by the voters at the next general election held. If the proposed amendment is not so approved and ratified, this act is void in its entirety." [1993 c 234 § 2.] House Joint Resolution No. 4200 was approved by the voters on November 2, 1993.

70.44.060 Powers and duties. All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including

state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the Municipal Revenue Bond Act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-five cents per thousand dollars of assessed value, or such further amount as has been or shall be authorized by a vote of the people. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in

the records of the commission on or before the first day of November. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks, at least one time each week, in a newspaper printed and of general circulation in said county. On or before the fifteenth day of November the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: PROVIDED, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians or other health care practitioners who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, which expenses may include expenses incurred by family members accompanying the candidate, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make all contracts useful or necessary to carry out the provisions of this chapter, including, but not limited to, (a) contracts with private or public institutions for employee retirement programs, and (b) contracts with current or prospective employees, physicians, or other health care practitioners providing for the payment or reimbursement by the public hospital district of health care training or education expenses, including but not limited to debt obligations, incurred by current or prospective employees, physicians, or other health care practitioners in return for their agreement to provide services beneficial to the public hospital district; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter. [2003 c 125 § 1; 2001 c 76 § 1; 1997 c 3 § 206 (Referendum Bill No.

47, approved November 4, 1997); 1990 c 234 § 2; 1984 c 186 § 59; 1983 c 167 § 172; 1982 c 84 § 15; 1979 ex.s. c 155 § 1; 1979 ex.s. c 143 § 4; 1977 ex.s. c 211 § 1; 1974 ex.s. c 165 § 2; 1973 1st ex.s. c 195 § 83; 1971 ex.s. c 218 § 2; 1970 ex.s. c 56 § 85; 1969 ex.s. c 65 § 1; 1967 c 164 § 7; 1965 c 157 § 2; 1949 c 197 § 18; 1945 c 264 § 6; Rem. Supp. 1949 § 6090-35.]

Intent—1997 c 3 §§ 201-207: See note following RCW 84.55.010.

Application—Severability—Part headings not law—Referral to electorate—1997 c 3: See notes following RCW 84.40.030.

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—1979 ex.s. c 155: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 155 § 3.]

Severability—1979 ex.s. c 143: See note following RCW 70.44.200.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Eminent domain

by cities: Chapter 8.12 RCW.

generally: State Constitution Art. 1 § 16.

Limitation on levies: State Constitution Art. 7 § 2; RCW 84.52.050.

Port districts, collection of taxes: RCW 53.36.020.

Tortious conduct of political subdivisions, municipal corporations and quasi-municipal corporations, liability for damages: Chapter 4.96 RCW.

70.44.062 Commissioners' meetings, proceedings, and deliberations concerning health care providers' clinical or staff privileges to be confidential—Final action in public session. (1) All meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider as that term is defined in RCW 7.70.020, if such other providers at the discretion of the district's commissioners are considered for such privileges, shall be confidential and may be conducted in executive session: PROVIDED, That the final action of the board as to the denial, revocation, or restriction of clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020 shall be done in public session.

(2) All meetings, proceedings, and deliberations of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 and all meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, to review the report or the activities of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 may, at the discretion of the quality improvement committee or the board of commissioners, be confidential and may be conducted in executive session. Any review conducted by the board of commissioners or quality improvement committee, or their staffs or agents, shall be subject to the same protections, limitations, and exemptions that apply to quality improvement committee activities under RCW 4.24.240, 4.24.250, 43.70.510, and 70.41.200. However, any final action of the board of com-

missioners on the report of the quality improvement committee shall be done in public session. [2005 c 169 § 1; 1985 c 166 § 1.]

70.44.065 Levy for emergency medical care and services. See RCW 84.52.069.

70.44.067 Community revitalization financing—Public improvements. In addition to other authority that a public hospital district possesses, a public hospital district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a public hospital district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 22.]

Severability—2001 c 212: See RCW 39.89.902.

70.44.070 Superintendent—Appointment—Removal—Compensation. (1) The public hospital district commission shall appoint a superintendent, who shall be appointed for an indefinite time and be removable at the will of the commission. Appointments and removals shall be by resolution, introduced at a regular meeting and adopted at a subsequent regular meeting by a majority vote. The superintendent shall receive such compensation as the commission shall fix by resolution.

(2) Where a public hospital district operates more than one hospital, the commission may in its discretion appoint up to one superintendent per hospital and assign among the superintendents the powers and duties set forth in RCW 70.44.080 and 70.44.090 as deemed appropriate by the commission. [1987 c 58 § 1; 1982 c 84 § 16; 1945 c 264 § 7; Rem. Supp. 1945 § 6090-36.]

70.44.080 Superintendent—Powers. (1) The superintendent shall be the chief administrative officer of the public district hospital and shall have control of administrative functions of the district. The superintendent shall be responsible to the commission for the efficient administration of all affairs of the district. In case of the absence or temporary disability of the superintendent a competent person shall be appointed by the commission. The superintendent shall be entitled to attend all meetings of the commission and its committees and to take part in the discussion of any matters pertaining to the district, but shall have no vote.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the powers set forth in this section as deemed appropriate by the commission. [1987 c 58 § 2; 1982 c 84 § 17; 1945 c 264 § 9; Rem. Supp. 1945 § 6090-38.]

70.44.090 Superintendent—Duties. (1) The public hospital district superintendent shall have the power, and duty:

(a) To carry out the orders of the commission, and to see that all the laws of the state pertaining to matters within the functions of the district are duly enforced.

(b) To keep the commission fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal year of the probable expenses of the district, and to recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the commission all the bills, allowances and payrolls, including claims due contractors of public works. To recommend to the commission a range of salaries to be paid to district employees.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the duties set forth in this section as deemed appropriate by the commission. [1987 c 58 § 3; 1982 c 84 § 18; 1945 c 264 § 11; Rem. Supp. 1945 § 6090-40.]

70.44.110 Plan to construct or improve—General obligation bonds. Whenever the commission deems it advisable that the district acquire or construct a public hospital, or other health care facilities, or make additions or betterments thereto, or extensions thereof, it shall provide therefor by resolution, which shall specify and adopt the plan proposed, declare the estimated cost thereof, and specify the amount of indebtedness to be incurred therefor. General indebtedness may be incurred by the issuance of general obligation bonds or short-term obligations in anticipation of such bonds. General obligation bonds shall mature in not to exceed thirty years. The incurring of such indebtedness shall be subject to the applicable limitations and requirements provided in section 1, chapter 143, Laws of 1917, as last amended by section 4, chapter 107, Laws of 1967, and RCW 39.36.020, as now or hereafter amended. Such general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 60; 1974 ex.s. c 165 § 3; 1969 ex.s. c 65 § 2; 1955 c 56 § 1; 1945 c 264 § 12; Rem. Supp. 1945 § 6090-41.]

Purpose—1984 c 186: See note following RCW 39.46.110.

70.44.130 Bonds—Payment—Security for deposits. The principal and interest of such general bonds shall be paid by levying each year a tax upon the taxable property within the district sufficient, together with other revenues of the district available for such purpose, to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. All bonds and warrants issued under the authority of this chapter shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys. [1984 c 186 § 61; 1971 ex.s. c 218 § 3; 1945 c 264 § 14; Rem. Supp. 1945 § 6090-43.]

Purpose—1984 c 186: See note following RCW 39.46.110.

70.44.140 Contracts for material and work—Call for bids—Alternative procedures—Exemptions. (1) All materials purchased and work ordered, the estimated cost of which is in excess of fifty thousand dollars, shall be by con-

tract. Before awarding any such contract, the commission shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: PROVIDED, HOWEVER, That the commission may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders. The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: PROVIDED, HOWEVER, That no contract shall be let in excess of the estimated cost of the materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders. If the contract is let, then all bid proposal security shall be returned to the bidders, except that of the successful bidder, which is retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to the requirements of subsection (1) of this section, a public hospital district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchases with an estimated cost of up to fifteen thousand dollars may be made using the process provided in RCW 39.04.190.

(4) The commission may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2002 c 106 § 1; 2000 c 138 § 213; 1999 c 99 § 1; 1998 c 278 § 9; 1996 c 18 § 15; 1993 c 198 § 22; 1965 c 83 § 1; 1945 c 264 § 17; Rem. Supp. 1945 § 6090-46.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Contractor's bond: Chapter 39.08 RCW.

[Title 70 RCW—page 82]

Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.

70.44.171 Treasurer—Duties—Funds—Depositaries—Surety bonds, cost. The treasurer of the county in which a public hospital district is located shall be treasurer of the district, except that the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the district. If the treasurer is not the county treasurer, the commission shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

All district funds shall be paid to the treasurer and shall be disbursed by him only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public hospital district fund, into which shall be paid all district funds, and he shall maintain such special funds as may be created by the commission, into which he shall place all money as the commission may, by resolution, direct.

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries. If the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in *RCW 36.48.020 for deposit of county funds. Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

All interest collected on district funds shall belong to the district and be deposited to its credit in the proper district funds.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district. The district may pay the premium on such bond. [1967 c 227 § 1.]

*Reviser's note: RCW 36.48.020 was repealed by 1984 c 177 § 21.

70.44.185 Change of district boundary lines to allow farm units to be wholly within one hospital district—

Notice. Notwithstanding any other provision of law, including RCW 70.44.040, whenever the boundary line between contiguous hospital districts bisects an irrigation block unit placing part of the unit in one hospital district and the balance thereof in another such district, the county auditor, upon his approval of a request therefor after public hearing thereon, shall change the hospital district boundary lines so that the entire farm unit of the person so requesting shall be wholly in one of such hospital districts and give notice thereof to those hospital district and county officials as he shall deem appropriate therefor. [1971 ex.s. c 218 § 4.]

70.44.190 Consolidation of districts. Two or more contiguous hospital districts, whether the territory therein lies in one or more counties, may consolidate by following the

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procedure outlined in chapter 35.10 RCW with reference to consolidation of cities and towns. [1953 c 267 § 3.]

70.44.200 Annexation of territory. (1) A public hospital district may annex territory outside the existing boundaries of such district and contiguous thereto, whether the territory lies in one or more counties, in accordance with this section.

(2) A petition for annexation of territory contiguous to a public hospital district may be filed with the commission of the district to which annexation is proposed. The petition must be signed by the owners, as prescribed by *RCW 35A.01.040(9) (a) through (e), of not less than sixty percent of the area of land within the territory proposed to be annexed. Such petition shall describe the boundaries of the territory proposed to be annexed and shall be accompanied by a map which outlines the boundaries of such territory.

(3) Whenever such a petition for annexation is filed with the commission of a public hospital district, the commission may entertain the same, fix a date for public hearing thereon, and cause notice of the hearing to be published once a week for at least two consecutive weeks in a newspaper of general circulation within the territory proposed to be annexed. The notice shall also be posted in three public places within the territory proposed to be annexed, shall contain a description of the boundaries of such territory, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation.

(4) Following the hearing, if the commission of the district determines to accomplish the annexation, it shall do so by resolution. The resolution may annex all or any portion of the proposed territory but may not include in the annexation any property not described in the petition. Upon passage of the annexation resolution, the territory annexed shall become part of the district and a certified copy of such resolution shall be filed with the legislative authority of the county or counties in which the annexed property is located.

(5) If the petition for annexation and the annexation resolution so provide, as the commission may require, and such petition has been signed by the owners of all the land within the boundaries of the territory being annexed, the annexed property shall assume and be assessed and taxed to pay for all or any portion of the outstanding indebtedness of the district to which it is annexed at the same rates as other property within such district. Unless so provided in the petition and resolution, property within the boundaries of the territory annexed shall not be assessed or taxed to pay for all or any portion of the indebtedness of the district to which it is annexed that was contracted prior to or which existed at the date of annexation. In no event shall any such annexed property be released from any assessments or taxes previously levied against it or from its existing liability for the payment of outstanding bonds or warrants issued prior to such annexation.

(6) The annexation procedure provided for in this section shall be an alternative method of annexation applicable only if at the time the annexation petition is filed either there are no registered voters residing in the territory proposed to be annexed or the petition is also signed by all of the registered voters residing in the territory proposed to be annexed. [1993 c 489 § 1; 1979 ex.s. c 143 § 1; 1953 c 267 § 4.]

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*Reviser's note: RCW 35A.01.040 was amended by 2008 c 196 § 2, changing subsection (9)(e) to subsection (9)(f).

Severability—1979 ex.s. c 143: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 143 § 3.]

70.44.210 Alternate method of annexation—Contents of resolution calling for election. As an alternate method of annexation to public hospital districts, any territory adjacent to a public hospital district may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in RCW 70.44.210 through 70.44.230. An election to annex such territory may be called pursuant to a resolution calling for such an election adopted by the district commissioners.

Any resolution calling for such an election shall describe the boundaries of the territory to be annexed, state that the annexation of such territory to the public hospital district will be conducive to the welfare and benefit of the persons or property within the district and within the territory proposed to be annexed, and fix the date, time and place for a public hearing thereon which date shall be not more than sixty nor less than forty days following the adoption of such resolution. [1967 c 227 § 6.]

70.44.220 Alternate method of annexation—Publication and contents of notice of hearing—Hearing—Resolution—Special election. Notice of such hearing shall be published once a week for at least two consecutive weeks in one or more newspapers of general circulation within the territory proposed to be annexed. The notice shall contain a description of the boundaries of the territory proposed to be annexed and shall state the time and place of the hearing thereon and the fact that any changes in the boundaries of such territory will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the proposed annexation. The district commissioners may make such changes in the boundaries of the territory proposed to be annexed as it shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands. If the district commissioners shall determine that any additional territory should be included in the territory to be annexed, a second hearing shall be held and notice given in the same manner as for the original hearing. The district commissioners may adjourn the hearing on the proposed annexation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing, the district commissioners shall, if it finds that the annexation of such territory will be conducive to the welfare and benefit of the persons and property therein and the welfare and benefit of the persons and property within the public hospital district, adopt a resolution fixing the boundaries of the territory to be annexed and causing to be called a special election on such annexation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1967 c 227 § 7.]

[Title 70 RCW—page 83]

70.44.230 Alternate method of annexation—Conduct and canvass of election—Notice—Ballot. An election on the annexation of territory to a public hospital district shall be conducted and canvassed in the same manner as provided for the conduct of an election on the formation of a public hospital district except that notice of such election shall be published in one or more newspapers of general circulation in the territory proposed to be annexed and the ballot proposition shall be in substantially the following form:

ANNEXATION TO (herein insert name of public hospital district)

"Shall the territory described in a resolution of the public hospital district commissioners of (here insert name of public hospital district) adopted on,, 19. . . ., be annexed to such district?"

YES
NO

If a majority of those voting on such proposition vote in favor thereof, the territory shall thereupon be annexed to the public hospital district. [1967 c 227 § 8.]

70.44.235 Withdrawal or reannexation of areas. (1)

As provided in this section, a public hospital district may withdraw areas from its boundaries, or reannex areas into the public hospital district that previously had been withdrawn from the public hospital district under this section.

(2) The withdrawal of an area shall be authorized upon:

(a) Adoption of a resolution by the hospital district commissioners requesting the withdrawal and finding that, in the opinion of the commissioners, inclusion of this area within the public hospital district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The withdrawal of an area from the boundaries of a public hospital district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the public hospital district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a public hospital district under this section may be reannexed into the public hospital district upon:

(a) Adoption of a resolution by the hospital district commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of

December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date according to RCW 29A.04.330. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [2006 c 344 § 39; 1987 c 138 § 4.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

70.44.240 Contracting or joining with other districts, hospitals, corporations, or individuals to provide services or facilities.

Any public hospital district may contract or join with any other public hospital district, publicly owned hospital, nonprofit hospital, legal entity, or individual to acquire, own, operate, manage, or provide any hospital or other health care facilities or hospital services or other health care services to be used by individuals, districts, hospitals, or others, including providing health maintenance services. If a public hospital district chooses to contract or join with another party or parties pursuant to the provisions of this chapter, it may do so through establishing a nonprofit corporation, partnership, limited liability company, or other legal entity of its choosing in which the public hospital district and the other party or parties participate. The governing body of such legal entity shall include representatives of the public hospital district, which representatives may include members of the public hospital district's board of commissioners. A public hospital district contracting or joining with another party pursuant to the provisions of this chapter may appropriate funds and may sell, lease, or otherwise provide property, personnel, and services to the legal entity established to carry out the contract or joint activity. [2004 c 261 § 7; 1997 c 332 § 16; 1982 c 84 § 19; 1974 ex.s. c 165 § 4; 1967 c 227 § 3.]

Severability—1997 c 332: See RCW 70.45.900.

70.44.260 Contracts for purchase of real or personal property.

Any public hospital district may execute an executory conditional sales contract with any other municipal corporation, the state, or any of its political subdivisions, the government of the United States, or any private party for the purchase of any real or personal property, or property rights, in connection with the exercise of any powers or duties which such districts now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of the limitation imposed by RCW 39.36.020, as now or hereafter amended, to be incurred without the assent of the voters of

the district: PROVIDED, That if such a proposed contract would result in a total indebtedness in excess of three-fourths of one percent of the value of taxable property in such public hospital district, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. The term "value of taxable property" shall have the meaning set forth in RCW 39.36.015. [1975-'76 2nd ex.s. c 78 § 1.]

70.44.300 Sale of surplus real property. (1) The board of commissioners of any public hospital district may sell and convey at public or private sale real property of the district if the board determines by resolution that the property is no longer required for public hospital district purposes or determines by resolution that the sale of the property will further the purposes of the public hospital district.

(2) Any sale of district real property authorized pursuant to this section shall be preceded, not more than one year prior to the date of sale, by market value appraisals by three licensed real estate brokers or professionally designated real estate appraisers as defined in RCW 74.46.020 or three independent experts in valuing health care property, selected by the board of commissioners, and no sale shall take place if the sale price would be less than ninety percent of the average of such appraisals.

(3) When the board of commissioners of any public hospital district proposes a sale of district real property pursuant to this section and the value of the property exceeds one hundred thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper of general circulation within the public hospital district. The notice shall describe the property to be sold and designate the place where and the day and hour when a hearing will be held. The board shall hold a public hearing upon the proposal to dispose of the public hospital district property at the place and the day and hour fixed in the notice and consider evidence offered for and against the propriety and advisability of the proposed sale.

(4) If in the judgment of the board of commissioners of any district the sale of any district real property not needed for public hospital district purposes would be facilitated and greater value realized through use of the services of licensed real estate brokers, a contract for such services may be negotiated and concluded. The fee or commissions charged for any broker service shall not exceed seven percent of the resulting sale price for a single parcel. No licensed real estate broker or professionally designated real estate appraisers as defined in RCW 74.46.020 or independent expert in valuing health care property selected by the board to appraise the market value of a parcel of property to be sold may be a party to any contract with the public hospital district to sell such property for a period of three years after the appraisal. [1997 c 332 § 17; 1984 c 103 § 4; 1982 c 84 § 2.]

Severability—1997 c 332: See RCW 70.45.900.

70.44.310 Lease of surplus real property. The board of commissioners of any public hospital district may lease or rent out real property of the district which the board has

determined by resolution presently is not required for public hospital district purposes in such manner and upon such terms and conditions as the board in its discretion finds to be in the best interest of the district. [1982 c 84 § 3.]

70.44.315 Evaluation criteria and requirements for acquisition of district hospitals. (1) When evaluating a potential acquisition, the commissioners shall determine their compliance with the following requirements:

(a) That the acquisition is authorized under chapter 70.44 RCW and other laws governing public hospital districts;

(b) That the procedures used in the decision-making process allowed district officials to thoroughly fulfill their due diligence responsibilities as municipal officers, including those covered under chapter 42.23 RCW governing conflicts of interest and chapter 42.20 RCW prohibiting malfeasance of public officials;

(c) That the acquisition will not result in the revocation of hospital privileges;

(d) That sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(e) That the acquisition is allowed under Article VIII, section 7 of the state Constitution, which prohibits gifts of public funds or lending of credit and Article XI, section 14, prohibiting private use of public funds;

(f) That the public hospital district will retain control over district functions as required under chapter 70.44 RCW and other laws governing hospital districts;

(g) That the activities related to the acquisition process complied with chapters 42.56 and 42.32 RCW, governing disclosure of public records, and chapter 42.30 RCW, governing public meetings;

(h) That the acquisition complies with the requirements of RCW 70.44.300 relating to fair market value; and

(i) Other state laws affecting the proposed acquisition.

(2) The commissioners shall also determine whether the public hospital district should retain a right of first refusal to repurchase the assets by the public hospital district if the hospital is subsequently sold to, acquired by, or merged with another entity.

(3)(a) Prior to approving the acquisition of a district hospital, the board of commissioners of the hospital district shall obtain a written opinion from a qualified independent expert or the Washington state department of health as to whether or not the acquisition meets the standards set forth in RCW 70.45.080.

(b) Upon request, the hospital district and the person seeking to acquire its hospital shall provide the department or independent expert with any needed information and documents. The department shall charge the hospital district for any costs the department incurs in preparing an opinion under this section. The hospital district may recover from the acquiring person any costs it incurs in obtaining the opinion from either the department or the independent expert. The opinion shall be delivered to the board of commissioners no later than ninety days after it is requested.

(c) Within ten working days after it receives the opinion, the board of commissioners shall publish notice of the opinion in at least one newspaper of general circulation within the hospital district, stating how a person may obtain a copy, and

giving the time and location of the hearing required under (d) of this subsection. It shall make a copy of the report and the opinion available to anyone upon request.

(d) Within thirty days after it received the opinion, the board of commissioners shall hold a public hearing regarding the proposed acquisition. The board of commissioners may vote to approve the acquisition no sooner than thirty days following the public hearing.

(4)(a) For purposes of this section, "acquisition" means an acquisition by a person of any interest in a hospital owned by a public hospital district, whether by purchase, merger, lease, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of a hospital currently licensed and operating under RCW 70.41.090. Acquisition does not include an acquisition where the other party or parties to the acquisition are nonprofit corporations having a substantially similar charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include an acquisition where the other party is an organization that is a limited liability corporation, a partnership, or any other legal entity and the members, partners, or otherwise designated controlling parties of the organization are all nonprofit corporations having a charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include activities between two or more governmental organizations, including organizations acting pursuant to chapter 39.34 RCW, regardless of the type of organizational structure used by the governmental entities.

(b) For purposes of this subsection (4), "person" means an individual, a trust or estate, a partnership, a corporation including associations, a limited liability company, a joint stock company, or an insurance company. [2005 c 274 § 334; 1997 c 332 § 18.]

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

Severability—1997 c 332: See RCW 70.45.900.

70.44.320 Disposal of surplus personal property. The board of commissioners of any public hospital district may sell or otherwise dispose of surplus personal property of the district which the board has determined by resolution is no longer required for public hospital district purposes in such manner and upon such terms and conditions as the board in its discretion finds to be in the best interest of the district. [1982 c 84 § 4.]

70.44.350 Dividing a district. An existing public hospital district upon resolution of its board of commissioners may be divided into two new public hospital districts, in the manner provided in RCW 70.44.350 through 70.44.380, subject to the approval of the plan therefor by the superior court in the county where such district is located and by a majority of the voters voting on the proposition for such approval at a special election to be held in each of the proposed new districts. The board of commissioners of an existing district shall by resolution or resolutions find that such division is in the public interest; adopt and approve a plan of division; authorize the filing of a petition in the superior court in the county

in which the district is located to obtain court approval of the plan of division; request the calling of a special election to be held, following such court approval, for the purpose of submitting to the voters in each of the proposed new districts the proposition of whether the plan of division should be approved and carried out; and direct all officers and employees of the existing district to take whatever actions are reasonable and necessary in order to carry out the division, subject to the approval of the plan therefor by the court and the voters. [1982 c 84 § 5.]

70.44.360 Dividing a district—Plan. The plan of division authorized by RCW 70.44.350 shall include: Proposed names for the new districts; a description of the boundaries of the new districts, which boundaries shall follow insofar as reasonably possible the then-existing precinct boundaries and include all of the territory encompassed by the existing district; a division of all the assets of the existing district between the resulting new districts, including funds, rights, and property, both real and personal; the assumption of all the outstanding obligations of the existing district by the resulting new districts, including general obligation and revenue bonds, contracts, and any other liabilities or indebtedness; the establishing and constituting of new boards of three commissioners for each of the new districts, including fixing the boundaries of commissioner districts within such new districts following insofar as reasonably possible the then-existing precinct boundaries; and such other matters as the board of commissioners of the existing district may deem appropriate. Unless the plan of division provides otherwise, all the area and property of the existing district shall remain subject to the outstanding obligations of that district, and the boards of commissioners of the new districts shall make such levies or charges for services as may be necessary to pay such outstanding obligations in accordance with their terms from the sources originally pledged or otherwise liable for that purpose. [1982 c 84 § 6.]

70.44.370 Dividing a district—Petition to court, hearing, order. After adoption of a resolution approving the plan of division by the board of commissioners of an existing district pursuant to RCW 70.44.350 through 70.44.380, the district shall petition the superior court in the county where such district is located requesting court approval of the plan. The court shall conduct a hearing on the plan of division, after reasonable and proper notice of such hearing (including notice to bondholders) is given in the manner fixed and directed by such court. At the conclusion of the hearing, the court may enter its order approving the division of the existing district and of its assets and outstanding obligations in the manner provided by the plan after finding such division to be fair and equitable and in the public interest. [1982 c 84 § 7.]

70.44.380 Dividing a district—Election—Creation of new districts—Challenges. Following the entry of the court order pursuant to RCW 70.44.370, the county officer authorized to call and conduct elections in the county in which the existing district is located shall call a special election as provided by the resolution of the board of commissioners of such district for the purpose of submitting to the voters in each of

the proposed new districts the proposition of whether the plan of division should be approved and carried out. Notice of the election describing the boundaries of the proposed new districts and stating the objects of the election shall be given and the election conducted in accordance with the general election laws. The proposition expressed on the ballots at such election shall be substantially as follows:

"Shall the plan of division of public hospital district No. . . . , approved by the Superior Court on (insert date), be approved and carried out?"

Yes

No

At such election three commissioners for each of the proposed new districts nominated by petition pursuant to RCW 54.12.010 shall be elected to hold office pursuant to RCW 70.44.040. If at such election a majority of the voters voting on the proposition in each of the proposed new districts shall vote in favor of the plan of division, the county canvassing board shall so declare in its canvass of the returns of such election and upon the filing of the certificate of such canvass: The division of the existing district shall be effective; such original district shall cease to exist; the creation of the two new public hospital districts shall be complete; all assets of the original district shall vest in and become the property of the new districts, respectively, pursuant to the plan of division; all the outstanding obligations of the original district shall be assumed by the new districts, respectively, pursuant to such plan; the commissioners of the original district shall cease to hold office; and the affairs of the new districts shall be governed by the newly elected commissioners of such respective new districts. Unless commenced within thirty days after the date of the filing of the certificate of the canvass of such election, no lawsuit whatever may be maintained challenging in any way the legal existence of the resulting new districts, the validity of the proceedings had for the organization and creation thereof, or the lawfulness of the plan of division. Upon the petition of either or both new districts, the superior court in the county where they are located may take whatever actions are reasonable and necessary to complete or confirm the carrying out of such plan. [1982 c 84 § 8.]

70.44.400 Withdrawal of territory from public hospital district. Territory within a public hospital district may be withdrawn therefrom in the same manner provided by law for withdrawal of territory from water-sewer districts, as provided by chapter 57.28 RCW. For purposes of conforming with such procedure, the public hospital district shall be deemed to be the water-sewer district and the public hospital board of commissioners shall be deemed to be the water-sewer district board of commissioners. [1999 c 153 § 65; 1984 c 100 § 1.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

70.44.450 Rural public hospital districts—Cooperative agreements and contracts. In addition to other powers granted to public hospital districts by chapter 39.34 RCW, rural public hospital districts may enter into cooperative agreements and contracts with other rural public hospital districts in order to provide for the health care needs of the peo-

ple served by the hospital districts. These agreements and contracts are specifically authorized to include:

- (1) Allocation of health care services among the different facilities owned and operated by the districts;
- (2) Combined purchases and allocations of medical equipment and technologies;
- (3) Joint agreements and contracts for health care service delivery and payment with public and private entities; and
- (4) Other cooperative arrangements consistent with the intent of chapter 161, Laws of 1992. The provisions of chapter 39.34 RCW shall apply to the development and implementation of the cooperative contracts and agreements. [1992 c 161 § 3.]

Intent—1992 c 161: "The legislature finds that maintaining the viability of health care service delivery in rural areas of Washington is a primary goal of state health policy. The legislature also finds that most hospitals located in rural Washington are operated by public hospital districts authorized under chapter 70.44 RCW and declares that it is not cost-effective, practical, or desirable to provide quality health and hospital care services in rural areas on a competitive basis because of limited patient volume and geographic isolation. It is the intent of this act to foster the development of cooperative and collaborative arrangements among rural public hospital districts by specifically authorizing cooperative agreements and contracts for these entities under the interlocal cooperation act." [1992 c 161 § 1.]

70.44.460 Rural public hospital district defined.

Unless the context clearly requires otherwise, the definition in this section applies throughout RCW 70.44.450.

"Rural public hospital district" means a public hospital district authorized under chapter 70.44 RCW whose geographic boundaries do not include a city with a population greater than thirty thousand. [1992 c 161 § 2.]

Intent—1992 c 161: See note following RCW 70.44.450.

70.44.470 Chapter not applicable to certain transfers of property. This chapter does not apply to transfers of property under *sections 1 and 2 of this act. [2006 c 35 § 9.]

***Reviser's note:** The reference to "sections 1 and 2 of this act" appears to be erroneous. Reference to "sections 2 and 3 of this act" codified as RCW 43.99C.070 and 43.83D.120 was apparently intended.

Findings—2006 c 35: See note following RCW 43.99C.070.

70.44.900 Severability—Construction—1945 c 264.

Adjudication of invalidity of any section, clause or part of a section of this act [1945 c 264] shall not impair or otherwise affect the validity of the act as a whole or any other part thereof. The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended. When this act comes in conflict with any provisions, limitation or restriction in any other law, this act shall govern and control. [1945 c 264 § 21; no RRS.]

70.44.901 Severability—Construction—1974 ex.s. c 165. If any section, clause, or other provision of this 1974 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of such 1974 amendatory act, or the application of such section, clause, or provision to other persons or circumstances, shall not be affected. The rule of strict construction shall have no application to this 1974 amendatory act, but the same shall be liberally construed, in order to carry out the purposes and objects for

which this 1974 amendatory act is intended. When this 1974 amendatory act comes in conflict with any provision, limitation, or restriction in any other law, this 1974 amendatory act shall govern and control. [1974 ex.s. c 165 § 6.]

70.44.902 Severability—1982 c 84. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 84 § 21.]

70.44.903 Savings—1982 c 84. All debts, contracts, and obligations made or incurred prior to June 10, 1982, by or in favor of any public hospital district, and all bonds, warrants, or other obligations issued by such district, and all other actions and proceedings relating thereto done or taken by such public hospital districts or by their respective officers within their authority are hereby declared to be legal and valid and of full force and effect from the date thereof. [1982 c 84 § 11.]

70.44.910 Construction—1945 c 264. This act [1945 c 264 § 22] shall not be deemed or construed to repeal or affect any existing act, or any part thereof, relating to the construction, operation and maintenance of public hospitals, but shall be supplemental thereto and concurrent therewith. [1945 c 264 § 22; no RRS.]

Chapter 70.45 RCW

ACQUISITION OF NONPROFIT HOSPITALS

Sections

70.45.010	Legislative findings.
70.45.020	Definitions.
70.45.030	Department approval required—Application—Fees.
70.45.040	Applications—Deficiencies—Public notice.
70.45.050	Public hearings.
70.45.060	Attorney general review and opinion—Department review and decision—Adjudicative proceedings.
70.45.070	Department review—Criteria to safeguard charitable assets.
70.45.080	Department review—Criteria for continued existence of accessible, affordable health care.
70.45.090	Approval of acquisition required—Injunctions.
70.45.100	Compliance—Department authority—Hearings—Revocation or suspension of hospital license—Referral to attorney general for action.
70.45.110	Authority of attorney general to ensure compliance.
70.45.120	Acquisitions completed before July 27, 1997, not subject to this chapter.
70.45.130	Common law and statutory authority of attorney general.
70.45.140	Rule-making and contracting authority.
70.45.900	Severability—1997 c 332.

70.45.010 Legislative findings. The health of the people of our state is a most important public concern. The state has an interest in assuring the continued existence of accessible, affordable health care facilities that are responsive to the needs of the communities in which they exist. The state also has a responsibility to protect the public interest in nonprofit hospitals and to clarify the responsibilities of local public hospital district boards with respect to public hospital district assets by making certain that the charitable and public assets of those hospitals are managed prudently and safeguarded consistent with their mission under the laws governing nonprofit and municipal corporations. [1997 c 332 § 1.]

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

(1) "Department" means the Washington state department of health.

(2) "Hospital" means any entity that is: (a) Defined as a hospital in RCW 70.41.020 and is required to obtain a license under RCW 70.41.090; or (b) a psychiatric hospital required to obtain a license under chapter 71.12 RCW.

(3) "Acquisition" means an acquisition by a person of an interest in a nonprofit hospital, whether by purchase, merger, lease, gift, joint venture, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of the hospital, or that results in the acquiring person holding or controlling fifty percent or more of the assets of the hospital, but acquisition does not include an acquisition if the acquiring person: (a) Is a nonprofit corporation having a substantially similar charitable health care purpose as the nonprofit corporation from whom the hospital is being acquired, or is a government entity; (b) is exempt from federal income tax under section 501(c)(3) of the internal revenue code or as a government entity; and (c) will maintain representation from the affected community on the local board of the hospital.

(4) "Nonprofit hospital" means a hospital owned by a nonprofit corporation organized under Title 24 RCW.

(5) "Person" means an individual, a trust or estate, a partnership, a corporation including associations, limited liability companies, joint stock companies, and insurance companies. [1997 c 332 § 2.]

70.45.030 Department approval required—Application—Fees. (1) A person may not engage in the acquisition of a nonprofit hospital without first having applied for and received the approval of the department under this chapter.

(2) An application must be submitted to the department on forms provided by the department, and at a minimum must include: The name of the hospital being acquired, the name of the acquiring person or other parties to the acquisition, the acquisition price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria in RCW 70.45.070, and all other related documents. The applications and all related documents are considered public records for purposes of chapter 42.56 RCW.

(3) The department shall charge an applicant fees sufficient to cover the costs of implementing this chapter. The fees must include the cost of the attorney general's opinion under RCW 70.45.060. The department shall transfer this portion of the fee, upon receipt, to the attorney general. [2005 c 274 § 335; 1997 c 332 § 3.]

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

70.45.040 Applications—Deficiencies—Public notice. (1) The department, in consultation with the attorney general, shall determine if the application is complete for the purposes of review. The department may find that an application is incomplete if a question on the application form has not been answered in whole or in part, or has been answered in a manner that does not fairly meet the question addressed,

or if the application does not include attachments of supporting documents as required by RCW 70.45.030. If the department determines that an application is incomplete, it shall notify the applicant within fifteen working days after the date the application was received stating the reasons for its determination of incompleteness, with reference to the particular questions for which a deficiency is noted.

(2) Within five working days after receipt of a completed application, the department shall publish notice of the application in a newspaper of general circulation in the county or counties where the hospital is located and shall notify by first-class United States mail, electronic mail, or facsimile transmission, any person who has requested notice of the filing of such applications. The notice must state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the department. [1997 c 332 § 4.]

70.45.050 Public hearings. During the course of review under this chapter, the department shall conduct one or more public hearings, at least one of which must be in the county where the hospital to be acquired is located. At the hearings, anyone may file written comments and exhibits or appear and make a statement. The department may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the application.

A hearing must be held not later than forty-five days after receipt of a completed application. At least ten days' public notice must be given before the holding of a hearing. [1997 c 332 § 5.]

70.45.060 Attorney general review and opinion—Department review and decision—Adjudicative proceedings. (1) The department shall provide the attorney general with a copy of a completed application upon receiving it. The attorney general shall review the completed application, and within forty-five days of the first public hearing held under RCW 70.45.050 shall provide a written opinion to the department as to whether or not the acquisition meets the requirements for approval in RCW 70.45.070.

(2) The department shall review the completed application to determine whether or not the acquisition meets the requirements for approval in RCW 70.45.070 and 70.45.080. Within thirty days after receiving the written opinion of the attorney general under subsection (1) of this section, the department shall:

(a) Approve the acquisition, with or without any specific modifications or conditions; or

(b) Disapprove the acquisition.

(3) The department may not make its decision subject to any condition not directly related to requirements in RCW 70.45.070 or 70.45.080, and any condition or modification must bear a direct and rational relationship to the application under review.

(4) A person engaged in an acquisition and affected by a final decision of the department has the right to an adjudicative proceeding under chapter 34.05 RCW. The opinion of

the attorney general provided under subsection (1) of this section may not constitute a final decision for purposes of review.

(5) The department or the attorney general may extend, by not more than thirty days, any deadline established under this chapter one time during consideration of any application, for good cause. [1997 c 332 § 6.]

70.45.070 Department review—Criteria to safeguard charitable assets. The department shall only approve an application if the parties to the acquisition have taken the proper steps to safeguard the value of charitable assets and ensure that any proceeds from the acquisition are used for appropriate charitable health purposes. To this end, the department may not approve an application unless, at a minimum, it determines that:

(1) The acquisition is permitted under chapter 24.03 RCW, the Washington nonprofit corporation act, and other laws governing nonprofit entities, trusts, or charities;

(2) The nonprofit corporation that owns the hospital being acquired has exercised due diligence in authorizing the acquisition, selecting the acquiring person, and negotiating the terms and conditions of the acquisition;

(3) The procedures used by the nonprofit corporation's board of trustees and officers in making its decision fulfilled their fiduciary duties, that the board and officers were sufficiently informed about the proposed acquisition and possible alternatives, and that they used appropriate expert assistance;

(4) No conflict of interest exists related to the acquisition, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the nonprofit corporation, acquiring person, or other parties to the acquisition;

(5) The nonprofit corporation will receive fair market value for its assets. The attorney general or the department may employ, at the expense of the acquiring person, reasonably necessary expert assistance in making this determination. This expense must be in addition to the fees charged under RCW 70.45.030;

(6) Charitable funds will not be placed at unreasonable risk, if the acquisition is financed in part by the nonprofit corporation;

(7) Any management contract under the acquisition will be for fair market value;

(8) The proceeds from the acquisition will be controlled as charitable funds independently of the acquiring person or parties to the acquisition, and will be used for charitable health purposes consistent with the nonprofit corporation's original purpose, including providing health care to the disadvantaged, the uninsured, and the underinsured and providing benefits to promote improved health in the affected community;

(9) Any charitable entity established to hold the proceeds of the acquisition will be broadly based in and representative of the community where the hospital to be acquired is located, taking into consideration the structure and governance of such entity; and

(10) A right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the hospital is subsequently sold to, acquired by, or merged with another entity. [1997 c 332 § 7.]

70.45.080 Department review—Criteria for continued existence of accessible, affordable health care. The department shall only approve an application if the acquisition in question will not detrimentally affect the continued existence of accessible, affordable health care that is responsive to the needs of the community in which the hospital to be acquired is located. To this end, the department shall not approve an application unless, at a minimum, it determines that:

(1) Sufficient safeguards are included to assure the affected community continued access to affordable care, and that alternative sources of care are available in the community should the acquisition result in a reduction or elimination of particular health services;

(2) The acquisition will not result in the revocation of hospital privileges;

(3) Sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(4) The acquiring person and parties to the acquisition are committed to providing health care to the disadvantaged, the uninsured, and the underinsured and to providing benefits to promote improved health in the affected community. Activities and funding provided under RCW 70.45.070(8) may be considered in evaluating compliance with this commitment; and

(5) Sufficient safeguards are included to avoid conflict of interest in patient referral. [1997 c 332 § 8.]

70.45.090 Approval of acquisition required—Injunctions. (1) The secretary of state may not accept any forms or documents in connection with any acquisition of a nonprofit hospital until the acquisition has been approved by the department under this chapter.

(2) The attorney general may seek an injunction to prevent any acquisition not approved by the department under this chapter. [1997 c 332 § 9.]

70.45.100 Compliance—Department authority—Hearings—Revocation or suspension of hospital license—Referral to attorney general for action. The department shall require periodic reports from the nonprofit corporation or its successor nonprofit corporation or foundation and from the acquiring person or other parties to the acquisition to ensure compliance with commitments made. The department may subpoena information and documents and may conduct on-site compliance audits at the acquiring person's expense.

If the department receives information indicating that the acquiring person is not fulfilling commitments to the affected community under RCW 70.45.080, the department shall hold a hearing upon ten days' notice to the affected parties. If after the hearing the department determines that the information is true, it may revoke or suspend the hospital license issued to the acquiring person pursuant to the procedure established under RCW 70.41.130, refer the matter to the attorney general for appropriate action, or both. The attorney general may seek a court order compelling the acquiring person to fulfill its commitments under RCW 70.45.080. [1997 c 332 § 10.]

70.45.110 Authority of attorney general to ensure compliance. The attorney general has the authority to ensure

compliance with commitments that inure to the public interest. [1997 c 332 § 11.]

70.45.120 Acquisitions completed before July 27, 1997, not subject to this chapter. An acquisition of a hospital completed before July 27, 1997, and an acquisition in which an application for a certificate of need under chapter 70.38 RCW has been granted by the department before July 27, 1997, is not subject to this chapter. [1997 c 332 § 12.]

70.45.130 Common law and statutory authority of attorney general. No provision of this chapter derogates from the common law or statutory authority of the attorney general. [1997 c 332 § 13.]

70.45.140 Rule-making and contracting authority. The department may adopt rules necessary to implement this chapter and may contract with and provide reasonable reimbursement to qualified persons to assist in determining whether the requirements of RCW 70.45.070 and 70.45.080 have been met. [1997 c 332 § 14.]

70.45.900 Severability—1997 c 332. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 332 § 19.]

Chapter 70.46 RCW HEALTH DISTRICTS

Sections

70.46.020	Districts of two or more counties—Health board—Membership—Chair.
70.46.031	Districts of one county—Health board—Membership.
70.46.060	District health board—Powers and duties.
70.46.080	District health funds.
70.46.085	County to bear expense of providing public health services.
70.46.090	Withdrawal of county.
70.46.100	Power to acquire, maintain, or dispose of property—Contracts.
70.46.110	Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.
70.46.120	License or permit fees.
70.46.130	Contracts for sale or purchase of health services authorized.

Local health departments, provisions relating to health districts: Chapter 70.05 RCW.

70.46.020 Districts of two or more counties—Health board—Membership—Chair. Health districts consisting of two or more counties may be created whenever two or more boards of county commissioners shall by resolution establish a district for such purpose. Such a district shall consist of all the area of the combined counties. The district board of health of such a district shall consist of not less than five members for districts of two counties and seven members for districts of more than two counties, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners of each county within the district, and shall have a jurisdiction coextensive with the combined boundaries. The boards of county commissioners may by resolution or ordinance provide for elected officials from

cities and towns and persons other than elected officials as members of the district board of health so long as persons other than elected officials do not constitute a majority. A resolution or ordinance adopted under this section must specify the provisions for the appointment, term, and compensation, or reimbursement of expenses. Any multicounty health district existing on *the effective date of this act shall continue in existence unless and until changed by affirmative action of all boards of county commissioners or one or more counties withdraws [withdraw] pursuant to RCW 70.46.090.

At the first meeting of a district board of health the members shall elect a chair to serve for a period of one year. [1995 c 43 § 10; 1993 c 492 § 247; 1967 ex.s. c 51 § 6; 1945 c 183 § 2; Rem. Supp. 1945 § 6099-11.]

***Reviser's note:** For "the effective date of this act" see note following RCW 70.05.030.

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.031 Districts of one county—Health board—Membership. A health district to consist of one county may be created whenever the county legislative authority of the county shall pass a resolution or ordinance to organize such a health district under chapter 70.05 RCW and this chapter.

The resolution or ordinance may specify the membership, representation on the district health board, or other matters relative to the formation or operation of the health district. The county legislative authority may appoint elected officials from cities and towns and persons other than elected officials as members of the health district board so long as persons other than elected officials do not constitute a majority.

Any single county health district existing on *the effective date of this act shall continue in existence unless and until changed by affirmative action of the county legislative authority. [1995 c 43 § 11.]

***Reviser's note:** For "the effective date of this act" see note following RCW 70.05.030.

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

70.46.060 District health board—Powers and duties. The district board of health shall constitute the local board of health for all the territory included in the health district, and shall supersede and exercise all the powers and perform all the duties by law vested in the county board of health of any county included in the health district. [1993 c 492 § 248; 1967 ex.s. c 51 § 11; 1945 c 183 § 6; Rem. Supp. 1945 § 6099-15.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.080 District health funds. Each health district shall establish a fund to be designated as the "district health fund", in which shall be placed all sums received by the district from any source, and out of which shall be expended all sums disbursed by the district. In a district composed of more than one county the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of the receipts and disbursements, and shall draw and the county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the board.

Each county which is included in the district shall contribute such sums towards the expense for maintaining and operating the district as shall be agreed upon between it and the local board of health in accordance with guidelines established by the state board of health. [1993 c 492 § 249; 1971 ex.s. c 85 § 10; 1967 ex.s. c 51 § 19; 1945 c 183 § 8; Rem. Supp. 1945 § 6099-17.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.085 County to bear expense of providing public health services. The expense of providing public health services shall be borne by each county within the health district. [1993 c 492 § 250; 1967 ex.s. c 51 § 20.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

Expenses of enforcing health laws: RCW 70.05.130.

70.46.090 Withdrawal of county. Any county may withdraw from membership in said health district any time after it has been within the district for a period of two years, but no withdrawal shall be effective except at the end of the calendar year in which the county gives at least six months' notice of its intention to withdraw at the end of the calendar year. No withdrawal shall entitle any member to a refund of any moneys paid to the district nor relieve it of any obligations to pay to the district all sums for which it obligated itself due and owing by it to the district for the year at the end of which the withdrawal is to be effective. Any county which withdraws from membership in said health district shall immediately establish a health department or provide health services which shall meet the standards for health services promulgated by the state board of health. No local health department may be deemed to provide adequate public health services unless there is at least one full time professionally trained and qualified physician as set forth in RCW 70.05.050. [1993 c 492 § 251; 1967 ex.s. c 51 § 21; 1945 c 183 § 9; Rem. Supp. 1945 § 6099-18.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.100 Power to acquire, maintain, or dispose of property—Contracts. In addition to all other powers and duties, a health district shall have the power to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the district. A health district may sell, lease, convey or otherwise dispose of any district real or personal property no longer necessary for the conduct of the affairs of the district. A health district may enter into contracts to carry out the provisions of this section. [1957 c 100 § 2.]

70.46.110 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

70.46.120 License or permit fees. In addition to all other powers and duties, health districts shall have the power to charge fees in connection with the issuance or renewal of a license or permit required by law: PROVIDED, That the fees charged shall not exceed the actual cost involved in issuing or renewing the license or permit. [1993 c 492 § 252; 1963 c 121 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.46.130 Contracts for sale or purchase of health services authorized. See RCW 70.05.150.

Chapter 70.47 RCW

BASIC HEALTH PLAN— HEALTH CARE ACCESS ACT

Sections

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70.47.170	Annual reporting requirement.
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70.47.201	Mental health services—Rules.
70.47.210	Prostate cancer screening.

70.47.900 Short title.

70.47.901 Severability—1987 1st ex.s. c 5.

70.47.002 Intent—2002 c 2 (Initiative Measure No. 773). It is the intent of the people to improve the health of low-income children and adults by expanding access to basic health care and by reducing tobacco-related and other diseases and illnesses that disproportionately affect low-income persons. [2002 c 2 § 1 (Initiative Measure No. 773, approved November 6, 2001).]

70.47.005 Transfer power, duties, and functions to Washington state health care authority. The powers, duties, and functions of the Washington basic health plan are hereby transferred to the Washington state health care authority. All references to the administrator of the Washington basic health plan in the Revised Code of Washington shall be construed to mean the administrator of the Washington state health care authority. [1993 c 492 § 201.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.010 Legislative findings—Purpose—Administrator and department of social and health services to coordinate eligibility. (1)(a) The legislature finds that limitations on access to health care services for enrollees in the state, such as in rural and underserved areas, are particularly challenging for the basic health plan. Statutory restrictions have reduced the options available to the administrator to address the access needs of basic health plan enrollees. It is the intent of the legislature to authorize the administrator to develop alternative purchasing strategies to ensure access to basic health plan enrollees in all areas of the state, including: (i) The use of differential rating for managed health care systems based on geographic differences in costs; and (ii) limited use of self-insurance in areas where adequate access cannot be assured through other options.

(b) In developing alternative purchasing strategies to address health care access needs, the administrator shall consult with interested persons including health carriers, health care providers, and health facilities, and with other appropriate state agencies including the office of the insurance commissioner and the office of community and rural health. In pursuing such alternatives, the administrator shall continue to give priority to prepaid managed care as the preferred method of assuring access to basic health plan enrollees followed, in priority order, by preferred providers, fee for service, and self-funding.

(2) The legislature further finds that:

(a) A significant percentage of the population of this state does not have reasonably available insurance or other coverage of the costs of necessary basic health care services;

(b) This lack of basic health care coverage is detrimental to the health of the individuals lacking coverage and to the public welfare, and results in substantial expenditures for emergency and remedial health care, often at the expense of health care providers, health care facilities, and all purchasers of health care, including the state; and

(c) The use of managed health care systems has significant potential to reduce the growth of health care costs incurred by the people of this state generally, and by low-income pregnant women, and at-risk children and adolescents who need greater access to managed health care.

(3) The purpose of this chapter is to provide or make more readily available necessary basic health care services in an appropriate setting to working persons and others who lack coverage, at a cost to these persons that does not create barriers to the utilization of necessary health care services. To that end, this chapter establishes a program to be made available to those residents not eligible for medicare who share in a portion of the cost or who pay the full cost of receiving basic health care services from a managed health care system.

(4) It is not the intent of this chapter to provide health care services for those persons who are presently covered through private employer-based health plans, nor to replace employer-based health plans. However, the legislature recognizes that cost-effective and affordable health plans may not always be available to small business employers. Further, it is the intent of the legislature to expand, wherever possible, the availability of private health care coverage and to discourage the decline of employer-based coverage.

(5)(a) It is the purpose of this chapter to acknowledge the initial success of this program that has (i) assisted thousands of families in their search for affordable health care; (ii) demonstrated that low-income, uninsured families are willing to pay for their own health care coverage to the extent of their ability to pay; and (iii) proved that local health care providers are willing to enter into a public-private partnership as a managed care system.

(b) As a consequence, the legislature intends to extend an option to enroll to certain citizens above two hundred percent of the federal poverty guidelines within the state who reside in communities where the plan is operational and who collectively or individually wish to exercise the opportunity to purchase health care coverage through the basic health plan if the purchase is done at no cost to the state. It is also the intent of the legislature to allow employers and other financial sponsors to financially assist such individuals to purchase health care through the program so long as such purchase does not result in a lower standard of coverage for employees.

(c) The legislature intends that, to the extent of available funds, the program be available throughout Washington state to subsidized and nonsubsidized enrollees. It is also the intent of the legislature to enroll subsidized enrollees first, to the maximum extent feasible.

(d) The legislature directs that the basic health plan administrator identify enrollees who are likely to be eligible for medical assistance and assist these individuals in applying for and receiving medical assistance. The administrator and the department of social and health services shall implement a seamless system to coordinate eligibility determinations and benefit coverage for enrollees of the basic health plan and medical assistance recipients. [2000 c 79 § 42; 1993 c 492 § 208; 1987 1st ex.s. c 5 § 3.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

(2008 Ed.)

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.015 Expanded enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for agents and brokers. (Effective until July 1, 2009.) (1) The legislature finds that the basic health plan has been an effective program in providing health coverage for uninsured residents. Further, since 1993, substantial amounts of public funds have been allocated for subsidized basic health plan enrollment.

(2) It is the intent of the legislature that the basic health plan enrollment be expanded expeditiously, consistent with funds available in the health services account, with the goal of two hundred thousand adult subsidized basic health plan enrollees and one hundred thirty thousand children covered through expanded medical assistance services by June 30, 1997, with the priority of providing needed health services to children in conjunction with other public programs.

(3) Effective January 1, 1996, basic health plan enrollees whose income is less than one hundred twenty-five percent of the federal poverty level shall pay at least a ten-dollar premium share.

(4) No later than July 1, 1996, the administrator shall implement procedures whereby hospitals licensed under chapters 70.41 and 71.12 RCW, health carrier, rural health care facilities regulated under chapter 70.175 RCW, and community and migrant health centers funded under RCW 41.05.220, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process.

(5) No later than July 1, 1996, the administrator shall implement procedures whereby health insurance *agents and brokers, licensed under chapter 48.17 RCW, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. Brokers and agents may receive a commission for each individual sale of the basic health plan to anyone not signed up within the previous five years and a commission for each group sale of the basic health plan, if funding for this purpose is provided in a specific appropriation to the health care authority. No commission shall be provided upon a renewal. Commissions shall be determined based on the estimated annual cost of the basic health plan, however, commissions shall not result in a reduction in the premium amount paid to health carriers. For purposes of this section "health carrier" is as defined in RCW 48.43.005. The administrator may establish: (a) Minimum educational requirements that must be completed by the agents or brokers; (b) an appointment process for agents or brokers marketing the basic health plan; or (c) standards for revocation of the appointment of an agent or broker to submit applications for cause, including untrustworthy or incompetent conduct or harm to the public. The health care authority and the department of social and health services shall make

every effort to simplify and expedite the application and enrollment process. [1997 c 337 § 1; 1995 c 265 § 1.]

***Reviser's note:** 2007 c 117 replaced the terms "agent" and "broker" with the term "producer," effective July 1, 2009.

Effective date—1997 c 337 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997." [1997 c 337 § 9.]

Captions not law—1995 c 265: "Captions as used in this act constitute no part of the law." [1995 c 265 § 29.]

Effective date—1995 c 265: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995, except that sections 13 through 18 of this act shall take effect January 1, 1996." [1995 c 265 § 30.]

Savings—1995 c 265: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 265 § 31.]

Severability—1995 c 265: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 265 § 32.]

70.47.015 Expanded enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for insurance producers. (Effective July 1, 2009.) (1) The legislature finds that the basic health plan has been an effective program in providing health coverage for uninsured residents. Further, since 1993, substantial amounts of public funds have been allocated for subsidized basic health plan enrollment.

(2) It is the intent of the legislature that the basic health plan enrollment be expanded expeditiously, consistent with funds available in the health services account, with the goal of two hundred thousand adult subsidized basic health plan enrollees and one hundred thirty thousand children covered through expanded medical assistance services by June 30, 1997, with the priority of providing needed health services to children in conjunction with other public programs.

(3) Effective January 1, 1996, basic health plan enrollees whose income is less than one hundred twenty-five percent of the federal poverty level shall pay at least a ten-dollar premium share.

(4) No later than July 1, 1996, the administrator shall implement procedures whereby hospitals licensed under chapters 70.41 and 71.12 RCW, health carrier, rural health care facilities regulated under chapter 70.175 RCW, and community and migrant health centers funded under RCW 41.05.220, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process.

(5) No later than July 1, 1996, the administrator shall implement procedures whereby disability insurance producers, licensed under chapter 48.17 RCW, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the depart-

ment of social and health services. Insurance producers may receive a commission for each individual sale of the basic health plan to anyone not signed up within the previous five years and a commission for each group sale of the basic health plan, if funding for this purpose is provided in a specific appropriation to the health care authority. No commission shall be provided upon a renewal. Commissions shall be determined based on the estimated annual cost of the basic health plan, however, commissions shall not result in a reduction in the premium amount paid to health carriers. For purposes of this section "health carrier" is as defined in RCW 48.43.005. The administrator may establish: (a) Minimum educational requirements that must be completed by the insurance producers; (b) an appointment process for insurance producers marketing the basic health plan; or (c) standards for revocation of the appointment of an insurance producer to submit applications for cause, including untrustworthy or incompetent conduct or harm to the public. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process. [2008 c 217 § 99; 1997 c 337 § 1; 1995 c 265 § 1.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Effective date—1997 c 337 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997." [1997 c 337 § 9.]

Captions not law—1995 c 265: "Captions as used in this act constitute no part of the law." [1995 c 265 § 29.]

Effective date—1995 c 265: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995, except that sections 13 through 18 of this act shall take effect January 1, 1996." [1995 c 265 § 30.]

Savings—1995 c 265: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 265 § 31.]

Severability—1995 c 265: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 265 § 32.]

70.47.020 Definitions. As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are

eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(5) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(6) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan;

(b) An individual who meets the requirements in (a)(i) through (iv) and (vi) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv) and (vi) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(7) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is accepted for enrollment by the administrator as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washing-

ton state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(10) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, non-subsidized, and health coverage tax credit eligible enrollees in the plan and in that system. [2007 c 259 § 35; 2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5. Prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—2005 c 188: "The legislature finds that the basic health plan is a valuable means of providing access to affordable health insurance coverage for low-income families and individuals in Washington state. The legislature further finds that persons studying in the United States as full-time students under temporary visas must show, as a condition of receiving their temporary visa, that they have sufficient funds available for self-support during their entire proposed course of study. For this reason, the legislature finds that it is not appropriate to provide subsidized basic health plan coverage to this group of students." [2005 c 188 § 1.]

Effective date—2004 c 192: "This act takes effect January 1, 2005." [2004 c 192 § 6.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Effective date—1995 c 266: See note following RCW 70.47.060.

Effective date—1995 c 2: See note following RCW 43.72.090.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.030 Basic health plan trust account—Basic health plan subscription account. (1) The basic health plan trust account is hereby established in the state treasury. Any nongeneral fund-state funds collected for this program shall be deposited in the basic health plan trust account and may be expended without further appropriation. Moneys in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of enrollees in the plan and payment of costs of administering the plan.

During the 1995-97 fiscal biennium, the legislature may transfer funds from the basic health plan trust account to the state general fund.

(2) The basic health plan subscription account is created in the custody of the state treasurer. All receipts from amounts due from or on behalf of nonsubsidized enrollees

and health coverage tax credit eligible enrollees shall be deposited into the account. Funds in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of nonsubsidized enrollees and health coverage tax credit eligible enrollees in the plan and payment of costs of administering the plan. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The administrator shall take every precaution to see that none of the funds in the separate accounts created in this section or that any premiums paid either by subsidized or nonsubsidized enrollees are commingled in any way, except that the administrator may combine funds designated for administration of the plan into a single administrative account. [2004 c 192 § 2; 1995 2nd sp.s. c 18 § 913; 1993 c 492 § 210; 1992 c 232 § 907. Prior: 1991 sp.s. c 13 § 68; 1991 sp.s. c 4 § 1; 1987 1st ex.s. c 5 § 5.]

Effective date—2004 c 192: See note following RCW 70.47.020.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 232: See note following RCW 43.33A.180.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1991 sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 4 § 4.]

70.47.040 Basic health plan—Health care authority head to be administrator—Joint operations—Technical advisory committee. (1) The Washington basic health plan is created as a program within the Washington state health care authority. The administrative head and appointing authority of the plan shall be the administrator of the Washington state health care authority. The administrator shall appoint a medical director. The medical director and up to five other employees of the plan shall be exempt from the civil service law, chapter 41.06 RCW.

(2) The administrator shall employ such other staff as are necessary to fulfill the responsibilities and duties of the administrator, such staff to be subject to the civil service law, chapter 41.06 RCW. In addition, the administrator may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. Any such contractor or consultant shall be prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the plan. The administrator may call upon other agencies of the state to provide available information as necessary to assist the administrator in meeting its responsibilities under this chapter, which information shall be supplied as promptly as circumstances permit.

(3) The administrator may appoint such technical or advisory committees as he or she deems necessary. The administrator shall appoint a standing technical advisory

committee that is representative of health care professionals, health care providers, and those directly involved in the purchase, provision, or delivery of health care services, as well as consumers and those knowledgeable of the ethical issues involved with health care public policy. Individuals appointed to any technical or other advisory committee shall serve without compensation for their services as members, but may be reimbursed for their travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(4) The administrator may apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects relating to health care costs and access to health care.

(5) Whenever feasible, the administrator shall reduce the administrative cost of operating the program by adopting joint policies or procedures applicable to both the basic health plan and employee health plans. [1993 c 492 § 211; 1987 1st ex.s. c 5 § 6.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.050 Rules. The administrator may promulgate and adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1987 1st ex.s. c 5 § 7.]

70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment. The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the actuarial value of the basic health plan benefits by more than five percent excluding inflation, as determined by the office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of ser-

vices shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.47.030, and such other factors as the administrator deems appropriate.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (11) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (12) of this section.

(b) To determine the periodic premiums due the administrator from subsidized enrollees under RCW 70.47.020(6)(b). Premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level shall be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level shall not exceed one hundred dollars per month.

(c) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(d) To determine the periodic premiums due the administrator from health coverage tax credit eligible enrollees. Premiums due from health coverage tax credit eligible enrollees must be in an amount equal to the cost charged by the managed health care system provider to the state for the plan, plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201. The administrator will consider the impact of eligibility determination by the appropriate federal agency designated by the Trade Act of 2002 (P.L. 107-210) as well as the premium collection and remittance activities by the United States internal revenue service when determining the administrative cost charged for health coverage tax credit eligible enrollees.

(e) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator. The administrator shall establish a mechanism for receiving premium payments from the United States internal revenue service for health coverage tax credit eligible enrollees.

(f) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as config-

ured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(3) To evaluate, with the cooperation of participating managed health care system providers, the impact on the basic health plan of enrolling health coverage tax credit eligible enrollees. The administrator shall issue to the appropriate committees of the legislature preliminary evaluations on June 1, 2005, and January 1, 2006, and a final evaluation by June 1, 2006. The evaluation shall address the number of persons enrolled, the duration of their enrollment, their utilization of covered services relative to other basic health plan enrollees, and the extent to which their enrollment contributed to any change in the cost of the basic health plan.

(4) To end the participation of health coverage tax credit eligible enrollees in the basic health plan if the federal government reduces or terminates premium payments on their behalf through the United States internal revenue service.

(5) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized, nonsubsidized, and health coverage tax credit eligible enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(6) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists. Such a closure does not apply to health coverage tax credit eligible enrollees who receive a premium subsidy from the United States internal revenue service as long as the enrollees qualify for the health coverage tax credit program.

(7) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(8) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(9) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan for subsidized enrollees, nonsubsidized enrollees, or health coverage tax credit eligible enrollees. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the man-

aged health care system if such providers have entered into provider agreements with the department of social and health services.

(10) To receive periodic premiums from or on behalf of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(11) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized, nonsubsidized, or health coverage tax credit eligible enrollees, to give priority to members of the Washington national guard and reserves who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents, for enrollment in the Washington basic health plan, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145 shall not be counted toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(12) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust

the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(13) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same or actuarially equivalent for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(14) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(15) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(16) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(17) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(18) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(19) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool.

(20) To give priority in enrollment to persons who disenrolled from the program in order to enroll in medicaid, and subsequently became ineligible for medicaid coverage. [2007 c 259 § 36; 2006 c 343 § 9; 2004 c 192 § 3; 2001 c 196 § 13; 2000 c 79 § 34. Prior: 1998 c 314 § 17; 1998 c 148 § 1; prior: 1997 c 337 § 2; 1997 c 335 § 2; 1997 c 245 § 6; 1997 c 231 § 206; prior: 1995 c 266 § 1; 1995 c 2 § 4; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908; prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—2006 c 343: See note following RCW 43.60A.160.

Effective date—2004 c 192: See note following RCW 70.47.020.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Effective date—1997 c 337 §§ 1 and 2: See note following RCW 70.47.015.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Effective date—1995 c 266: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 266 § 5.]

Effective date—1995 c 2: See note following RCW 43.72.090.

Contingency—1994 c 309 §§ 5 and 6: "If a court in a permanent injunction, permanent order, or final decision determines that the amendments made by sections 5 and 6, chapter 309, Laws of 1994, must be submitted to the people for their adoption and ratification, or rejection, as a result of section 13, chapter 2, Laws of 1994, the amendments made by sections 5 and 6, chapter 309, Laws of 1994, shall be null and void." [1994 c 309 § 7.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 232: See note following RCW 43.33A.180.

Effective date—1991 sp.s. c 4: See note following RCW 70.47.030.

70.47.070 Benefits from other coverages not reduced.

The benefits available under the plan shall be subject to RCW 48.21.200 and shall be excess to the benefits payable under the terms of any insurance policy issued to or on the behalf of an enrollee that provides payments toward medical expenses without a determination of liability for the injury. [1987 1st ex.s. c 5 § 9.]

70.47.080 Enrollment of applicants—Participation limitations. On and after July 1, 1988, the administrator shall accept for enrollment applicants eligible to receive covered basic health care services from the respective managed health care systems which are then participating in the plan.

Thereafter, total subsidized enrollment shall not result in expenditures that exceed the total amount that has been made available by the legislature in any act appropriating funds to the plan. To the extent that new funding is appropriated for expansion, the administrator shall endeavor to secure participation contracts from managed health care systems in geographic areas of the state that are unserved by the plan at the time at which the new funding is appropriated. In the selection of any such areas the administrator shall take into account the levels and rates of unemployment in different areas of the state, the need to provide basic health care coverage to a population reasonably representative of the portion of the state's population that lacks such coverage, and the need for geographic, demographic, and economic diversity.

The administrator shall at all times closely monitor growth patterns of enrollment so as not to exceed that consistent with the orderly development of the plan as a whole, in any area of the state or in any participating managed health care system. The annual or biennial enrollment limitations derived from operation of the plan under this section do not apply to nonsubsidized enrollees as defined in *RCW 70.47.020(5). [1993 c 492 § 213; 1987 1st ex.s. c 5 § 10.]

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***Reviser's note:** RCW 70.47.020 was amended by 2004 c 192 § 1, changing subsection (5) to subsection (7), effective January 1, 2005.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.090 Removal of enrollees. Any enrollee whose premium payments to the plan are delinquent or who moves his or her residence out of an area served by the plan may be dropped from enrollment status. An enrollee whose premium is the responsibility of the department of social and health services under RCW 70.47.110 may not be dropped solely because of nonpayment by the department. The administrator shall provide delinquent enrollees with advance written notice of their removal from the plan and shall provide for a hearing under chapters 34.05 and 34.12 RCW for any enrollee who contests the decision to drop the enrollee from the plan. Upon removal of an enrollee from the plan, the administrator shall promptly notify the managed health care system in which the enrollee has been enrolled, and shall not be responsible for payment for health care services provided to the enrollee (including, if applicable, members of the enrollee's family) after the date of notification. A managed health care system may contest the denial of payment for coverage of an enrollee through a hearing under chapters 34.05 and 34.12 RCW. [1987 1st ex.s. c 5 § 11.]

70.47.100 Participation by a managed health care system. (1) A managed health care system participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the administrator as long as payments from the administrator on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another

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participating managed health care system at any time upon a showing of good cause for the transfer.

(3) Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(4) In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

(a) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The administrator may then select one or more systems to provide the covered services within a local area; and

(d) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(5) The administrator may contract with a managed health care system to provide covered basic health care services to subsidized enrollees, nonsubsidized enrollees, health coverage tax credit eligible enrollees, or any combination thereof.

(6) The administrator may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (4) of this section, upon a determination by the administrator that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(7)(a) The administrator shall implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140, if one of the following conditions is met:

(i) The authority determines that no managed health care system other than the authority is willing and able to provide access, as defined in the request for proposal documents, to covered basic health care services for all subsidized enrollees in an area; or

(ii) The authority determines that no other managed health care system is willing to provide access, as defined in the request for proposal documents, for one hundred thirty-three percent of the statewide benchmark price or less, and the authority is able to offer such coverage at a price that is less than the lowest price at which any other managed health care system is willing to provide such access in an area.

(b) The authority shall initiate steps to provide the coverage described in (a) of this subsection within ninety days of making its determination that the conditions for providing a self-funded or self-insured method of providing insurance have been met.

(c) The administrator may not implement a self-funded or self-insured method of providing insurance in an area

unless the administrator has received a certification from a member of the American academy of actuaries that the funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator. [2004 c 192 § 4; 2000 c 79 § 35; 1987 1st ex.s. c 5 § 12.]

Effective date—2004 c 192: See note following RCW 70.47.020.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

70.47.110 Enrollment of medical assistance recipients. The department of social and health services may make payments to the administrator or to participating managed health care systems on behalf of any enrollee who is a recipient of medical care under chapter 74.09 RCW, at the maximum rate allowable for federal matching purposes under Title XIX of the social security act. Any enrollee on whose behalf the department of social and health services makes such payments may continue as an enrollee, making premium payments based on the enrollee's own income as determined under the sliding scale, after eligibility for coverage under chapter 74.09 RCW has ended, as long as the enrollee remains eligible under this chapter. Nothing in this section affects the right of any person eligible for coverage under chapter 74.09 RCW to receive the services offered to other persons under that chapter but not included in the schedule of basic health care services covered by the plan. The administrator shall seek to determine which enrollees or prospective enrollees may be eligible for medical care under chapter 74.09 RCW and may require these individuals to complete the eligibility determination process under chapter 74.09 RCW prior to enrollment or continued participation in the plan. The administrator and the department of social and health services shall cooperatively adopt procedures to facilitate the transition of plan enrollees and payments on their behalf between the plan and the programs established under chapter 74.09 RCW. [1991 sp.s. c 4 § 3; 1987 1st ex.s. c 5 § 13.]

Effective date—1991 sp.s. c 4: See note following RCW 70.47.030.

70.47.115 Enrollment of persons in timber impact areas. (1) The administrator, when specific funding is provided and where feasible, shall make the basic health plan available in timber impact areas. The administrator shall prioritize making the plan available under this section to the timber impact areas meeting the following criteria, as determined by the employment security department: (a) A lumber and wood products employment location quotient at or above the state average; (b) a direct lumber and wood products job loss of one hundred positions or more; and (c) an annual unemployment rate twenty percent above the state average.

(2) Persons assisted under this section shall meet the requirements of enrollee as defined in *RCW 70.47.020(4).

(3) For purposes of this section, "timber impact area" means:

(a) A county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year

such data is available: (i) A lumber and wood products employment location quotient at or above the state average; (ii) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (iii) an annual unemployment rate twenty percent or more above the state average; or

(b) Additional communities as the economic recovery coordinating board, established in ****RCW 43.31.631**, designates based on a finding by the board that each designated community is socially and economically integrated with areas that meet the definition of a timber impact area under (a) of this subsection. [1992 c 21 § 7; 1991 c 315 § 22.]

Reviser's note: *(1) RCW 70.47.020 was amended by 2004 c 192 § 1, changing subsection (4) to subsection (6), effective January 1, 2005.

***(2) RCW 43.31.631 was repealed by 1995 c 226 § 33 and 1995 c 269 § 1902, effective July 1, 1995.

Intent—1991 c 315: See note following RCW 28B.50.030.

Severability—Conflict with federal requirements—Effective date—1991 c 315: See RCW 50.70.900 through 50.70.902.

70.47.120 Administrator—Contracts for services. In addition to the powers and duties specified in RCW 70.47.040 and 70.47.060, the administrator has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the administrator in her or his duties to design or revise the schedule of covered basic health care services, and/or to monitor or evaluate the performance of participating managed health care systems.

(2) With public or private agencies, to provide technical or professional assistance to health care providers, particularly public or private nonprofit organizations and providers serving rural areas, who show serious intent and apparent capability to participate in the plan as managed health care systems.

(3) With public or private agencies, including health care service contractors registered under RCW 48.44.015, and doing business in the state, for marketing and administrative services in connection with participation of managed health care systems, enrollment of enrollees, billing and collection services to the administrator, and other administrative functions ordinarily performed by health care service contractors, other than insurance. Any activities of a health care service contractor pursuant to a contract with the administrator under this section shall be exempt from the provisions and requirements of Title 48 RCW except that persons appointed or authorized to solicit applications for enrollment in the basic health plan shall comply with chapter 48.17 RCW. [1997 c 337 § 7; 1987 1st ex.s. c 5 § 14.]

70.47.130 Exemption from insurance code. (1) The activities and operations of the Washington basic health plan under this chapter, including those of managed health care systems to the extent of their participation in the plan, are exempt from the provisions and requirements of Title 48 RCW except:

(a) Benefits as provided in RCW 70.47.070;

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(b) Managed health care systems are subject to the provisions of RCW 48.43.022, 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 43.70.235, 48.43.545, 48.43.550, 70.02.110, and 70.02.900;

(c) Persons appointed or authorized to solicit applications for enrollment in the basic health plan, including employees of the health care authority, must comply with chapter 48.17 RCW. For purposes of this subsection (1)(c), "solicit" does not include distributing information and applications for the basic health plan and responding to questions; and

(d) Amounts paid to a managed health care system by the basic health plan for participating in the basic health plan and providing health care services for nonsubsidized enrollees in the basic health plan must comply with RCW 48.14.0201.

(2) The purpose of the 1994 amendatory language to this section in chapter 309, Laws of 1994 is to clarify the intent of the legislature that premiums paid on behalf of nonsubsidized enrollees in the basic health plan are subject to the premium and prepayment tax. The legislature does not consider this clarifying language to either raise existing taxes nor to impose a tax that did not exist previously. [2004 c 115 § 2; 2000 c 5 § 21; 1997 c 337 § 8; 1994 c 309 § 6; 1987 1st ex.s. c 5 § 15.]

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

Contingency—1994 c 309 §§ 5 and 6: See note following RCW 70.47.060.

70.47.140 Reservation of legislative power. The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or any acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time. [1987 1st ex.s. c 5 § 2.]

70.47.150 Confidentiality. Notwithstanding the provisions of chapter 42.56 RCW, (1) records obtained, reviewed by, or on file with the plan containing information concerning medical treatment of individuals shall be exempt from public inspection and copying; and (2) actuarial formulas, statistics, and assumptions submitted in support of a rate filing by a managed health care system or submitted to the administrator upon his or her request shall be exempt from public inspection and copying in order to preserve trade secrets or prevent unfair competition. [2005 c 274 § 336; 1990 c 54 § 1.]

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

70.47.160 Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or religion—Requirements. (1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore,

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while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with the basic health plan to receive the full range of services covered under the basic health plan.

(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.

(b) The provisions of this section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan. Each health carrier shall:

(i) Provide written notice to enrollees, upon enrollment with the plan, listing services that the carrier refuses to cover for reason of conscience or religion;

(ii) Provide written information describing how an enrollee may directly access services in an expeditious manner; and

(iii) Ensure that enrollees refused services under this section have prompt access to the information developed pursuant to (b)(ii) of this subsection.

(c) The administrator shall establish a mechanism or mechanisms to recognize the right to exercise conscience while ensuring enrollees timely access to services and to assure prompt payment to service providers.

(3)(a) No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

(b) The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause in (a) of this subsection.

(c) The administrator shall define the process through which health carriers may offer the basic health plan to individuals and organizations identified in (a) and (b) of this subsection in accordance with the provisions of subsection (2)(c) of this section.

(4) Nothing in this section requires the health care authority, health carriers, health care facilities, or health care providers to provide any basic health plan service without payment of appropriate premium share or enrollee cost sharing. [1995 c 266 § 3.]

Effective date—1995 c 266: See note following RCW 70.47.060.

70.47.170 Annual reporting requirement. (1) The health care authority, in coordination with the department of social and health services, shall by November 15th of each year report to the legislature:

(a) The number of basic health plan enrollees who: (i) Upon enrollment or recertification had reported being employed, and beginning with the 2008 report, the month and year they reported being hired; or (ii) upon enrollment or recertification had reported being the dependent of someone who was employed, and beginning with the 2008 report, the month and year they reported the employed person was hired;

and (iii) the total cost to the state for these enrollees. The information shall be reported by employer [size] for employers having more than fifty employees as enrollees or with dependents as enrollees. This information shall be provided for the preceding January and June of that year.

(b) The following aggregated information: (i) The number of employees who are enrollees or with dependents as enrollees by private and governmental employers; (ii) the number of employees who are enrollees or with dependents as enrollees by employer size for employers with fifty or fewer employees, fifty-one to one hundred employees, one hundred one to one thousand employees, one thousand one to five thousand employees and more than five thousand employees; and (iii) the number of employees who are enrollees or with dependents as enrollees by industry type.

[(2)] For each aggregated classification, the report will include the number of hours worked and total cost to the state for these enrollees. This information shall be for each quarter of the preceding year. [2006 c 264 § 1.]

70.47.200 Mental health services—Definition—Coverage required, when. (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be determined by the administrator, by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment, unless the Washington basic health plan's or contracted managed health care system's medical director or designee determines the treatment to be medically necessary.

(2)(a) Any schedule of benefits established or renewed by the Washington basic health plan on or after January 1, 2006, shall provide coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(b) Any schedule of benefits established or renewed by the Washington basic health plan on or after January 1, 2008, shall provide coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services

otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the schedule of benefits imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(c) Any schedule of benefits established or renewed by the Washington basic health plan on or after July 1, 2010, shall include coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the schedule of benefits imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the schedule of benefits imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, the Washington basic health plan may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2005 c 6 § 6.]

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

70.47.201 Mental health services—Rules. The administrator may adopt rules to implement RCW 70.47.200. [2005 c 6 § 11.]

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

70.47.210 Prostate cancer screening. (1) Any schedule of benefits established or renewed by the Washington basic health plan after December 31, 2006, shall provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's

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physician, advanced registered nurse practitioner, or physician assistant.

(2) This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits, such as deductible or copayment provisions. This section does not limit the authority of the health care authority to negotiate rates and contract with specific providers for the delivery of prostate cancer screening services. [2006 c 367 § 7.]

70.47.900 Short title. This chapter shall be known and may be cited as the health care access act of 1987. [1987 1st ex.s. c 5 § 1.]

70.47.901 Severability—1987 1st ex.s. c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 1st ex.s. c 5 § 26.]

Chapter 70.47A RCW

SMALL EMPLOYER HEALTH INSURANCE PARTNERSHIP PROGRAM

Sections

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70.47A.110	Health insurance partnership board—Duties.
70.47A.900	Captions not law—2006 c 255.

70.47A.010 Finding—Intent. (1) The legislature finds that many small employers struggle with the cost of providing employer-sponsored health insurance coverage to their employees, while others are unable to offer employer-sponsored health insurance due to its high cost. Low-wage workers also struggle with the burden of paying their share of the costs of employer-sponsored health insurance, while others turn down their employer's offer of coverage due to its costs.

(2) The legislature intends, through establishment of a health insurance partnership program, to remove economic barriers to health insurance coverage for low-wage employees of small employers by building on the private sector health benefit plan system and encouraging employer and employee participation in employer-sponsored health benefit plan coverage. [2007 c 260 § 1; 2006 c 255 § 1.]

70.47A.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the Washington state health care authority, established under chapter 41.05 RCW.

(2) "Board" means the health insurance partnership board established in RCW 70.47A.100.

(3) "Eligible partnership participant" means a partnership participant who:

(a) Is a resident of the state of Washington; and

(b) Has family income that does not exceed two hundred percent of the federal poverty level, as determined annually by the federal department of health and human services.

(4) "Health benefit plan" has the same meaning as defined in RCW 48.43.005.

(5) "Participating small employer" means a small employer that has entered into an agreement with the partnership to purchase health benefits through the partnership. To participate in the partnership, an employer must attest to the fact that (a) the employer does not currently offer health insurance to its employees, and (b) at least fifty percent of the employer's employees are low-wage workers.

(6) "Partnership" means the health insurance partnership established in RCW 70.47A.030.

(7) "Partnership participant" means a participating small employer and employees of a participating small employer, and, except to the extent provided otherwise in RCW 70.47A.110(1)(e), a former employee of a participating small employer who chooses to continue receiving coverage through the partnership following separation from employment.

(8) "Small employer" has the same meaning as defined in RCW 48.43.005.

(9) "Subsidy" or "premium subsidy" means payment or reimbursement to an eligible partnership participant toward the purchase of a health benefit plan, and may include a net billing arrangement with insurance carriers or a prospective or retrospective payment for health benefit plan premiums. [2008 c 143 § 1; 2007 c 260 § 2; 2006 c 255 § 2.]

70.47A.030 Health insurance partnership established—Administrator duties. (1) To the extent funding is appropriated in the operating budget for this purpose, the health insurance partnership is established. The administrator shall be responsible for the implementation and operation of the health insurance partnership, directly or by contract. The administrator shall offer premium subsidies to eligible partnership participants under RCW 70.47A.040. The partnership shall begin to offer coverage no later than March 1, 2009.

(2) Consistent with policies adopted by the board under RCW 70.47A.110, the administrator shall, directly or by contract:

(a) Establish and administer procedures for enrolling small employers in the partnership, including publicizing the existence of the partnership and disseminating information on enrollment, and establishing rules related to minimum participation of employees in small groups purchasing health insurance through the partnership. Opportunities to publicize the program for outreach and education of small employers on the value of insurance shall explore the use of online employer guides. As a condition of participating in the partnership, a small employer must agree to establish a cafeteria plan under section 125 of the federal internal revenue code that will enable employees to use pretax dollars to pay their share of their health benefit plan premium. The partnership shall provide technical assistance to small employers for this purpose;

(b) Establish and administer procedures for health benefit plan enrollment by employees of small employers during open enrollment periods and outside of open enrollment periods upon the occurrence of any qualifying event specified in the federal health insurance portability and accountability act of 1996 or applicable state law. Except to the extent authorized in RCW 70.47A.110(1)(e), neither the employer nor the partnership shall limit an employee's choice of coverage from among the health benefit plans offered through the partnership;

(c) Establish and manage a system of collecting and transmitting to the applicable carriers all premium payments or contributions made by or on behalf of partnership participants, including employer contributions, automatic payroll deductions for partnership participants, premium subsidy payments, and contributions from philanthropies;

(d) Establish and manage a system for determining eligibility for and making premium subsidy payments under chapter 259, Laws of 2007;

(e) Establish a mechanism to apply a surcharge to each health benefit plan purchased through the partnership, which shall be used only to pay for administrative and operational expenses of the partnership. The surcharge must be applied uniformly to all health benefit plans purchased through the partnership. Any surcharge amount may be added to the premium, but shall not be considered part of the small group community rate, and shall be applied only to the coverage purchased through the partnership. Surcharges may not be used to pay any premium assistance payments under this chapter. The surcharge shall reflect administrative and operational expenses remaining after any appropriation provided by the legislature to support administrative or operational expenses of the partnership during the year the surcharge is assessed;

(f) Design a schedule of premium subsidies that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members based on a benchmark health benefit plan designated by the board. The amount of an eligible partnership participant's premium subsidy shall be determined by applying a sliding scale subsidy schedule with the percentage of premium similar to that developed for subsidized basic health plan enrollees under RCW 70.47.060. The subsidy shall be applied to the employee's premium obligation for his or her health benefit plan, so that employees benefit financially from any employer contribution to the cost of their coverage through the partnership.

(3) The administrator may enter into interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, and any other state agencies necessary to implement this chapter. [2008 c 143 § 2; 2007 c 259 § 58; 2006 c 255 § 3.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.47A.040 Applications for premium subsidies. Beginning January 1, 2009, the administrator shall accept applications from eligible partnership participants, on behalf of themselves, their spouses, and their dependent children, to receive premium subsidies through the health insurance partnership. Every effort shall be made to coordinate premium

subsidies for dependent children with federal funding available under Title XIX and Title XXI of the federal social security act, consistent with the requirements established in RCW 74.09.470(4) for the employer-sponsored insurance program at the department of social and health services. [2008 c 143 § 3; 2007 c 260 § 6; 2006 c 255 § 4.]

70.47A.050 Enrollment to remain within appropriation. Enrollment in the health insurance partnership is not an entitlement and shall not result in expenditures that exceed the amount that has been appropriated for the program in the operating budget. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the administrator may freeze new enrollment in the program and establish a waiting list of eligible employees who shall receive subsidies only when sufficient funds are available. [2007 c 260 § 12; 2006 c 255 § 5.]

70.47A.060 Rules. The administrator shall adopt all rules necessary for the implementation and operation of the health insurance partnership. As part of the rule development process, the administrator shall consult with small employers, carriers, employee organizations, and the office of the insurance commissioner under Title 48 RCW to determine an effective and efficient method for the payment of subsidies under this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [2007 c 260 § 13; 2006 c 255 § 6.]

70.47A.070 Reports. The administrator shall report biennially, beginning November 1, 2010, to the relevant policy and fiscal committees of the legislature on the effectiveness and efficiency of the health insurance partnership program, including enrollment trends, the services and benefits covered under the purchased health benefit plans, consumer satisfaction, and other program operational issues. [2008 c 143 § 4; 2006 c 255 § 7.]

70.47A.080 Health insurance partnership account. The health insurance partnership account is hereby established in the custody of the state treasurer. Any nongeneral fund—state funds collected for the health insurance partnership shall be deposited in the health insurance partnership account. Moneys in the account shall be used exclusively for the purposes of administering the health insurance partnership, including payments to insurance carriers on behalf of health insurance partnership enrollees. Only the administrator of the health care authority or his or her designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 260 § 14; 2006 c 255 § 8.]

70.47A.090 State children's health insurance program—Federal waiver request. The department of social and health services shall submit a request to the federal department of health and human services by October 1, 2006, for a state children's health insurance program section 1115 demonstration waiver. The waiver request shall seek authorization from the federal government to draw down Washington state's unspent state children's health insurance program

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allotment to finance basic health plan coverage, as provided in chapter 70.47 RCW, for parents of children enrolled in medical assistance or the state children's health insurance program. The waiver also shall seek authorization from the federal government to utilize the resulting state savings to finance expanded basic health plan enrollment, or subsidies provided to low-wage workers through the small employer health insurance partnership program established in this chapter. [2006 c 255 § 9.]

70.47A.100 Health insurance partnership board. (1) The health insurance partnership board is hereby established. The governor shall appoint a seven-member health insurance partnership board by June 30, 2007. The board shall be composed of persons with expertise in the health insurance market and benefit design, and be chaired by the administrator.

(2) The governor shall appoint the initial members of the board to staggered terms not to exceed four years. Initial appointments shall be made on or before June 1, 2007. Members appointed thereafter shall serve two-year terms. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. Meetings of the board shall be at the call of the chair.

(3) The board may establish technical advisory committees or seek the advice of technical experts when necessary to execute the powers and duties included in this section.

(4) The board and employees of the board shall not be civilly or criminally liable and shall not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under this chapter. Nothing in this section prohibits legal actions against the board to enforce the board's statutory or contractual duties or obligations. [2007 c 260 § 4.]

Report—2007 c 260: "On or before September 1, 2009, the health insurance partnership board shall submit a report and recommendations to the governor and the legislature regarding:

(1) The risks and benefits of additional markets participating in the partnership:

(a) The report shall examine the following markets:

(i) Washington state health insurance pool under chapter 48.41 RCW;

(ii) Basic health plan under chapter 70.47 RCW;

(iii) Public employees' benefits board enrollees under chapter 41.05 RCW;

(iv) Public school employees; and

(v) Any final recommendations for the individual and small group markets, relevant to the study outlined in section 10 of this act; and

(b) The report shall examine at least the following issues:

(i) The impact of these markets participating in the partnership, with respect to the utilization of services and cost of health plans offered through the partnership;

(ii) Whether any distinction should be made in participation between active and retired employees enrolled in public employees' benefits board plans, giving consideration to the implicit subsidy that nonmedicare-eligible retirees currently benefit from by being pooled with active employees, and how medicare-eligible retirees would be affected;

(iii) The impact of applying small group health benefit plan regulations on access to health services and the cost of coverage for these markets; and

(iv) If the board recommends the inclusion of additional markets, how the composition of the board should be modified to reflect the participation of these markets; and

(2) The risks and benefits of establishing a requirement that residents of the state of Washington age eighteen and over obtain and maintain affordable creditable coverage, as defined in the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg(c)). The report shall address the question of how a requirement that residents maintain coverage could be enforced in the state of Washington." [2007 c 260 § 11.]

70.47A.110 Health insurance partnership board—Duties. (1) The health insurance partnership board shall:

(a) Develop policies for enrollment of small employers in the partnership, including minimum participation rules for small employer groups. The small employer shall determine the criteria for eligibility and enrollment in his or her plan and the terms and amounts of the employer's contributions to that plan, consistent with any minimum employer premium contribution level established by the board under (d) of this subsection;

(b) Designate health benefit plans that are currently offered in the small group market that will be offered to participating small employers through the health insurance partnership and those plans that will qualify for premium subsidy payments. Up to five health benefit plans shall be chosen, with multiple deductible and point-of-service cost-sharing options. The health benefit plans shall range from catastrophic to comprehensive coverage, and one health benefit plan shall be a high deductible health plan accompanied by a health savings account. Every effort shall be made to include health benefit plans that include components to maximize the quality of care provided and result in improved health outcomes, such as preventive care, wellness incentives, chronic care management services, and provider network development and payment policies related to quality of care;

(c) Approve a mid-range benefit plan from those selected to be used as a benchmark plan for calculating premium subsidies;

(d) Determine whether there should be a minimum employer premium contribution on behalf of employees, and if so, how much;

(e) Develop policies related to partnership participant enrollment in health benefit plans. The board may focus its initial efforts on access to coverage and affordability of coverage for participating small employers and their employees. To the extent necessary for successful implementation of the partnership, during a start-up phase of partnership operation, the board may:

(i) Limit partnership participant health benefit plan choice; and

(ii) Offer former employees of participating small employers the opportunity to continue coverage after separation from employment to the extent that a former employee is eligible for continuation coverage under 29 U.S.C. Sec. 1161 et seq.

The start-up phase may not exceed two years from the date the partnership begins to offer coverage;

(f) Determine appropriate health benefit plan rating methodologies. The methodologies shall be based on the small group adjusted community rate as defined in Title 48 RCW. The board shall evaluate the impact of applying the small group adjusted community rating methodology to health benefit plans purchased through the partnership on the principle of allowing each partnership participant to choose his or her health benefit plan, and may implement one or

more risk adjustment or reinsurance mechanisms to reduce uncertainty for carriers and provide for efficient risk management of high-cost enrollees;

(g) Determine whether the partnership should be designated as the administrator of a participating small employer health benefit plan and undertake the obligations required of a plan administrator under federal law in order to minimize administrative burdens on participating small employers;

(h) Conduct analyses and provide recommendations as requested by the legislature and the governor, with the assistance of staff from the health care authority and the office of the insurance commissioner.

(2) The board may authorize one or more limited health care service plans for dental care services to be offered by limited health care service contractors under RCW 48.44.035. However, such plan shall not qualify for subsidy payments.

(3) In fulfilling the requirements of this section, the board shall consult with small employers, the office of the insurance commissioner, members in good standing of the American academy of actuaries, health carriers, agents and brokers, and employees of small business. [2008 c 143 § 5; 2007 c 260 § 5.]

70.47A.900 Captions not law—2006 c 255. Captions used in this act are not part of the law. [2006 c 255 § 11.]

Chapter 70.48 RCW

CITY AND COUNTY JAILS ACT

Sections

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70.48.020 Definitions. As used in this chapter the words and phrases in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Holding facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days.

(2) "Detention facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(3) "Special detention facility" means a minimum security facility operated by a governing unit primarily designed, staffed, and used for the housing of special populations of sentenced persons who do not require the level of security normally provided in detention and correctional facilities including, but not necessarily limited to, persons convicted of offenses under RCW 46.61.502 or 46.61.504.

(4) "Correctional facility" means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(5) "Jail" means any holding, detention, special detention, or correctional facility as defined in this section.

(6) "Health care" means preventive, diagnostic, and rehabilitative services provided by licensed health care professionals and/or facilities; such care to include providing prescription drugs where indicated.

(7) "Governing unit" means the city and/or county or any combinations of cities and/or counties responsible for the operation, supervision, and maintenance of a jail.

(8) "Major urban" means a county or combination of counties which has a city having a population greater than twenty-six thousand based on the 1978 projections of the office of financial management.

(9) "Medium urban" means a county or combination of counties which has a city having a population equal to or greater than ten thousand but less than twenty-six thousand based on the 1978 projections of the office of financial management.

(10) "Rural" means a county or combination of counties which has a city having a population less than ten thousand based on the 1978 projections of the office of financial management.

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(11) "Office" means the office of financial management. [1987 c 462 § 6; 1986 c 118 § 1; 1983 c 165 § 34; 1981 c 136 § 25; 1979 ex.s. c 232 § 11; 1977 ex.s. c 316 § 2.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1977 ex.s. c 316: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 316 § 26.]

70.48.060 Capital construction—Financial assistance—Rules—Oversight—Cost estimates.

Reviser's note: RCW 70.48.060 was amended by 1987 c 505 § 59 without reference to its repeal by 1987 c 462 § 23, effective January 1, 1988. It has been decodified for publication purposes pursuant to RCW 1.12.025.

70.48.071 Standards for operation—Adoption by units of local government. All units of local government that own or operate adult correctional facilities shall, individually or collectively, adopt standards for the operation of those facilities no later than January 1, 1988. Cities and towns shall adopt the standards after considering guidelines established collectively by the cities and towns of the state; counties shall adopt the standards after considering guidelines established collectively by the counties of the state. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare. Local correctional facilities shall be operated in accordance with these standards. [1987 c 462 § 17.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48.090 Interlocal contracts for jail services—Neighboring states—Responsibility for operation of jail—City or county departments of corrections authorized. (1) Contracts for jail services may be made between a county and a city, and among counties and cities. The contracts shall: Be in writing, give one governing unit the responsibility for the operation of the jails, specify the responsibilities of each governing unit involved, and include the applicable charges for custody of the prisoners as well as the basis for adjustments in the charges. The contracts may be terminated only by ninety days written notice to the governing units involved and to the office. The notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

(2) A city or county may contract for jail services with an adjacent county, or city in an adjacent county, in a neighboring state. A person convicted in the courts of this state and sentenced to a term of confinement in a city or county jail may be transported to a jail in the adjacent county to be confined until: (a) The term of confinement is completed; or (b) that person is returned to be confined in a city or county jail in this state.

(3) The contract authorized in subsection (1) of this section shall be for a minimum term of ten years when state funds are provided to construct or remodel a jail in one gov-

erning unit that will be used to house prisoners of other governing units. The contract may not be terminated prior to the end of the term without the office's approval. If the contract is terminated, or upon the expiration and nonrenewal of the contract, the governing unit whose jail facility was built or remodeled to hold the prisoners of other governing units shall pay to the state treasurer the amount set by the *corrections standards board or office when it authorized disbursement of state funds for the remodeling or construction under **RCW 70.48.120. This amount shall be deposited in the local jail improvement and construction account and shall fairly represent the construction costs incurred in order to house prisoners from other governing units. The office may pay the funds to the governing units which had previously contracted for jail services under rules which the office may adopt. The acceptance of state funds for constructing or remodeling consolidated jail facilities constitutes agreement to the proportionate amounts set by the office. Notice of the proportionate amounts shall be given to all governing units involved.

(4) A city or county primarily responsible for the operation of a jail or jails may create a department of corrections to be in charge of such jail and of all persons confined therein by law, subject to the authority of the governing unit. If such department is created, it shall have charge of jails and persons confined therein. If no such department of corrections is created, the chief law enforcement officer of the city or county primarily responsible for the operation of said jail shall have charge of the jail and of all persons confined therein. [2007 c 13 § 1; 2002 c 125 § 1; 1987 c 462 § 7; 1986 c 118 § 6; 1979 ex.s. c 232 § 15; 1977 ex.s. c 316 § 9.]

Reviser's note: *(1) The corrections standards board no longer exists. See 1987 c 462 § 21.

***(2) RCW 70.48.120 was repealed by 1991 sp.s. c 13 § 122, effective July 1, 1991.

Effective dates—1987 c 462: See note following RCW 13.04.116.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.095 Regional jails. (1) Regional jails may be created and operated between two or more local governments, or one or more local governments and the state, and may be governed by representatives from multiple jurisdictions.

(2) A jurisdiction that confines persons prior to conviction in a regional jail in another county is responsible for providing private telephone, video-conferencing, or in-person contact between the defendant and his or her public defense counsel.

(3) The creation and operation of any regional jail must comply with the interlocal cooperation act described in chapter 39.34 RCW.

(4) Nothing in this section prevents counties and cities from contracting for jail services as described in RCW 70.48.090. [2002 c 124 § 1.]

70.48.100 Jail register, open to the public—Records confidential—Exception. (1) A department of corrections or chief law enforcement officer responsible for the operation of a jail shall maintain a jail register, open to the public, into which shall be entered in a timely basis:

(a) The name of each person confined in the jail with the hour, date and cause of the confinement; and

(b) The hour, date and manner of each person's discharge.

(2) Except as provided in subsection (3) of this section the records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies as defined in RCW 43.43.705; or

(a) For use in inspections made pursuant to *RCW 70.48.070;

(b) In jail certification proceedings;

(c) For use in court proceedings upon the written order of the court in which the proceedings are conducted; or

(d) Upon the written permission of the person.

(3)(a) Law enforcement may use booking photographs of a person arrested or confined in a local or state penal institution to assist them in conducting investigations of crimes.

(b) Photographs and information concerning a person convicted of a sex offense as defined in RCW 9.94A.030 may be disseminated as provided in RCW 4.24.550, 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 43.43.745, 46.20.187, 70.48.470, 72.09.330, and **section 401, chapter 3, Laws of 1990. [1990 c 3 § 130; 1977 ex.s. c 316 § 10.]

Reviser's note: *(1) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

***(2) 1990 c 3 § 401 appears as a note following RCW 9A.44.130.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.130 Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations. (Expires June 30, 2009.) It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care. Governing units, the department of social and health services, and medical care providers shall cooperate to achieve the best rates consistent with adequate care.

Payment for emergency or necessary health care shall be by the governing unit, except that the department of social and health services shall directly reimburse the provider pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by the department, if the confined person is eligible under the department's medical care programs as authorized under chapter 74.09 RCW. After payment by the department, the financial responsibility for any remaining balance, including unpaid client liabilities that are a condition of eligibility or participation under chapter 74.09 RCW, shall be borne by the medical care provider and the governing unit as may be mutually agreed upon between the medical care provider and the governing unit. In the absence of mutual agreement between the medical care provider and the governing unit, the financial responsibility for any remaining balance shall be borne equally between the medical care provider and the governing unit. Total payments from all sources to providers for care rendered to confined persons eligible under chapter 74.09 RCW shall not exceed the amounts that would be paid by the department for similar services provided under Title XIX medicaid, unless additional resources are obtained from the confined person.

As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical care shall be identi-

fied, including insurance or other medical benefits or resources to which an inmate is entitled. This information shall be made available to the department, the governing unit, and any provider of health care services.

The governing unit or provider may obtain reimbursement from the confined person for the cost of health care services not provided under chapter 74.09 RCW, including reimbursement from any insurance program or from other medical benefit programs available to the confined person. Nothing in this chapter precludes civil or criminal remedies to recover the costs of medical care provided jail inmates or paid for on behalf of inmates by the governing unit. As part of a judgment and sentence, the courts are authorized to order defendants to repay all or part of the medical costs incurred by the governing unit or provider during confinement.

To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for the department's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government that initiated the charges on which the person is being held in the jail: PROVIDED, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

There shall be no right of reimbursement to the governing unit from units of government that initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

Under no circumstance shall necessary medical services be denied or delayed because of disputes over the cost of medical care or a determination of financial responsibility for payment of the costs of medical care provided to confined persons.

Nothing in this section shall limit any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided. [2007 c 259 § 66; 1993 c 409 § 1; 1986 c 118 § 9; 1977 ex.s. c 316 § 13.]

Expiration date—2007 c 259 § 66: "Section 66 of this act expires June 30, 2009." [2007 c 259 § 76.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—1993 c 409: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 409 § 2.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.130 Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations. (Effective June 30, 2009.) It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care. Governing units, the department of social and health services, and medical care providers shall cooperate to achieve the best rates consistent with adequate care.

Payment for emergency or necessary health care shall be by the governing unit, except that the department of social and health services shall directly reimburse the provider pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by the department, if the confined person is eligible under the department's medical care programs as authorized under chapter 74.09 RCW. After payment by the department, the financial responsibility for any remaining balance, including unpaid client liabilities that are a condition of eligibility or participation under chapter 74.09 RCW, shall be borne by the medical care provider and the governing unit as may be mutually agreed upon between the medical care provider and the governing unit. In the absence of mutual agreement between the medical care provider and the governing unit, the financial responsibility for any remaining balance shall be borne equally between the medical care provider and the governing unit. Total payments from all sources to providers for care rendered to confined persons eligible under chapter 74.09 RCW shall not exceed the amounts that would be paid by the department for similar services provided under Title XIX medicaid, unless additional resources are obtained from the confined person.

As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical care shall be identified, including insurance or other medical benefits or resources to which an inmate is entitled. This information shall be made available to the department, the governing unit, and any provider of health care services.

The governing unit or provider may obtain reimbursement from the confined person for the cost of health care services not provided under chapter 74.09 RCW, including reimbursement from any insurance program or from other medical benefit programs available to the confined person. Nothing in this chapter precludes civil or criminal remedies to recover the costs of medical care provided jail inmates or paid for on behalf of inmates by the governing unit. As part of a judgment and sentence, the courts are authorized to order defendants to repay all or part of the medical costs incurred by the governing unit or provider during confinement.

To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for the department's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail: PROVIDED, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

Under no circumstance shall necessary medical services be denied or delayed because of disputes over the cost of

medical care or a determination of financial responsibility for payment of the costs of medical care provided to confined persons.

Nothing in this section shall limit any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided. [1993 c 409 § 1; 1986 c 118 § 9; 1977 ex.s. c 316 § 13.]

Effective date—1993 c 409: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 409 § 2.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.140 Confinement pursuant to authority of the United States. A person having charge of a jail shall receive and keep in such jail, when room is available, all persons confined or committed thereto by process or order issued under authority of the United States until discharged according to law, the same as if such persons had been committed under process issued under authority of the state, if provision is made by the United States for the support of such persons confined, and for any additional personnel required. [1977 ex.s. c 316 § 14.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.160 Post-approval limitation on funding. Having received approval pursuant to *RCW 70.48.060, a governing unit shall not be eligible for further funding for physical plant standards for a period of ten years from the date of the completion of the approved project. A jail shall not be closed for noncompliance to physical plant standards within this same ten year period. This section does not apply if:

(1) The state elects to fund phased components of a jail project for which a governing unit has applied. In that instance, initially funded components do not constitute full funding within the meaning of *RCW 70.48.060(1) and **70.48.070(2) and the state may fund subsequent phases of the jail project;

(2) There is destruction of the facility because of an act of God or the result of a negligent and/or criminal act. [1987 c 462 § 9; 1986 c 118 § 10; 1981 c 276 § 3; 1977 ex.s. c 316 § 16.]

Reviser's note: *(1) RCW 70.48.060 was repealed by 1987 c 462 § 23, effective January 1, 1988.

***(2) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

Effective dates—1987 c 462: See note following RCW 13.04.116.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.170 Short title. This chapter shall be known and may be cited as the City and County Jails Act. [1977 ex.s. c 316 § 17.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.180 Authority to locate and operate jail facilities—Counties. Counties may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place designated by the county legislative authority within the territorial limits of the county. The facilities shall comply with

chapter 70.48 RCW and the rules adopted thereunder. [1983 c 165 § 37; 1979 ex.s. c 232 § 16.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

70.48.190 Authority to locate and operate jail facilities—Cities and towns. Cities and towns may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place within the territorial limits of the county in which the city or town is situated, as may be selected by the legislative authority of the municipality. The facilities comply with the provisions of chapter 70.48 RCW and rules adopted thereunder. [1983 c 165 § 38; 1977 ex.s. c 316 § 19; 1965 c 7 § 35.21.330. Prior: 1917 c 103 § 1; RRS § 10204. Formerly RCW 35.21.330.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.210 Farms, camps, work release programs, and special detention facilities. (1) All cities and counties are authorized to establish and maintain farms, camps, and work release programs and facilities, as well as special detention facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his or her employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail unless authorized to be absent from the

facility for program-related purposes, unless the court directs otherwise.

(d) Each work release prisoner's earnings may be collected by the chief law enforcement officer or a designee. The chief law enforcement officer or a designee may deduct from the earnings moneys for the payments for the prisoner's board, personal expenses inside and outside the jail, a share of the administrative expenses of this section, court-ordered victim compensation, and court-ordered restitution. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used to pay the prisoner's preexisting debts. Any remaining balance shall be returned to the prisoner.

(e) The prisoner's sentence may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the work release facility. The earned early release time shall be for good behavior and good performance as determined by the facility. The facility shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence.

(4) A special detention facility may be operated by a noncorrectional agency or by noncorrectional personnel by contract with the governing unit. The employees shall meet the standards of training and education established by the criminal justice training commission as authorized by RCW 43.101.080. The special detention facility may use combinations of features including, but not limited to, low-security or honor prisoner status, work farm, work release, community review, prisoner facility maintenance and food preparation, training programs, or alcohol or drug rehabilitation programs. Special detention facilities may establish a reasonable fee schedule to cover the cost of facility housing and programs. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1990 c 3 § 203; 1989 c 248 § 3; 1985 c 298 § 1; 1983 c 165 § 39; 1979 ex.s. c 232 § 17.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Application—1989 c 248: See note following RCW 9.92.151.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

70.48.220 Confinement may be wherever jail services are contracted—Defendant contact with defense counsel. A person confined for an offense punishable by imprisonment in a city or county jail may be confined in the jail of any city or county contracting with the prosecuting city or county for jail services.

A jurisdiction that confines persons prior to conviction in a jail in another county is responsible for providing private

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telephone, video-conferencing, or in-person contact between the defendant and his or her public defense counsel. [2002 c 125 § 2; 1979 ex.s. c 232 § 19.]

70.48.230 Transportation and temporary confinement of prisoners. The jurisdiction having immediate authority over a prisoner is responsible for the transportation expenses. The transporting officer shall have custody of the prisoner within any Washington county while being transported. Any jail within the state may be used for the temporary confinement of the prisoner with the only charge being for the reasonable cost of board. [1979 ex.s. c 232 § 18.]

70.48.240 Transfer of felons from jail to state institution—Time limit. A person imprisoned in a jail and sentenced to a state institution for a felony conviction shall be transferred to a state institution before the forty-first day from the date of sentencing.

This section does not apply to persons sentenced for a felony who are held in the facility as a condition of probation or who are specifically sentenced to confinement in the facility.

Payment for persons sentenced to state institutions and remaining in a jail from the eighth through the fortieth days following sentencing shall be in accordance with the procedure prescribed under this chapter. [1984 c 235 § 8; 1979 ex.s. c 232 § 20.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.270 Disposition of proceeds from sale of bonds. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the local jail improvement and construction account hereby created in the general fund and shall be used exclusively for the purpose specified in this chapter and for payment of the expenses incurred in the issuance and sale of the bonds. [1979 ex.s. c 232 § 3.]

70.48.280 Proceeds of bond sale—Deposits—Administration. The proceeds from the sale of the bonds deposited in the local jail improvement and construction account of the general fund under the terms of this chapter shall be administered by the office subject to legislative appropriation. [1987 c 462 § 10; 1986 c 118 § 13; 1979 ex.s. c 232 § 4.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48.310 Jail renovation bond retirement fund—Debt-limit general fund bond retirement account. The jail renovation bond retirement fund is hereby created in the state treasury. This fund shall be used for the payment of interest on and retirement of the bonds and notes authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the jail renovation bond retirement fund an amount equal to the amount certified by the state finance committee to be due on the payment date.

The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

If a debt-limit general fund bond retirement account is created in the state treasury by chapter 456, Laws of 1997 and becomes effective prior to the issuance of any of the bonds authorized by this chapter, the debt-limit general fund bond retirement account shall be used for the purposes of this chapter in lieu of the jail renovation bond retirement fund. [1997 c 456 § 26; 1979 ex.s. c 232 § 7.]

Severability—1997 c 456: See RCW 43.99L.900.

Effective date—1997 c 456 §§ 9-43: See RCW 43.99M.901.

70.48.320 Bonds legal investments for public funds.

The bonds authorized in this chapter shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1979 ex.s. c 232 § 8.]

70.48.380 Special detention facilities—Fees for cost of housing. The legislative authority of a county or city that establishes a special detention facility as defined in RCW 70.48.020 for persons convicted of violating RCW 46.61.502 or 46.61.504 may establish a reasonable fee schedule to cover the cost of housing in the facility. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1983 c 165 § 36.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

70.48.390 Fee payable by person being booked. A governing unit may require that each person who is booked at a city, county, or regional jail pay a fee based on the jail's actual booking costs or one hundred dollars, whichever is less, to the sheriff's department of the county or police chief of the city in which the jail is located. The fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department or city jail administration on the person's behalf. If the person has no funds at the time of booking or during the period of incarceration, the sheriff or police chief may notify the court in the county or city where the charges related to the booking are pending, and may request the assessment of the fee. Unless the person is held on other criminal matters, if the person is not charged, is acquitted, or if all charges are dismissed, the sheriff or police chief shall return the fee to the person at the last known address listed in the booking records. [2003 c 99 § 1; 1999 c 325 § 3.]

70.48.400 Sentences to be served in state institutions—When—Sentences that may be served in jail—Financial responsibility of city or county. Persons sentenced to felony terms or a combination of terms of more than three hundred sixty-five days of incarceration shall be committed to state institutions under the authority of the department of corrections. Persons serving sentences of three hundred sixty-five consecutive days or less may be sentenced to a jail as defined in RCW 70.48.020. All persons convicted of felonies or misdemeanors and sentenced to jail shall be the

financial responsibility of the city or county. [1987 c 462 § 11; 1984 c 235 § 1.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

Effective dates—1984 c 235: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 27, 1984]. The remainder of this act shall take effect July 1, 1984." [1984 c 235 § 10.]

70.48.410 Financial responsibility for convicted felons. Persons convicted of a felony as defined by chapter 9A.20 RCW and committed to the care and custody of the department of corrections shall be the financial responsibility of the department of corrections not later than the eighth day, excluding weekends and holidays, following sentencing for the felony and notification that the prisoner is available for movement to a state correctional institution. However, if good cause is shown, a superior court judge may order the prisoner detained in the jail beyond the eight-day period for an additional period not to exceed ten days. If a superior court orders a convicted felon to be detained beyond the eighth day following sentencing, the county or city shall retain financial responsibility for that ten-day period or portion thereof ordered by the court. [1984 c 235 § 2.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.420 Financial responsibility for persons detained on parole hold. A person detained in jail solely by reason of a parole hold is the financial responsibility of the city or the county detaining the person until the sixteenth day, at which time the person shall become the financial responsibility of the department of corrections. Persons who are detained in a jail on a parole hold and for whom the prosecutor has filed a felony charge remain the responsibility of the city or county. [1984 c 235 § 3.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.430 Financial responsibility for work release inmates detained in jail. Inmates, as defined by *RCW 72.09.020, who reside in a work release facility and who are detained in a city or county jail are the financial responsibility of the department of corrections. [1984 c 235 § 4.]

***Reviser's note:** RCW 72.09.020 was repealed by 1995 1st sp.s. c 19 § 36.

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.440 Office of financial management to establish reimbursement rate for cities and counties—Rate until June 30, 1985—Re-establishment of rates. The office of financial management shall establish a uniform equitable rate for reimbursing cities and counties for the care of sentenced felons who are the financial responsibility of the department of corrections and are detained or incarcerated in a city or county jail.

Until June 30, 1985, the rate for the care of sentenced felons who are the financial responsibility of the department of corrections shall be ten dollars per day. Cost of extraordinary emergency medical care incurred by prisoners who are the financial responsibility of the department of corrections under this chapter shall be reimbursed. The department of corrections shall be advised as far in advance as practicable

by competent medical authority of the nature and course of treatment required to ensure the most efficient use of state resources to address the medical needs of the offender. In the event emergency medical care is needed, the department of corrections shall be advised as soon as practicable after the offender is treated.

Prior to June 30, 1985, the office of financial management shall meet with the *corrections standards board to establish criteria to determine equitable rates regarding variable costs for sentenced felons who are the financial responsibility of the department of corrections after June 30, 1985. The office of financial management shall re-establish these rates each even-numbered year beginning in 1986. [1984 c 235 § 5.]

***Reviser's note:** The corrections standards board no longer exists. See 1987 c 462 § 21.

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.450 Local jail reporting form—Information to be provided by city or county requesting payment for prisoners from state. The department of corrections is responsible for developing a reporting form for the local jails. The form shall require sufficient information to identify the person, type of state responsibility, method of notification for availability for movement, and the number of days for which the state is financially responsible. The information shall be provided by the city or county requesting payment for prisoners who are the financial responsibility of the department of corrections. [1984 c 235 § 6.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.460 Contracts for incarceration services for prisoners not covered by RCW 70.48.400 through 70.48.450. Nothing in RCW 70.48.400 through 70.48.450 precludes the establishment of mutually agreeable contracts between the department of corrections and counties for incarceration services of prisoners not covered by RCW 70.48.400 through 70.48.450. [1984 c 235 § 7.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.470 Sex, kidnapping offenders—Notices to offenders, law enforcement officials. (1) A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of a sex offense as defined in RCW 9A.44.030 or a kidnapping offense as defined in RCW 9A.44.130 of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification. The person shall also obtain from the inmate the county of the inmate's residence upon release from jail and, where applicable, the city.

(2) When a sex offender or a person convicted of a kidnapping offense as defined in RCW 9A.44.130 under local government jurisdiction will reside in a county other than the county of conviction upon discharge or release, the chief law enforcement officer of the jail or his or her designee shall give notice of the inmate's discharge or release to the sheriff of the county and, where applicable, to the police chief of the city where the offender will reside. [2000 c 91 § 4. Prior:

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1997 c 364 § 3; 1997 c 113 § 7; 1996 c 215 § 2; 1990 c 3 § 406.]

Severability—1997 c 364: See note following RCW 4.24.550.

Findings—1997 c 113: See note following RCW 4.24.550.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

70.48.475 Release of offender or defendant subject to a discharge review—Required notifications. (1) A person having charge of a jail, or that person's designee, shall notify the *county designated mental health professional or the designated chemical dependency specialist seventy-two hours prior to the release to the community of an offender or defendant who was subject to a discharge review under RCW 71.05.232. If the person having charge of the jail does not receive seventy-two hours notice of the release, the notification to the *county designated mental health professional or the designated chemical dependency specialist shall be made as soon as reasonably possible, but not later than the actual release to the community of the defendant or offender.

(2) When a person having charge of a jail, or that person's designee, releases an offender or defendant who was the subject of a discharge review under RCW 71.05.232, the person having charge of a jail, or that person's designee, shall notify the state hospital from which the offender or defendant was released. [2004 c 166 § 14.]

***Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

70.48.480 Communicable disease prevention guidelines. (1) Local jail administrators shall develop and implement policies and procedures for the uniform distribution of communicable disease prevention guidelines to all jail staff who, in the course of their regularly assigned job responsibilities, may come within close physical proximity to offenders or detainees with communicable diseases.

(2) The guidelines shall identify special precautions necessary to reduce the risk of transmission of communicable diseases.

(3) For the purposes of this section, "communicable disease" means a sexually transmitted disease, as defined in RCW 70.24.017, diseases caused by bloodborne pathogens, or any other illness caused by an infectious agent that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [1997 c 345 § 5.]

Findings—Intent—1997 c 345: See note following RCW 70.24.105.

Chapter 70.48A RCW

JAIL IMPROVEMENT AND CONSTRUCTION— BOND ISSUE

Sections

- 70.48A.010 Legislative declaration.
- 70.48A.020 Bond issue authorized—Appropriations.
- 70.48A.030 Proceeds from bond sale—Deposit, use.
- 70.48A.040 Proceeds from bond sale—Administration.
- 70.48A.050 Bonds—Minimum sale price.

- 70.48A.060 Bonds—State's full faith and credit pledged.
 70.48A.070 Bonds—Payment of interest, retirement.
 70.48A.080 Bonds legal investment for public funds.
 70.48A.090 Legislative intent.
 70.48A.900 Severability—1981 c 131.

70.48A.010 Legislative declaration. In order for the state to provide safe and humane detention and correctional facilities, its long range development goals must include the renovation of jail buildings and facilities. [1981 c 131 § 1.]

70.48A.020 Bond issue authorized—Appropriations. For the purpose of providing funds for the planning, acquisition, construction, and improvement of jail buildings and necessary supporting facilities within the state, and the office of financial management's operational costs related to the review of physical plant funding applications, award of grants, and construction monitoring, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one hundred forty-four million three hundred thousand dollars, or so much thereof as may be required, to finance the improvements defined in RCW 70.48A.010 through 70.48A.080 and all costs incidental thereto, including administration, but not including acquisition or preparation of sites. Appropriations for administration shall be determined by the legislature. No bonds authorized by this section may be offered for sale without prior legislative appropriation of the proceeds of the bonds to be sold: PROVIDED, That the reappropriation of previously authorized bond moneys and this new appropriation shall constitute full funding of each approved project within the meaning of *RCW 70.48.070 and 70.48.110. [1987 c 462 § 13; 1986 c 118 § 16; 1983 1st ex.s. c 63 § 1; 1981 c 131 § 2.]

*Reviser's note: RCW 70.48.070 and 70.48.110 were repealed by 1987 c 462 § 23, effective January 1, 1988.

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48A.030 Proceeds from bond sale—Deposit, use. The proceeds from the sale of bonds authorized by RCW 70.48A.010 through 70.48A.080 shall be deposited in the local jail improvement and construction account in the general fund and shall be used exclusively for the purpose specified in RCW 70.48A.010 through 70.48A.080 and for payment of the expenses incurred in the issuance and sale of the bonds. [1981 c 131 § 3.]

70.48A.040 Proceeds from bond sale—Administration. The proceeds from the sale of the bonds deposited in the local jail improvement and construction account in the general fund under the terms of RCW 70.48A.010 through 70.48A.080 shall be administered by the office of financial management subject to legislative appropriation. [1987 c 462 § 14; 1986 c 118 § 17; 1981 c 131 § 4.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48A.050 Bonds—Minimum sale price. None of the bonds authorized in RCW 70.48A.010 through 70.48A.080 may be sold for less than their par value. [1981 c 131 § 5.]

70.48A.060 Bonds—State's full faith and credit pledged. The bonds shall pledge the full faith and credit of

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the state of Washington and shall contain an unconditional promise to pay the principal and interest when due. [1981 c 131 § 6.]

70.48A.070 Bonds—Payment of interest, retirement. The debt-limit general fund bond retirement account shall be used for the payment of principal and interest on and retirement of the bonds authorized by RCW 70.48A.010 through 70.48A.080.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1997 c 456 § 27; 1981 c 131 § 7.]

Severability—1997 c 456: See RCW 43.99L.900.

Effective date—1997 c 456 §§ 9-43: See RCW 43.99M.901.

70.48A.080 Bonds legal investment for public funds. The bonds authorized in RCW 70.48A.010 through 70.48A.080 shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1981 c 131 § 8.]

70.48A.090 Legislative intent. It is the intent of the legislature that the construction and remodeling of jails proceed without further delay, and the jail commission's review and funding procedures are to reflect this intent. Neither the jail commission nor local governments should order or authorize capital expenditures to improve jails now in use which are scheduled for replacement. Capital expenditures which relate directly to life safety of inmates or jail personnel may be ordered. [1981 c 131 § 9.]

70.48A.900 Severability—1981 c 131. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 131 § 11.]

Chapter 70.50 RCW STATE OTOLOGIST

Sections

- 70.50.010 Appointment—Salary.
 70.50.020 Duties.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Hearing tests for public school children: RCW 28A.210.020.

70.50.010 Appointment—Salary. The secretary of health shall appoint and employ an otologist skilled in diagnosis of diseases of the ear and defects in hearing, especially for school children with an impaired sense of hearing, and shall fix the salary of such otologist in a sum not exceeding the salary of the secretary. [1991 c 3 § 340; 1979 c 141 § 108; 1945 c 23 § 1; Rem. Supp. 1945 § 6010-10.]

70.50.020 Duties. The otologist shall cooperate with the state department of public instruction, and with the state, county and city health officers, seeking for the children in the schools who are hard of hearing, or have an impaired sense of hearing, and making otological inspections and examinations of children referred to him by such departments and officers. Where necessary or proper he shall make recommendations to parents or guardians of such children, and urge them to submit such recommendations to physicians to be selected by such parents or guardians. [1945 c 23 § 2; Rem. Supp. 1945 § 6010-11.]

Chapter 70.54 RCW MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Sections

70.54.005	Transfer of duties to the department of health.
70.54.010	Polluting water supply—Penalty.
70.54.020	Furnishing impure water—Penalty.
70.54.030	Pollution of watershed of city in adjoining state—Penalty.
70.54.040	Secretary to advise local authorities on sanitation.
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Control of cities and towns over water pollution: Chapter 35.88 RCW.

Council for children and families: Chapter 43.121 RCW.

Nuisances, generally: Chapters 7.48 and 9.66 RCW.

Water pollution control: Chapter 90.48 RCW.

70.54.005 Transfer of duties to the department of health. The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 250.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.54.010 Polluting water supply—Penalty. Every person who shall deposit or suffer to be deposited in any spring, well, stream, river or lake, the water of which is or may be used for drinking purposes, or on any property owned, leased or otherwise controlled by any municipal corporation, corporation or person as a watershed or drainage basin for a public or private water system, any matter or thing whatever, dangerous or deleterious to health, or any matter or thing which may or could pollute the waters of such spring, well, stream, river, lake or water system, shall be guilty of a gross misdemeanor. [1909 c 249 § 290; RRS § 2542.]

70.54.020 Furnishing impure water—Penalty. Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. [1909 c 249 § 291; RRS § 2543.]

70.54.030 Pollution of watershed of city in adjoining state—Penalty. Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine in any sum not exceeding five hundred dollars. [1909 c 16 § 2; RRS § 9281.]

70.54.040 Secretary to advise local authorities on sanitation. The commissioners of any county or the mayor of any city may call upon the secretary of health for advice relative to improving sanitary conditions or disposing of garbage and sewage or obtaining a pure water supply, and when so called upon the secretary shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his or her advice to the county or city making such request. [1991 c 3 § 341; 1979 c 141 § 109; 1909 c 208 § 3; RRS § 6006.]

70.54.050 Exposing contagious disease—Penalty. Every person who shall wilfully expose himself to another, or

any animal affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his or its necessary removal in a manner not dangerous to the public health; and every person so affected who shall expose any other person thereto without his knowledge, shall be guilty of a misdemeanor. [1909 c 249 § 287; RRS § 2539.]

70.54.060 Ambulances and drivers. (1) The drivers of all ambulances shall be required to take the advanced first aid course as prescribed by the American Red Cross.

(2) All ambulances must be at all times equipped with first aid equipment consisting of leg and arm splints and standard twenty-four unit first aid kit as prescribed by the American Red Cross. [1945 c 65 § 1; Rem. Supp. 1945 § 6131-1. FORMER PART OF SECTION: 1945 c 65 § 2 now codified as RCW 70.54.060, part.]

70.54.065 Ambulances and drivers—Penalty. Any person violating any of the provisions herein shall be guilty of a misdemeanor. [1945 c 65 § 2; Rem. Supp. 1945 § 6131-2. Formerly RCW 70.54.060, part.]

70.54.070 Door of public buildings to swing outward—Penalty. The doors of all theatres, opera houses, school buildings, churches, public halls, or places used for public entertainments, exhibitions or meetings, which are used exclusively or in part for admission to or egress from the same, or any part thereof, shall be so hung and arranged as to open outwardly, and during any exhibition, entertainment or meeting, shall be kept unlocked and unfastened, and in such condition that in case of danger or necessity, immediate escape from such building shall not be prevented or delayed; and every agent or lessee of any such building who shall rent the same or allow it to be used for any of the aforesaid public purposes without having the doors thereof hung and arranged as hereinbefore provided, shall, for each violation of any provision of this section, be guilty of a misdemeanor. [1909 c 249 § 273; RRS § 2525.]

70.54.080 Liability of person handling steamboat or steam boiler. Every person who shall apply, or cause to be applied to a steam boiler a higher pressure of steam than is allowed by law, or by any inspector, officer or person authorized to limit the same; every captain or other person having charge of the machinery or boiler in a steamboat used for the conveyance of passengers on the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of such boat, shall create or cause to be created an undue or unsafe pressure of steam; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or employing steam, who shall wilfully or from ignorance or gross neglect, create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident, whereby human life is endangered, shall be guilty of a gross misdemeanor. [1909 c 249 § 280; RRS § 2532.]

Boilers and unfired pressure vessels: Chapter 70.79 RCW.

Industrial safety and health: Chapter 43.22 RCW.

[Title 70 RCW—page 116]

70.54.090 Attachment of objects to utility poles—Penalty. (1) It shall be unlawful to attach to utility poles any of the following: Advertising signs, posters, vending machines, or any similar object which presents a hazard to, or endangers the lives of, electrical workers. Any attachment to utility poles shall only be made with the permission of the utility involved, and shall be placed not less than twelve feet above the surface of the ground.

(2) A person violating this section is guilty of a misdemeanor. [2003 c 53 § 351; 1953 c 185 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.54.120 Immunity from implied warranties and civil liability relating to blood, blood products, tissues, organs, or bones—Scope—Effective date. The procurement, processing, storage, distribution, administration, or use of whole blood, plasma, blood products and blood derivatives for the purpose of injecting or transfusing the same, or any of them, or of tissues, organs, or bones for the purpose of transplanting them, or any of them, into the human body is declared to be, for all purposes whatsoever, the rendition of a service by each and every person, firm, or corporation participating therein, and is declared not to be covered by any implied warranty under the Uniform Commercial Code, Title 62A RCW, or otherwise, and no civil liability shall be incurred as a result of any of such acts, except in the case of wilful or negligent conduct: PROVIDED, HOWEVER, That this section shall apply only to liability alleged in the contraction of hepatitis, malaria, and acquired immune deficiency disease and shall not apply to any transaction in which the donor receives compensation: PROVIDED FURTHER, That this section shall only apply where the person, firm or corporation rendering the above service shall have maintained records of donor suitability and donor identification: PROVIDED FURTHER, That nothing in this section shall be considered by the courts in determining or applying the law to any blood transfusion occurring before June 10, 1971 and the court shall decide such case as though this section had not been passed. [1987 c 84 § 1; 1985 c 321 § 1; 1971 c 56 § 1.]

Severability—1971 c 56: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 c 56 § 2.]

70.54.130 Laetrile—Legislative declaration. It is the intent of the legislature that passage of RCW 70.54.130 through 70.54.150 shall not constitute any endorsement whatever of the efficacy of amygdalin (Laetrile) in the treatment of cancer, but represents only the legislature's endorsement of a patient's freedom of choice, so long as the patient has been given sufficient information in writing to make an informed decision regarding his/her treatment and the substance is not proven to be directly detrimental to health. [1977 ex.s. c 122 § 1.]

70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Board of pharmacy, duties. No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of amygdalin (Laetrile) when prescribed

or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

For the purposes of RCW 70.54.130 through 70.54.150, the state board of pharmacy shall provide for the certification as to the identity of amygdalin (Laetrile) by random sample testing or other testing procedures, and shall promulgate rules and regulations necessary to implement and enforce its authority under this section. [1977 ex.s. c 122 § 2.]

70.54.150 Physicians not subject to disciplinary action for prescribing or administering laetrile—Conditions. No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering amygdalin (Laetrile) to a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct. [1986 c 259 § 150; 1977 ex.s. c 122 § 3.]

Severability—1986 c 259: See note following RCW 18.130.010.

70.54.160 Public restrooms—Pay facilities—Penalty.

(1) Every establishment which maintains restrooms for use by the public shall not discriminate in charges required between facilities used by men and facilities used by women.

(2) When coin lock controls are used, the controls shall be so allocated as to allow for a proportionate equality of free toilet units available to women as compared with those units available to men, and at least one-half of the units in any restroom shall be free of charge. As used in this section, toilet units are defined as constituting commodes and urinals.

(3) In situations involving coin locks placed on restroom entry doors, admission keys shall be readily provided without charge when requested, and notice as to the availability of the keys shall be posted on the restroom entry door.

(4) Any owner, agent, manager, or other person charged with the responsibility of the operation of an establishment who operates such establishment in violation of this section is guilty of a misdemeanor. [2003 c 53 § 352; 1977 ex.s. c 97 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.54.180 Deaf persons access to emergency services—Telecommunication devices. (1) For the purpose of this section "telecommunication device" means an instrument for telecommunication in which speaking or hearing is not required for communicators.

(2) The county legislative authority of each county with a population of eighteen thousand or more and the governing body of each city with a population in excess of ten thousand shall provide by July 1, 1980, for a telecommunication device in their jurisdiction or through a central dispatch office that will assure access to police, fire, or other emergency services.

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(3) The county legislative authority of each county with a population of eighteen thousand or less shall by July 1, 1980, make a determination of whether sufficient need exists with their respective counties to require installation of a telecommunication device. Reconsideration of such determination will be made at any future date when a deaf individual indicates a need for such an instrument. [1991 c 363 § 142; 1979 ex.s. c 63 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Purpose—1979 ex.s. c 63: "The legislature finds that many citizens of this state who are unable to utilize telephone services in a regular manner due to hearing defects are able to communicate by teletypewriters where hearing is not required for communication. Hence, it is the purpose of section 2 of this act [RCW 70.54.180] to require that telecommunication devices for the deaf be installed." [1979 ex.s. c 63 § 1.]

70.54.190 DMSO (dimethyl sulfoxide)—Use—Liability. No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of DMSO (dimethyl sulfoxide) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering DMSO (dimethyl sulfoxide) to a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct. [1986 c 259 § 151; 1981 c 50 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.

DMSO authorized: RCW 69.04.565.

70.54.200 Fees for repository of vaccines, biologics. The department shall prescribe by rule a schedule of fees predicated on the cost of providing a repository of emergency vaccines and other biologics. [1981 c 284 § 2.]

Reviser's note: Although 1981 c 284 directs this section be added to chapter 74.04 RCW, codification here is considered more appropriate. The "department" referred to is apparently the department of social and health services.

70.54.220 Practitioners to provide information on prenatal testing. (Effective until July 1, 2010.) All persons licensed or certified by the state of Washington to provide prenatal care or to practice medicine shall provide information regarding the use and availability of prenatal tests to all pregnant women in their care within the time limits prescribed by department rules and in accordance with standards established by those rules. [1988 c 276 § 5.]

Effective date—1988 c 276 § 5: "Section 5 of this act shall take effect December 31, 1989." [1988 c 276 § 10.]

70.54.220 Practitioners to provide information on prenatal testing and cord blood banking. (Effective July 1, 2010.) (1) All persons licensed or certified by the state of Washington to provide prenatal care or to practice medicine

shall provide information to all pregnant women in their care regarding:

(a) The use and availability of prenatal tests; and

(b) Using objective and standardized information: (i) The differences between and potential benefits and risks involved in public and private cord blood banking that is sufficient to allow a pregnant woman to make an informed decision before her third trimester of pregnancy on whether to participate in a private or public cord blood banking program; and (ii) the opportunity to donate, to a public cord blood bank, blood and tissue extracted from the placenta and umbilical cord following delivery of a newborn child.

(2) The information required by this section must be provided within the time limits prescribed by department rules and in accordance with standards established by those rules. [2008 c 56 § 2; 1988 c 276 § 5.]

Purpose—Effective date—2008 c 56: See note following RCW 70.54.222.

Effective date—1988 c 276 § 5: "Section 5 of this act shall take effect December 31, 1989." [1988 c 276 § 10.]

70.54.222 Cord blood banks—Regulation—Application of consumer protection act—Definitions. (Effective July 1, 2010.) (1) A cord blood bank advertising, offering to provide, or providing private cord blood banking services to residents in this state must:

(a) Have all applicable licenses, accreditations, and other authorizations required under federal and Washington state law to engage in cord blood banking;

(b) Include, in any advertising or educational materials made available to the general public or provided to health services providers or potential cord blood donors: (i) A statement identifying the cord blood bank's licenses, accreditations, and other authorizations required in (a) of this subsection; and (ii) information about the cord blood bank's rate of success in collecting, processing, and storing sterile cord blood units that have adequate, viable yields of targeted cells; and

(c)(i) Provide to the cord blood donor the results of appropriate quality control tests performed on the donor's collected cord blood; and

(ii) If the test results provided under (c)(i) of this subsection demonstrate that the collected cord blood may not be recommended for long-term storage and potential future medical uses because of low cell yield, foreign contamination, or other reasons determined by the cord blood bank's medical director, provide the cord blood donor with the option not to be charged fees for processing or storage services, including a refund of any fees paid. The cord blood bank must provide the cord blood donor with sufficient information to make an informed decision regarding this option.

(2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Autologous use" means the transplantation, including implanting, transplanting, infusion, or transfer, of cord blood into the individual from whom the cord blood was collected.

(b) "Cord blood bank" means an operation engaged in collecting, processing, storing, distributing, or transplanting hematopoietic progenitor cells present in placental or umbilical cord blood.

(c) "Hematopoietic progenitor cells" means pluripotent cells that may be capable of self-renewal and differentiation into any mature blood cell.

(d) "Private cord blood banking" means a cord blood bank that provides, for a fee, cord blood banking services for the autologous use of the cord blood. [2008 c 56 § 3.]

Purpose—2008 c 56: "The purpose of this act is to promote public awareness and education of the general public and potential cord blood donors on the benefits of public or private cord blood banking, and to establish safeguards related to effective private banking of cord blood." [2008 c 56 § 1.]

Effective date—2008 c 56: "This act takes effect July 1, 2010." [2008 c 56 § 4.]

70.54.230 Cancer registry program. The secretary of health may contract with either a recognized regional cancer research institution or regional tumor registry, or both, which shall hereinafter be called the contractor, to establish a statewide cancer registry program and to obtain cancer reports from all or a portion of the state as required in RCW 70.54.240 and to make available data for use in cancer research and for purposes of improving the public health. [1990 c 280 § 2.]

Intent—1990 c 280: "It is the intent of the legislature to establish a system to accurately monitor the incidence of cancer in the state of Washington for the purposes of understanding, controlling, and reducing the occurrence of cancer in this state. In order to accomplish this, the legislature has determined that cancer cases shall be reported to the department of health, and that there shall be established a statewide population-based cancer registry." [1990 c 280 § 1.]

70.54.240 Cancer registry program—Reporting requirements. (1) The department of health shall adopt rules as to which types of cancer shall be reported, who shall report, and the form and timing of the reports.

(2) Every health care facility and independent clinical laboratory, and those physicians or others providing health care who diagnose or treat any patient with cancer who is not hospitalized within one month of diagnosis, will provide the contractor with the information required under subsection (1) of this section. The required information may be collected on a regional basis where such a system exists and forwarded to the contractor in a form suitable for the purposes of RCW 70.54.230 through 70.54.270. Such reporting arrangements shall be reduced to a written agreement between the contractor and any regional reporting agency which shall detail the manner, form, and timeliness of the reporting. [1990 c 280 § 3.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.250 Cancer registry program—Confidentiality. (1) Data obtained under RCW 70.54.240 shall be used for statistical, scientific, medical research, and public health purposes only.

(2) The department and its contractor shall ensure that access to data contained in the registry is consistent with federal law for the protection of human subjects and consistent with chapter 42.48 RCW. [1990 c 280 § 4.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.260 Liability. Providing information required under RCW 70.54.240 or 70.54.250 shall not create any liability on the part of the provider nor shall it constitute a breach of confidentiality. The contractor shall, at the request of the provider, but not more frequently than once a year, sign an oath of confidentiality, which reads substantially as follows:

"As a condition of conducting research concerning persons who have received services from (name of the health care provider or facility), I, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such research that could lead to identification of such persons receiving services, or to the identification of their health care providers. I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law."

[1990 c 280 § 5.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.270 Rule making. The department shall adopt rules to implement RCW 70.54.230 through 70.54.260, including but not limited to a definition of cancer. [1990 c 280 § 6.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.280 Bone marrow donor recruitment and education program—Generally—Target minority populations. The department of health shall establish a bone marrow donor recruitment and education program to educate residents of the state about:

- (1) The need for bone marrow donors;
- (2) The procedures required to become registered as a potential bone marrow donor, including procedures for determining a person's tissue type; and
- (3) The procedures a donor must undergo to donate bone marrow or other sources of blood stem cells.

The department of health shall make special efforts to educate and recruit citizens from minority populations to volunteer as potential bone marrow donors. Means of communication may include use of press, radio, and television, and placement of educational materials in appropriate health care facilities, blood banks, and state and local agencies. The department of health in conjunction with the department of licensing shall make educational materials available at all places where driver licenses are issued or renewed. [1992 c 109 § 2.]

Findings—1992 c 109: "The legislature finds that an estimated sixteen thousand American children and adults are stricken each year with leukemia, aplastic anemia, or other fatal blood diseases. For many of these individuals, bone marrow transplantation is the only chance for survival. Nearly seventy percent cannot find a suitable bone marrow match within their own families. The chance that a patient will find a matching, unrelated donor in the general population is between one in a hundred and one in a million.

(2008 Ed.)

The legislature further finds that because tissue types are inherited, and different tissue types are found in different ethnic groups, the chances of finding an unrelated donor vary according to the patient's ethnic and racial background. Patients from minority groups are therefore less likely to find matching, unrelated donors.

It is the intent of the legislature to establish a statewide bone marrow donor education and recruitment program in order to increase the number of Washington residents who become bone marrow donors, and to increase the chance that patients in need of bone marrow transplants will find a suitable bone marrow match." [1992 c 109 § 1.]

70.54.290 Bone marrow donor recruitment and education program—State employees to be recruited. The department of health shall make special efforts to educate and recruit state employees to volunteer as potential bone marrow donors. Such efforts shall include, but not be limited to, conducting a bone marrow donor drive to encourage state employees to volunteer as potential bone marrow donors. The drive shall include educational materials furnished by the national bone marrow donor program and presentations that explain the need for bone marrow donors, and the procedures for becoming registered as potential bone marrow donors. The cost of educational materials and presentations to state employees shall be borne by the national marrow donor program. [1992 c 109 § 3.]

Findings—1992 c 109: See note following RCW 70.54.280.

70.54.300 Bone marrow donor recruitment and education program—Private sector and community involvement. In addition to educating and recruiting state employees, the department of health shall make special efforts to encourage community and private sector businesses and associations to initiate independent efforts to achieve the goals of chapter 109, Laws of 1992. [1992 c 109 § 4.]

Findings—1992 c 109: See note following RCW 70.54.280.

70.54.305 Bone marrow donation—Status as minor not a disqualifying factor. A person's status as a minor may not disqualify him or her from bone marrow donation. [2000 c 116 § 1.]

70.54.310 Semiautomatic external defibrillator—Duty of acquirer—Immunity from civil liability. (1) As used in this section, "defibrillator" means a semiautomatic external defibrillator as prescribed by a physician licensed under chapter 18.71 RCW or an osteopath licensed under chapter 18.57 RCW.

(2) A person or entity who acquires a defibrillator shall ensure that:

(a) Expected defibrillator users receive reasonable instruction in defibrillator use and cardiopulmonary resuscitation by a course approved by the department of health;

(b) The defibrillator is maintained and tested by the acquirer according to the manufacturer's operational guidelines;

(c) Upon acquiring a defibrillator, medical direction is enlisted by the acquirer from a licensed physician in the use of the defibrillator and cardiopulmonary resuscitation;

(d) The person or entity who acquires a defibrillator shall notify the local emergency medical services organization about the existence and the location of the defibrillator; and

(e) The defibrillator user shall call 911 or its local equivalent as soon as possible after the emergency use of the defibrillator and shall assure that appropriate follow-up data is made available as requested by emergency medical service or other health care providers.

(3) A person who uses a defibrillator at the scene of an emergency and all other persons and entities providing services under this section are immune from civil liability for any personal injury that results from any act or omission in the use of the defibrillator in an emergency setting.

(4) The immunity from civil liability does not apply if the acts or omissions amount to gross negligence or willful or wanton misconduct.

(5) The requirements of subsection (2) of this section shall not apply to any individual using a defibrillator in an emergency setting if that individual is acting as a good samaritan under RCW 4.24.300. [1998 c 150 § 1.]

70.54.320 Electrology and tattooing—Findings. The legislature finds and declares that the practices of electrology and tattooing involve an invasive procedure with the use of needles and instruments which may be dangerous when improperly sterilized presenting a risk of infecting the client with bloodborne pathogens such as HIV and Hepatitis B. It is in the interests of the public health, safety, and welfare to establish requirements for the sterilization procedures in the commercial practices of electrology and tattooing in this state. [2001 c 194 § 1.]

70.54.330 Electrology and tattooing—Definitions. The definitions in this section apply throughout RCW 70.54.320, 70.54.340, and 70.54.350 unless the context clearly requires otherwise.

(1) "Electrologist" means a person who practices the business of electrology for a fee.

(2) "Electrology" means the process by which hair is permanently removed through the utilization of solid needle/probe electrode epilation, including thermolysis, being of shortwave, high frequency type, and including electrolysis, being of galvanic type, or a combination of both which is accomplished by a superimposed or sequential blend.

(3) "Tattoo artist" means a person who practices the business of tattooing for a fee.

(4) "Tattooing" means the indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being for cosmetic or figurative purposes. [2001 c 194 § 2.]

70.54.340 Electrology and tattooing—Rules, sterilization requirements. The secretary of health shall adopt by rule requirements for the sterilization of needles and instruments by electrologists and tattoo artists in accordance with nationally recognized professional standards. The secretary shall consider the universal precautions for infection control, as recommended by the United States centers for disease control, and guidelines for infection control, as recommended by the national environmental health association and the alliance of professional tattooists, in the adoption of these sterilization requirements. [2001 c 194 § 3.]

70.54.350 Electrology and tattooing—Practitioners to comply with rules—Penalty. (1) Any person who practices electrology or tattooing shall comply with the rules adopted by the department of health under RCW 70.54.340.

(2) A violation of this section is a misdemeanor. [2001 c 194 § 4.]

70.54.370 Meningococcal disease—Students to receive informational materials. (1) Except for community and technical colleges, each degree-granting public or private postsecondary residential campus that provides on-campus or group housing shall provide information on meningococcal disease to each enrolled matriculated first-time student. Community and technical colleges must provide the information only to those students who are offered on-campus or group housing. The information about meningococcal disease shall include:

(a) Symptoms, risks, especially as the risks relate to circumstances of group living arrangements, and treatment; and

(b) Current recommendations from the United States centers for disease control and prevention regarding the receipt of vaccines for meningococcal disease and where the vaccination can be received.

(2) This section shall not be construed to require the department of health or the postsecondary educational institution to provide the vaccination to students.

(3) The department of health shall be consulted regarding the preparation of the information materials provided to the first-time students.

(4) If institutions provide electronic enrollment or registration to first-time students, the information required by this section shall be provided electronically and acknowledged by the student before completion of electronic enrollment or registration.

(5) This section does not create a private right of action. [2003 c 398 § 1.]

Reviser's note: Substitute House Bill No. 1059, Substitute House Bill No. 1173, and Engrossed Substitute House Bill No. 1827 were enacted during the 2003 regular session of the legislature, but were vetoed in part by the governor. A stipulated judgment, No. 03-2-01988-4 filed in the Superior Court of Thurston County, between the governor and the legislature, settled litigation over the governor's use of veto powers and declared the vetoes of SHB 1059, SHB 1173, and ESHB 1827 null and void. Consequently, the text of this section has been returned to the version passed by the legislature prior to the vetoes. For vetoed text and message, see chapter 398, Laws of 2003.

Effective date—2003 c 398: "This act takes effect July 1, 2004." [2003 c 398 § 2.]

Chapter 70.56 RCW

ADVERSE HEALTH EVENTS AND INCIDENT REPORTING SYSTEM

Sections	
70.56.010	Definitions.
70.56.020	Notification of adverse health events—Notification and report required—Rules.
70.56.030	Department of health—Duties—Rules.
70.56.040	Contract with independent entity—Duties of independent entity—Establishment of notification and reporting system—Annual reports to governor, legislature.
70.56.050	Confidentiality of notifications and reports.
70.56.900	Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8.

70.56.010 Definitions. (Effective until July 1, 2009.)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the national quality forum in 2002, in its consensus report on serious reportable events in health care. The department shall update the list, through adoption of rules, as subsequent changes are made by the national quality forum. The term does not include an incident.

(2) "Ambulatory surgical facility" means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, whether or not the facility is certified under Title XVIII of the federal social security act.

(3) "Childbirth center" means a facility licensed under chapter 18.46 RCW.

(4) "Correctional medical facility" means a part or unit of a correctional facility operated by the department of corrections under chapter 72.10 RCW that provides medical services for lengths of stay in excess of twenty-four hours to offenders.

(5) "Department" means the department of health.

(6) "Health care worker" means an employee, independent contractor, licensee, or other individual who is directly involved in the delivery of health services in a medical facility.

(7) "Hospital" means a facility licensed under chapter 70.41 RCW.

(8) "Incident" means an event, occurrence, or situation involving the clinical care of a patient in a medical facility that:

(a) Results in unanticipated injury to a patient that is not related to the natural course of the patient's illness or underlying condition and does not constitute an adverse event; or

(b) Could have injured the patient but did not either cause an unanticipated injury or require the delivery of additional health care services to the patient.

"Incident" does not include an adverse event.

(9) "Independent entity" means that entity that the department of health contracts with under RCW 70.56.040 to receive notifications and reports of adverse events and incidents, and carry out the activities specified in RCW 70.56.040.

(10) "Medical facility" means a childbirth center, hospital, psychiatric hospital, or correctional medical facility. An ambulatory surgical facility shall be considered a medical facility for purposes of this chapter upon the effective date of any requirement for state registration or licensure of ambulatory surgical facilities.

(11) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW. [2006 c 8 § 105.]

70.56.010 Definitions. (Effective July 1, 2009.)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the national quality forum in 2002, in its consensus report on serious reportable events in health care. The department shall update the

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list, through adoption of rules, as subsequent changes are made by the national quality forum. The term does not include an incident.

(2) "Ambulatory surgical facility" means a facility licensed under chapter 70.230 RCW.

(3) "Childbirth center" means a facility licensed under chapter 18.46 RCW.

(4) "Correctional medical facility" means a part or unit of a correctional facility operated by the department of corrections under chapter 72.10 RCW that provides medical services for lengths of stay in excess of twenty-four hours to offenders.

(5) "Department" means the department of health.

(6) "Health care worker" means an employee, independent contractor, licensee, or other individual who is directly involved in the delivery of health services in a medical facility.

(7) "Hospital" means a facility licensed under chapter 70.41 RCW.

(8) "Incident" means an event, occurrence, or situation involving the clinical care of a patient in a medical facility that:

(a) Results in unanticipated injury to a patient that is not related to the natural course of the patient's illness or underlying condition and does not constitute an adverse event; or

(b) Could have injured the patient but did not either cause an unanticipated injury or require the delivery of additional health care services to the patient.

"Incident" does not include an adverse event.

(9) "Independent entity" means that entity that the department of health contracts with under RCW 70.56.040 to receive notifications and reports of adverse events and incidents, and carry out the activities specified in RCW 70.56.040.

(10) "Medical facility" means a childbirth center, hospital, psychiatric hospital, or correctional medical facility. An ambulatory surgical facility shall be considered a medical facility for purposes of this chapter upon the effective date of any requirement for state registration or licensure of ambulatory surgical facilities.

(11) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW. [2007 c 273 § 20; 2006 c 8 § 105.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

70.56.020 Notification of adverse health events—Notification and report required—Rules.

(1) The legislature intends to establish an adverse health events and incident notification and reporting system that is designed to facilitate quality improvement in the health care system, improve patient safety, assist the public in making informed health care choices, and decrease medical errors in a nonpunitive manner. The notification and reporting system shall not be designed to punish errors by health care practitioners or health care facility employees.

(2) When a medical facility confirms that an adverse event has occurred, it shall submit to the department of health:

(a) Notification of the event, with the date, type of adverse event, and any additional contextual information the facility chooses to provide, within forty-eight hours; and

(b) A report regarding the event within forty-five days.

The notification and report shall be submitted to the department using the internet-based system established under RCW 70.56.040(2). A medical facility may amend the notification or report within sixty days of the submission.

(3) The notification and report shall be filed in a format specified by the department after consultation with medical facilities and the independent entity. The format shall identify the facility, but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department of health or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180.

(4) As part of the report filed under subsection (2)(b) of this section, the medical facility must conduct a root cause analysis of the event, describe the corrective action plan that will be implemented consistent with the findings of the analysis, or provide an explanation of any reasons for not taking corrective action. The department shall adopt rules, in consultation with medical facilities and the independent entity, related to the form and content of the root cause analysis and corrective action plan. In developing the rules, consideration shall be given to existing standards for root cause analysis or corrective action plans adopted by the joint commission on accreditation of health facilities and other national or governmental entities.

(5) If, in the course of investigating a complaint received from an employee of a medical facility, the department determines that the facility has not provided notification of an adverse event or undertaken efforts to investigate the occurrence of an adverse event, the department shall direct the facility to provide notification or to undertake an investigation of the event.

(6) The protections of RCW 43.70.075 apply to notifications of adverse events that are submitted in good faith by employees of medical facilities. [2008 c 136 § 1; 2006 c 8 § 106.]

70.56.030 Department of health—Duties—Rules. (1) The department shall:

(a) Receive and investigate, where necessary, notifications and reports of adverse events, including root cause analyses and corrective action plans submitted as part of reports, and communicate to individual facilities the department's conclusions, if any, regarding an adverse event reported by a facility;

(b) Provide to the Washington state quality forum established in RCW 41.05.029 such information from the adverse health events and incidents reports made under this chapter as the department and the Washington state quality forum determine will assist in the Washington state quality forum's research regarding health care quality, evidence-based medicine, and patient safety. Any shared information must be aggregated and not identify an individual medical facility. As determined by the department and the Washington state quality forum, selected shared information may be disseminated on the Washington state quality forum's web site and through other appropriate means; and

(c) Adopt rules as necessary to implement this chapter.

(2) The department may enforce the reporting requirements of RCW 70.56.020 using its existing enforcement authority provided in chapter 18.46 RCW for childbirth centers, chapter 70.41 RCW for hospitals, and chapter 71.12 RCW for psychiatric hospitals. [2007 c 259 § 13; 2006 c 8 § 107.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.56.040 Contract with independent entity—Duties of independent entity—Establishment of notification and reporting system—Annual reports to governor, legislature. (1) The department shall contract with a qualified, independent entity to receive notifications and reports of adverse events and incidents, and carry out the activities specified in this section. In establishing qualifications for, and choosing the independent entity, the department shall strongly consider the patient safety organization criteria included in the federal patient safety and quality improvement act of 2005, P.L. 109-41, and any regulations adopted to implement this chapter.

(2) The independent entity shall:

(a) In collaboration with the department of health, establish an internet-based system for medical facilities and the health care workers of a medical facility to submit notifications and reports of adverse events and incidents, which shall be accessible twenty-four hours a day, seven days a week. The system shall be a portal to report both adverse events and incidents, and notifications and reports of adverse events shall be immediately transmitted to the department. The system shall be a secure system that protects the confidentiality of personal health information and provider and facility specific information submitted in notifications and reports, including appropriate encryption and an accurate means of authenticating the identity of users of the system. When the system becomes operational, medical facilities shall submit all notifications and reports by means of the system;

(b) Collect, analyze, and evaluate data regarding notifications and reports of adverse events and incidents, including the identification of performance indicators and patterns in frequency or severity at certain medical facilities or in certain regions of the state;

(c) Develop recommendations for changes in health care practices and procedures, which may be instituted for the purpose of reducing the number or severity of adverse events and incidents;

(d) Directly advise reporting medical facilities of immediate changes that can be instituted to reduce adverse events or incidents;

(e) Issue recommendations to medical facilities on a facility-specific or on a statewide basis regarding changes, trends, and improvements in health care practices and procedures for the purpose of reducing the number and severity of adverse events or incidents. Prior to issuing recommendations, consideration shall be given to the following factors: Expectation of improved quality of care, implementation feasibility, other relevant implementation practices, and the cost impact to patients, payers, and medical facilities. Statewide

recommendations shall be issued to medical facilities on a continuing basis and shall be published and posted on a publicly accessible web site. The recommendations made to medical facilities under this section shall not be considered mandatory for licensure purposes unless they are adopted by the department as rules pursuant to chapter 34.05 RCW; and

(f) Monitor implementation of reporting systems addressing adverse events or their equivalent in other states and make recommendations to the governor and the legislature as necessary for modifications to this chapter to keep the system as nearly consistent as possible with similar systems in other states.

(3)(a) The independent entity shall report no later than January 1, 2008, and annually thereafter to the governor and the legislature on the activities under this chapter in the preceding year. The report shall include:

(i) The number of adverse events and incidents reported by medical facilities, in the aggregate, on a geographical basis, and a summary of actions taken by facilities in response to the adverse events or incidents;

(ii) In the aggregate, the information derived from the data collected, including any recognized trends concerning patient safety;

(iii) Recommendations for statutory or regulatory changes that may help improve patient safety in the state; and

(iv) Information, presented in the aggregate, to inform and educate consumers and providers, on best practices and prevention tools that medical facilities are implementing to prevent adverse events as well as other patient safety initiatives medical facilities are undertaking to promote patient safety.

(b) The annual report shall be made available for public inspection and shall be posted on the department's and the independent entity's web site.

(4) The independent entity shall conduct all activities under this section in a manner that preserves the confidentiality of facilities, documents, materials, or information made confidential by RCW 70.56.050.

(5) Medical facilities and health care workers may provide notification of incidents to the independent entity. The notification shall be filed in a format specified by the independent entity, after consultation with the department and medical facilities, and shall identify the facility but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180. The protections of RCW 43.70.075 apply to notifications of incidents that are submitted in good faith by employees of medical facilities. [2008 c 136 § 2; 2006 c 8 § 108.]

70.56.050 Confidentiality of notifications and reports. (1)(a) When notification of an adverse event under RCW 70.56.020(2)(a) or of an incident under RCW 70.56.040(5), or a report regarding an adverse event under RCW 70.56.020(2)(b) is made by or through a coordinated quality improvement program under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, information and documents, including complaints

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and incident reports, created specifically for and collected and maintained by a quality improvement committee for the purpose of preparing a notification of an adverse event or incident or a report regarding an adverse event, the report itself, and the notification of an incident, shall be subject to the confidentiality protections of those laws and RCW 42.56.360(1)(c).

(b) The notification of an adverse event under RCW 70.56.020(2)(a), shall be subject to public disclosure and not exempt from disclosure under chapter 42.56 RCW. Any public disclosure of an adverse event notification must include any contextual information the medical facility chose to provide under RCW 70.56.020(2)(a).

(2)(a) When notification of an adverse event under RCW 70.56.020(2)(a) or of an incident under RCW 70.56.040(5), or a report regarding an adverse event under RCW 70.56.020(2)(b), made by a health care worker uses information and documents, including complaints and incident reports, created specifically for and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200 or a peer review committee under RCW 4.24.250, a notification of an incident, the report itself, and the information or documents used for the purpose of preparing notifications or the report, shall be subject to the confidentiality protections of those laws and RCW 42.56.360(1)(c).

(b) The notification of an adverse event under RCW 70.56.020(2)(a) shall be subject to public disclosure and not exempt from disclosure under chapter 42.56 RCW. Any public disclosure of an adverse event notification must include any contextual information the medical facility chose to provide under RCW 70.56.020(2)(a). [2008 c 136 § 3; 2006 c 8 § 110.]

70.56.900 Findings--Intent--Part headings and sub-headings not law--Severability--2006 c 8. See notes following RCW 5.64.010.

Chapter 70.58 RCW VITAL STATISTICS

Sections

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70.58.250	Burial-transit permit—Requisites.
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70.58.270	Data on inmates of hospitals, etc.
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Vital statistics

duties of state registrar: RCW 43.70.160.
registration of: RCW 43.70.150.

70.58.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Business days" means Monday through Friday except official state holidays.

(2) "Department" means the department of health.

(3) "Embalmer" means a person licensed as required in chapter 18.39 RCW and defined in RCW 18.39.010.

(4) "Funeral director" means a person licensed as required in chapter 18.39 RCW and defined in RCW 18.39.010.

(5) "Vital records" means records of birth, death, fetal death, marriage, dissolution, annulment, and legal separation, as maintained under the supervision of the state registrar of vital statistics. [2005 c 365 § 151; 1991 c 3 § 342; 1987 c 223 § 1.]

70.58.010 Registration districts. Each city of the first class shall constitute a primary registration district and each county and the territory of counties jointly comprising a health district, exclusive of the portion included within cities of the first class, shall constitute a primary registration area. All other counties and municipal areas not included in the foregoing shall be divided into registration areas by the state registrar as he may deem essential to obtain the most efficient registration of vital events as provided by law. [1979 ex.s. c 52 § 2; 1951 c 106 § 4; 1915 c 180 § 1; 1907 c 83 § 2; RRS § 6019.]

70.58.020 Local registrars—Deputies. Under the direction and control of the state registrar, the health officer of each city of the first class shall be the local registrar in and for the primary registration district under his supervision as health officer and the health officer of each county and district health department shall be the local registrar in and for the registration area which he supervises as health officer and shall serve as such as long as he performs the registration duties as prescribed by law. He may be removed as local registrar of the registration area which he serves by the state

board of health upon its finding of evidence of neglect in the performance of his duties as such registrar. The state registrar shall appoint local registrars for those registration areas not included in the foregoing and also in areas where the state board of health has removed the health officer from this position as registrar.

Each local registrar, subject to the approval of the state registrar, shall appoint in writing a sufficient number of deputy registrars to administer the laws relating to vital statistics, and shall certify the appointment of such deputies to the state registrar. Deputy registrars shall act in the case of absence, death, illness or disability of the local registrar, or such other conditions as may be deemed sufficient cause to require their services. [1979 ex.s. c 52 § 3; 1961 ex.s. c 5 § 5; 1951 c 106 § 5; 1915 c 180 § 2; 1907 c 83 § 3; RRS § 6020.]

Director of combined city-county health department as registrar: RCW 70.08.060.

70.58.030 Duties of local registrars. The local registrar shall supply blank forms of certificates to such persons as require them. He or she shall carefully examine each certificate of birth, death, and fetal death when presented for record, and see that it has been made out in accordance with the provisions of law and the instructions of the state registrar. If any certificate of death is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return, and withhold issuing the burial-transit permit until it is corrected. If the certificate of death is properly executed and complete, he or she shall issue a burial-transit permit to the funeral director or person acting as such. If a certificate of a birth is incomplete, he or she shall immediately notify the informant, and require that the missing items be supplied if they can be obtained. He or she shall sign as local registrar to each certificate filed in attest of the date of filing in the office. He or she shall make a record of each birth, death, and fetal death certificate registered in such manner as directed by the state registrar. The local registrar shall transmit to the state registrar each original death or fetal death certificate no less than thirty days after the certificate was registered nor more than sixty days after the certificate was registered. On or before the fifteenth day and the last day of each month, each local registrar shall transmit to the state registrar all original birth certificates that were registered prior to that day and which had not been transmitted previously. A local registrar shall transmit an original certificate to the state registrar whenever the state registrar requests the transfer of the certificate from the local registrar. If no births or no deaths occurred in any month, he or she shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for this purpose. Local registrars in counties in which a first-class city or a city of twenty-seven thousand or more population is located may retain an exact copy of the original and make certified copies of the exact copy. [1990 c 99 § 1; 1961 ex.s. c 5 § 6; 1907 c 83 § 18; RRS § 6035.]

70.58.040 Compensation of local registrars. A local registrar shall be paid the sum of one dollar for each birth, death, or fetal death certificate registered for his district which sum shall cover making out the burial-transit permit and record of the certificate to be filed and preserved in his office. If no births or deaths were registered during any

month, the local registrar shall be paid the sum of one dollar for each report to that effect: PROVIDED, That all local health officers who are by statute required to serve as local registrars shall not be entitled to the fee of one dollar. Neither shall any members of their staffs be entitled to the above fee of one dollar when such persons serve as deputy registrars. All fees payable to local registrars shall be paid by the treasurer of the county or city, properly chargeable therewith, out of the funds of the county or city, upon warrants drawn by the auditor, or other proper officer of the county or city. No warrant shall be issued to a local registrar except upon a statement, signed by the state registrar, stating the names and addresses respectively of the local registrars entitled to fees from the county or city, and the number of certificates and reports of births, deaths, and fetal deaths, properly returned to the state registrar, by each local registrar, during three preceding calendar months prior to the date of the statement, and the amount of fees to which each local registrar is entitled, which statement the state registrar shall file with the proper officers during the months of January, April, July, and October of each year. Upon filing of the statement the auditor or other proper officer of the county or city shall issue warrants for the amount due each local registrar. [1961 ex.s. c 5 § 7; 1951 c 106 § 8; 1915 c 180 § 10; 1907 c 83 § 19; RRS § 6036.]

70.58.050 Duty to enforce law. The local registrars are hereby charged with the strict and thorough enforcement of the provisions of *this act in their districts, under the supervision and direction of the state registrar. And they shall make an immediate report to the state registrar of any violations of this law coming to their notice by observation or upon the complaint of any person, or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of *this act in every part of the state, and with supervisory power over local registrars, to the end that all of the requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all local registrars shall aid him, upon request, in such investigation. When he shall deem it necessary he shall report cases of violation of any of the provisions of *this act to the prosecuting attorney of the proper county with a statement of the fact and circumstances; and when any such case is reported to them by the state registrar, all prosecuting attorneys or officials acting in such capacity shall forthwith initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violations of law. And upon request of the state registrar the attorney general shall likewise assist in the enforcement of the provisions of *this act. [1907 c 83 § 22; RRS § 6039.]

***Reviser's note:** "this act" appears in 1907 c 83 codified as RCW 70.58.010 through 70.58.100, 70.58.230 through 70.58.280, and 43.20A.620 through 43.20A.630.

70.58.055 Certificates generally. (1) To promote and maintain nation-wide uniformity in the system of vital statistics, the certificates required by this chapter or by the rules adopted under this chapter shall include, as a minimum, the items recommended by the federal agency responsible for national vital statistics including social security numbers.

(2) The state board of health by rule may require additional pertinent information relative to the birth and manner of delivery as it may deem necessary for statistical study. This information shall be placed in a confidential section of the birth certificate form and shall not be subject to the view of the public or for certification purposes except upon order of the court. The state board of health may eliminate from the forms items that it determines are not necessary for statistical study.

(3) Each certificate or other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(4) All vital records shall contain the data required for registration. No certificate may be held to be complete and correct that does not supply all items of information called for or that does not satisfactorily account for the omission of required items.

(5) Information required in certificates or documents authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar. [1997 c 58 § 948; 1991 c 96 § 1.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

70.58.061 Electronic and hard copy transmission.

The department is authorized to prescribe by rule the schedule and system for electronic and hard copy transmission of certificates and documents required by this chapter. [1991 c 96 § 2.]

70.58.065 Local registrar use of electronic databases.

The department, in mutual agreement with a local health officer as defined in RCW 70.05.010, may authorize a local registrar to access the statewide birth database or death database and to issue a certified copy of birth or death certificates from the respective statewide electronic databases. In such cases, the department may bill local registrars for only direct line charges associated with accessing birth and death databases. [1991 c 96 § 3.]

70.58.070 Registration of births required. All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided. [1907 c 83 § 11; RRS § 6028.]

70.58.080 Birth certificates—Filing—Establishing paternity—Surname of child. (1) Within ten days after the birth of any child, the attending physician, midwife, or his or her agent shall:

(a) Fill out a certificate of birth, giving all of the particulars required, including: (i) The mother's name and date of birth, and (ii) if the mother and father are married at the time of birth or an acknowledgment of paternity has been signed or one has been filed with the state registrar of vital statistics naming the man as the father, the father's name and date of birth; and

(b) File the certificate of birth together with the mother's and father's social security numbers with the state registrar of vital statistics.

(2) The local registrar shall forward the birth certificate, any signed acknowledgment of paternity that has not been filed with the state registrar of vital statistics, and the mother's and father's social security numbers to the state office of vital statistics pursuant to RCW 70.58.030.

(3) The state registrar of vital statistics shall make available to the division of child support the birth certificates, the mother's and father's social security numbers and acknowledgments of paternity.

(4) Upon the birth of a child to an unmarried woman, the attending physician, midwife, or his or her agent shall:

(a) Provide an opportunity for the child's mother and natural father to complete an acknowledgment of paternity. The completed acknowledgment shall be filed with the state registrar of vital statistics. The acknowledgment shall be prepared as required by RCW 26.26.305.

(b) Provide written information and oral information, furnished by the department of social and health services, to the mother and the father regarding the benefits of having the child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services. The oral and written information shall also include information regarding the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor any rights afforded due to minority status, and responsibilities that arise from, signing the acknowledgment of paternity.

(5) The physician or midwife or his or her agent is entitled to reimbursement for reasonable costs, which the department shall establish by rule, when an acknowledgment of paternity is filed with the state registrar of vital statistics.

(6) If there is no attending physician or midwife, the father or mother of the child, householder or owner of the premises, manager or superintendent of the public or private institution in which the birth occurred, shall notify the local registrar, within ten days after the birth, of the fact of the birth, and the local registrar shall secure the necessary information and signature to make a proper certificate of birth.

(7) When an infant is found for whom no certificate of birth is known to be on file, a birth certificate shall be filed within the time and in the form prescribed by the state board of health.

(8) When no alleged father is named on a birth certificate of a child born to an unwed mother the mother may give any surname she so desires to her child but shall designate in space provided for father's name on the birth certificate "None Named". [2002 c 302 § 708; 1997 c 58 § 937; 1989 c 55 § 2; 1961 ex.s. c 5 § 8; 1951 c 106 § 6; 1907 c 83 § 12; RRS § 6029.]

Application—Construction—Short title—Severability—2002 c 302: See RCW 26.26.903, 26.26.911, and 26.26.912.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Implementation—1994 c 299: "The department of social and health services shall make a substantial effort to determine the identity of the non-custodial parent through consistent implementation of RCW 70.58.080. By December 1, 1994, the department of social and health services shall report to the fiscal committees of the legislature on the method for validating claims of good cause for refusing to establish paternity, the methods used in other states, and the national average rate of claims of good cause for refusing to establish paternity compared to the Washington state rate of claims of good

cause for refusing to establish paternity, the reasons for differences in the rates, and steps that may be taken to reduce these differences." [1994 c 299 § 13.]

70.58.082 Vital records—Rules—Release of copies.

No person may prepare or issue any vital record that purports to be an original, certified copy, or copy of a vital record except as authorized in this chapter.

The department shall adopt rules providing for the release of paper or electronic copies of vital records that include adequate standards for security and confidentiality, ensure the proper record is identified, and prevent fraudulent use of records. All certified copies of vital records in the state must be on paper and in a format provided and approved by the department and must include security features to deter the alteration, counterfeiting, duplication, or simulation without ready detection.

Federal, state, and local governmental agencies may, upon request and with submission of the appropriate fee, be furnished copies of vital records if the vital record will be used for the agencies' official duties. The department may enter into agreements with offices of vital statistics outside the state for the transmission of copies of vital records to those offices when the vital records relate to residents of those jurisdictions and receipt of copies of vital records from those offices. The agreement must specify the statistical and administrative purposes for which the vital records may be used and must provide instructions for the proper retention and disposition of the copies. Copies of vital records that are received by the department from other offices of vital statistics outside the state must be handled as provided under the agreements.

The department may disclose information that may identify any person named in any birth certificate [vital] record for research purposes as provided under chapter 42.48 RCW. [2005 c 365 § 152; 1997 c 108 § 1.]

70.58.085 Birth certificates suitable for display—Issuance—Fee—Disposition of funds.

(1) In addition to the original birth certificate, the state registrar shall issue upon request and upon payment of the fee established pursuant to subsection (3) of this section a birth certificate representing that the birth of the person named thereon is recorded in the office of the registrar. The certificate issued under this section shall be in a form consistent with the need to protect the integrity of vital records but shall be suitable for display. It may bear the seal of the state printed thereon and may be signed by the governor. It shall have the same status as evidence as the original birth certificate.

(2) Of the funds received under subsection (1) of this section, the amount needed to reimburse the registrar for expenses incurred in administering this section shall be credited to the state registrar account. The remainder shall be credited to the children's trust fund established under RCW 43.121.100.

(3) The fee shall be set by the council established pursuant to RCW 43.121.020, at a level likely to maximize revenues for the children's trust fund. [2004 c 53 § 1; 1987 c 351 § 6.]

Legislative findings—1987 c 351: "The legislature finds that children are society's most valuable resource and that child abuse and neglect is a

threat to the physical, mental, and emotional health of children. The legislature further finds that assisting community-based private nonprofit and public organizations, agencies, or school districts in identifying and establishing needed primary prevention programs will reduce the incidence of child abuse and neglect, and the necessity for costly subsequent intervention in family life by the state. Child abuse and neglect prevention programs can be most effectively and economically administered through the use of trained volunteers and the cooperative efforts of the communities, citizens, and the state. The legislature finds that the Washington council for prevention of child abuse is an effective counsel for reducing child abuse but limited resources have prevented the council from funding promising prevention concepts statewide.

It is the intent of the legislature to establish a cost-neutral revenue system for the children's trust fund which is designed to fund primary prevention programs and innovative prevention related activities such as research or public awareness campaigns. The fund shall be supported through revenue created by the sale of heirloom birth certificates. This concept has proven to be a cost-effective approach to funding child abuse prevention in the state of Oregon. The legislature believes that this is an innovative way of using private dollars to supplement our public dollars to reduce child abuse and neglect." [1987 c 351 § 1.]

70.58.095 New certificate of birth—Legitimation, paternity—Substitution for original—Inspection of original, when—When delayed registration required. The state registrar of vital statistics shall establish a new certificate of birth for a person born in this state when he receives a request that a new certificate be established and such evidence as required by regulation of the state board of health proving that such person has been acknowledged, or that a court of competent jurisdiction has determined the paternity of such person. When a new certificate of birth is established, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of paternity, or acknowledgment shall not be subject to inspection except upon order of a court of competent jurisdiction, or upon written request of the department of social and health services, the attorney general, or a prosecuting attorney, stating that the documents are being sought in furtherance of an action to enforce a duty of support. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed registration of birth shall be filed with the state registrar of vital statistics as provided in RCW 70.58.120. [1983 1st ex.s. c 41 § 14; 1975-'76 2nd ex.s. c 42 § 38; 1961 ex.s. c 5 § 21.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

70.58.100 Supplemental report on name of child. It shall be the duty of every local registrar when any certificate of birth of a living child is presented without statement of the given name, to make out and deliver to the parents of such child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed and returned to the registrar as soon as the child has been named. [1915 c 180 § 8; 1907 c 83 § 14; RRS § 6031.]

70.58.104 Reproductions of vital records—Disclosure of information for research purposes—Furnishing of birth and death records by local registrars. (1) The state registrar may prepare typewritten, photographic, electronic, or other reproductions of records of birth, death, fetal death, marriage, or decrees of divorce, annulment, or legal separation registered under law or that portion of the record of any

birth which shows the child's full name, sex, date of birth, and date of filing of the certificate. Such reproductions, when certified by the state registrar, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated therein.

(2) The department may authorize by regulation the disclosure of information contained in vital records for research purposes. All research proposals must be submitted to the department and must be reviewed and approved as to scientific merit and to ensure that confidentiality safeguards are provided in accordance with department policy.

(3) Local registrars may, upon request, furnish certified copies of the records of birth, death, and fetal death, subject to all provisions of state law applicable to the state registrar. [1991 c 96 § 4; 1987 c 223 § 2.]

70.58.107 Fees charged by department and local registrars. The department of health shall charge a fee of twenty dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration. No fee may be demanded or required for furnishing certified copies of a death certificate of a sex offender for use by a law enforcement agency in maintaining a registered sex offender database, or that of any offender requested by a county clerk or court in the state of Washington for purposes of extinguishing the offender's legal financial obligation.

The department shall keep a true and correct account of all fees received and transmit the fees to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation except in cases where payment is made by credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication. Payment by these electronic methods may be subject to an additional fee consistent with the requirements established by RCW 36.29.190. All such fees collected, except for seven dollars of each fee collected for the issuance of birth certificates and first copies of death certificates and fourteen dollars of each fee collected for additional copies of the same death certificate ordered at the same time as the first copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall transmit seven dollars of the fees collected for birth certificates and first copies of death certificates and fourteen dollars of the fee collected for additional copies of death certificates to the state treasurer on or before the first day of January, April, July, and October. All but five dollars of the fees turned over to the state treasurer by local registrars shall be paid to the department of

health for the purpose of developing and maintaining the state vital records systems, including a web-based electronic death registration system.

Eight dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations' account established by RCW 43.79.445. [2007 c 200 § 2; 2007 c 91 § 2. Prior: 2003 c 272 § 1; 2003 c 241 § 1; 1997 c 223 § 1; 1991 c 3 § 343; 1988 c 40 § 1; 1987 c 223 § 3.]

Reviser's note: This section was amended by 2007 c 91 § 2 and by 2007 c 200 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

70.58.110 Delayed registration of births—Authorized. Whenever a birth which occurred in this state on or after July 1, 1907, is not on record in the office of the state registrar or in the office of the auditor of the county in which the birth occurred if the birth was prior to July 1, 1907, application for the registration of the birth may be made by the interested person to the state registrar: PROVIDED, That if the person whose birth is to be recorded be a child under four years of age the attending physician, if available, shall make the registration. [1953 c 90 § 2; 1943 c 176 § 1; 1941 c 167 § 1; Rem. Supp. 1943 § 6011-1.]

70.58.120 Delayed registration of births—Application—Evidence required. The delayed registration of birth form shall be provided by the state registrar and shall be signed by the registrant if of legal age, or by the attendant at birth, parent, or guardian if the registrant is not of legal age. In instances of delayed registration of birth where the person whose birth is to be recorded is four years of age or over but under twelve years of age and in instances where the person whose birth is to be recorded is less than four years of age and the attending physician is not available to make the registration, the facts concerning date of birth, place of birth, and parentage shall be established by at least one piece of documentary evidence. In instances of delayed registration of birth where the person whose birth is to be recorded is twelve years of age or over, the facts concerning date of birth and place of birth shall be established by at least three documents of which only one may be an affidavit. The facts concerning parentage shall be established by at least one document. Documents, other than affidavits, or documents established prior to the fourth birthday of the registrant, shall be at least five years old or shall have been made from records established at least five years prior to the date of application. [1961 ex.s. c 5 § 9; 1953 c 90 § 3; 1943 c 176 § 2; 1941 c 167 § 2; Rem. Supp. 1943 § 6011-2.]

70.58.130 Delayed registration of births—Where registered—Copy as evidence. The birth shall be registered in the records of the state registrar. A certified copy of the record shall be prima facie evidence of the facts stated therein. [1961 ex.s. c 5 § 10; 1953 c 90 § 4; 1951 c 106 § 2; 1943 c 176 § 4; 1941 c 167 § 4; Rem. Supp. 1943 § 6011-4.]

70.58.145 Order establishing record of birth when delayed registration not available—Procedure. When a

person alleged to be born in this state is unable to meet the requirements for a delayed registration of birth in accordance with RCW 70.58.120, he may petition the superior court of the county of residence or of the county of birth for an order establishing a record of the date and place of his birth, and his parentage. The court shall fix a time for hearing the petition, and the state registrar shall be given notice at least twenty days prior to the date set for hearing in order that he may present at the hearing any information he believes will be useful to the court. If the court from the evidence presented to it finds that the petitioner was born in this state, the court shall issue an order to establish a record of birth. This order shall include the birth data to be registered. If the court orders the birth of a person born in this state registered, it shall be registered in the records of the state registrar. [1961 ex.s. c 5 § 20.]

70.58.150 "Fetal death," "evidence of life," defined. A fetal death means any product of conception that shows no evidence of life after complete expulsion or extraction from its mother. The words "evidence of life" include breathing, beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. [1961 ex.s. c 5 § 11; 1945 c 159 § 5; Rem. Supp. 1945 § 6024-5.]

70.58.160 Certificate of death or fetal death required. A certificate of every death or fetal death shall be filed with the local registrar of the district in which the death or fetal death occurred within three business days after the occurrence is known, or if the place of death or fetal death is not known, then with the local registrar of the district in which the human remains are found within one business day thereafter. In every instance a certificate shall be filed prior to the interment or other disposition of the human remains. However, a certificate of fetal death shall not be required if the period of gestation is less than twenty weeks. [2005 c 365 § 153; 1961 ex.s. c 5 § 12; 1945 c 159 § 1; Rem. Supp. 1945 § 6024-1. Prior: 1915 c 180 § 4; 1907 c 83 § 5.]

70.58.170 Certificate of death or fetal death—By whom filed. The funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall file the certificate of death or fetal death. In preparing such certificate, the funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall obtain and enter on the certificate such personal data as the certificate requires from the person or persons best qualified to supply them. He or she shall present the certificate of death to the physician, physician's assistant, or advanced registered nurse practitioner last in attendance upon the deceased, or, if the deceased died without medical attendance, to the health officer, coroner, or prosecuting attorney having jurisdiction, who shall thereupon certify the cause of death according to his or her best knowledge and belief and shall sign the certificate of death or fetal death within two business days after being presented with the certificate unless good cause for not signing the certificate within the two business days can be established. He or she shall present the certificate of fetal death to the physician, physician's assistant, advanced registered nurse practitioner,

midwife, or other person in attendance at the fetal death, who shall certify the fetal death and such medical data pertaining thereto as he or she can furnish. [2005 c 365 § 154; 2000 c 133 § 1; 1979 ex.s. c 162 § 1; 1961 ex.s. c 5 § 13; 1945 c 159 § 2; Rem. Supp. 1945 § 6024-2.]

70.58.175 Certificate of death—Domestic partnership information. Information recorded on death certificates shall include domestic partnership status and the surviving partner's information to the same extent such information is recorded for marital status and the surviving spouse's information. [2007 c 156 § 32.]

70.58.180 Certificate when no physician, physician's assistant, or advanced registered nurse practitioner in attendance—Legally accepted cause of death. If the death occurred without medical attendance, the funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall notify the coroner, or prosecuting attorney if there is no coroner in the county. If the circumstances suggest that the death or fetal death was caused by unlawful or unnatural causes or if there is no local health officer with jurisdiction, the coroner, or if none, the prosecuting attorney shall complete and sign the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death. In case of any death without medical attendance in which there is no suspicion of death from unlawful or unnatural causes, the local health officer or his or her deputy, the coroner and if none, the prosecuting attorney, shall complete and sign the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death, and noting the cause of death without the holding of an inquest or performing of an autopsy or post mortem, but from statements of relatives, persons in attendance during the last sickness, persons present at the time of death or other persons having adequate knowledge of the facts.

The cause of death, the manner and mode in which death occurred, as noted by the coroner or if none, the prosecuting attorney or the health officer and incorporated in the death certificate filed with the bureau of vital statistics of the board of health shall be the legally accepted manner and mode by which the deceased came to his or her death and shall be the legally accepted cause of death. [2005 c 365 § 155; 2000 c 133 § 2; 1961 ex.s. c 5 § 14; 1953 c 188 § 5; 1945 c 159 § 3; Rem. Supp. 1945 § 6024-3. Prior: 1915 c 180 § 5; 1907 c 83 § 7.]

70.58.190 Permit to dispose of human remains when cause of death undetermined. If the cause of death cannot be determined within three business days, the certification of its cause may be filed after the prescribed period, but the attending physician, coroner, or prosecuting attorney shall give the local registrar of the district in which the death occurred written notice of the reason for the delay, in order that a permit for the disposition of the human remains may be issued if required. [2005 c 365 § 156; 1945 c 159 § 4; Rem. Supp. 1945 § 6024-4.]

(2008 Ed.)

70.58.210 Birth certificate upon adoption. (1) Whenever a decree of adoption has been entered declaring a child, born in the state of Washington, adopted in any court of competent jurisdiction in the state of Washington or any other state or any territory of the United States, a certified copy of the decree of adoption shall be recorded with the proper department of registration of births in the state of Washington and a certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the adoptive parents of the child and the age, sex, and date of birth of the child, but no reference in any birth certificate shall have reference to the adoption of the child. However, original registration of births shall remain a part of the record of the board of health.

(2) Whenever a decree of adoption has been entered declaring a child, born outside of the United States and its territories, adopted in any court of competent jurisdiction in the state of Washington, a certified copy of the decree of adoption together with evidence as to the child's birth date and birth place provided by the original birth certificate, or by a certified copy, extract, or translation thereof or by a certified copy of some other document essentially equivalent thereto, shall be recorded with the proper department of registration of births in the state of Washington. The records of the United States immigration and naturalization service or of the United States department of state are essentially equivalent to the birth certificate. A certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the adoptive parents of the child and the age, sex, and date of birth of the child, but no reference in any birth certificate shall have reference to the adoption of the child. Unless the court orders otherwise, the certificate of birth shall have the same overall appearance as the certificate which would have been issued if the adopted child had been born in the state of Washington.

A person born outside of the United States and its territories for whom a decree of adoption has been entered in a court of this state before September 1, 1979, may apply for a certificate of birth under this subsection by furnishing the proper department of registration of births with a certified copy of the decree of adoption together with the other evidence required by this subsection as to the date and place of birth. Upon receipt of the decree and evidence, a certificate of birth shall be issued in accordance with this subsection. [1979 ex.s. c 101 § 2; 1975-'76 2nd ex.s. c 42 § 40; 1943 c 12 § 1; 1939 c 133 § 1; Rem. Supp. 1943 § 6013-1.]

Severability—1979 ex.s. c 101: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 101 § 3.]

Adoption: Chapter 26.33 RCW.

Decree of adoption—Duties of state registrar of vital statistics: RCW 26.33.290.

Uniform parentage act: Chapter 26.26 RCW.

70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee. It shall be unlawful for any person to inter, deposit in a vault, grave, or tomb, cremate, or otherwise dispose of, or disinter or remove from one registration district to another, or hold for more than three business days

after death, the human remains of any person whose death occurred in this state or any human remains which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the human remains were found, a permit for the burial, disinterment, or removal of the human remains. However, a licensed funeral director or embalmer of this state or a funeral establishment licensed in another state contiguous to Washington, with a current certificate of removal registration issued by the director of the department of licensing, may remove human remains from the district where the death occurred to another registration district or Oregon or Idaho without having obtained a permit but in such cases the funeral director or embalmer shall at the time of removing human remains file with or mail to the local registrar of the district where the death occurred a notice of removal upon a blank to be furnished by the state registrar. The notice of removal shall be signed by the funeral director or embalmer and shall contain the name and address of the local registrar with whom the certificate of death will be filed and the burial-transit permit secured. Every local registrar, accepting a death certificate and issuing a burial-transit permit for a death that occurred outside his or her district, shall be entitled to a fee of one dollar to be paid by the funeral director or embalmer at the time the death certificate is accepted and the permit is secured. It shall be unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave, or tomb, or cremate or otherwise dispose of human remains of any person whose death occurred outside this state unless the human remains are accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred, or unless a special permit for bringing the human remains into this state shall be obtained from the state registrar. [2005 c 365 § 157; 1961 ex.s. c 5 § 16; 1915 c 180 § 3; 1907 c 83 § 4; RRS § 6021.]

Cemeteries and human remains: Title 68 RCW.

70.58.240 Duties of funeral directors. Each funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall obtain a certificate of death, sign and file the certificate with the local registrar, and secure a burial-transit permit, prior to any permanent disposition of the human remains. He or she shall obtain the personal and statistical particulars required, from the person best qualified to supply them. He or she shall present the certificate to the attending physician or in case the death occurred without any medical attendance, to the proper official for certification for the medical certificate of the cause of death and other particulars necessary to complete the record. He or she shall supply the information required relative to the date and place of disposition and he or she shall sign and present the completed certificate to the local registrar, for the issuance of a burial-transit permit. He or she shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring the human remains; or shall attach the transit permit to the box containing the corpse, when shipped by any transportation company, and the permit shall accompany the corpse to its destination. [2005 c 365 § 158; 1961 ex.s. c 5 § 17; 1915 c 180 § 6; 1907 c 83 § 8; RRS § 6025.]

[Title 70 RCW—page 130]

70.58.250 Burial-transit permit—Requisites. The burial-transit permit shall contain a statement by the local registrar and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or otherwise dispose of the body; stating the name of the deceased and other necessary details upon the form prescribed by the state registrar. [1961 ex.s. c 5 § 18; 1907 c 83 § 9; RRS § 6026.]

70.58.260 Burial grounds—Duties of sexton. It shall be unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated, or otherwise permanently disposed of, to permit the interment, cremation, or other disposition of any body upon such premises unless it is accompanied by a burial, removal, or transit permit as provided in this chapter. It shall be the duty of the person in charge of any such premises to, in case of the interment, cremation, or other disposition of human remains therein, endorse upon the permit the date and character of such disposition, over his or her signature, to return all permits so endorsed to the local registrar of the district in which the death occurred within ten days from the date of such disposition, and to keep a record of all human remains disposed of on the premises under his or her charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the undertaker, which record shall at all times be open to public inspection, and it shall be the duty of every undertaker, or person acting as such, when burying human remains in a cemetery or burial grounds having no person in charge, to sign the burial, removal, or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge", and file the burial, removal, or transit permit within ten days with the registrar of the district in which the death occurred. [2005 c 365 § 159; 1915 c 180 § 7; 1907 c 83 § 10; RRS § 6027.]

70.58.270 Data on inmates of hospitals, etc. All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions, at the date of approval of *this act, that are required in the form of the certificate provided for by this act, as directed by the state registrar; and thereafter such record shall be by them made for all future inmates at the time of their admission. And in case of persons admitted or committed for medical treatment of contagious disease, the physician in charge shall specify, for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself, if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from the relatives, friends, or other persons acquainted with the facts. [1907 c 83 § 16; RRS § 6033.]

*Reviser's note: For "this act," see note following RCW 70.58.050.

(2008 Ed.)

70.58.280 Penalty. (1) Every person who violates or willfully fails, neglects, or refuses to comply with any provisions of *this act is guilty of a misdemeanor and for a second offense shall be punished by a fine of not less than twenty-five dollars, and for a third and each subsequent offense shall be punished by a fine of not less than fifty dollars or more than two hundred and fifty dollars or by imprisonment for not more than ninety days, or by both fine and imprisonment.

(2) Every person who willfully furnishes any false information for any certificate required by *this act or who makes any false statement in any such certificate is guilty of a gross misdemeanor. [2003 c 53 § 353; 1915 c 180 § 12; 1907 c 83 § 21; RRS § 6038.]

***Reviser's note:** For "this act," see note following RCW 70.58.050.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.58.380 Certificates for out-of-state marriage license requirements. The department shall prescribe by rule a schedule of fees for providing certificates necessary to meet marriage license requirements of other states. The fees shall be predicated on the costs of conducting premarital blood screening tests and issuing certificates. [1981 c 284 § 1.]

Reviser's note: Although 1981 c 284 directs this section be added to chapter 74.04 RCW, codification here is considered more appropriate. The department of social and health services is apparently the department referred to.

70.58.390 Certificates of presumed death. A county coroner, medical examiner, or the prosecuting attorney having jurisdiction may file a certificate of presumed death when the official filing the certificate determines to the best of the official's knowledge and belief that there is sufficient circumstantial evidence to indicate that a person has in fact died in the county or in waters contiguous to the county and that it is unlikely that the body will be recovered. The certificate shall recite, to the extent possible, the date, circumstances, and place of the death, and shall be the legally accepted fact of death.

In the event that the county in which the death occurred cannot be determined with certainty, the county coroner, medical examiner, or prosecuting attorney in the county in which the events occurred and in which the decedent was last known to be alive may file a certificate of presumed death under this section.

The official filing the certificate of presumed death shall file the certificate with the local registrar of the county where the death was presumed to have occurred, and thereafter all persons and parties acting in good faith may rely thereon with acquittance. [2005 c 365 § 160; 1981 c 176 § 1.]

Chapter 70.62 RCW

**TRANSIENT ACCOMMODATIONS—
LICENSING—INSPECTIONS**

Sections

70.62.200	Purpose.
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70.62.260	Licenses—Applications—Expiration—Renewal.
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70.62.290	Adoption of fire and safety rules.
70.62.900	Severability—1971 ex.s. c 239.

Reviser's note: Throughout this chapter, the terms "this 1971 amendatory act" or "this act" have been changed to "this chapter." "This 1971 amendatory act" and "this act" consist of this chapter, the amendment of RCW 43.22.050 and the repeal of RCW 70.62.010 through 70.62.130 and 43.22.060 through 43.22.110 by 1971 ex.s. c 239.

Hotels: Chapter 19.48 RCW.

Lien of hotels, lodging and boarding houses: Chapter 60.64 RCW.

70.62.200 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of transient accommodations through a licensing program to promote the protection of the health and safety of individuals using such accommodations in this state. [1994 c 250 § 1; 1971 ex.s. c 239 § 1.]

70.62.210 Definitions. The following terms whenever used or referred to in this chapter shall have the following respective meanings for the purposes of this chapter, except in those instances where the context clearly indicates otherwise:

(1) The term "transient accommodation" shall mean any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to travelers and transient guests.

(2) The term "person" shall mean any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(3) The term "secretary" shall mean the secretary of the Washington state department of health and any duly authorized representative thereof.

(4) The term "board" shall mean the Washington state board of health.

(5) The term "department" shall mean the Washington state department of health.

(6) The term "lodging unit" shall mean one self-contained unit designated by number, letter or some other method of identification. [1991 c 3 § 347; 1971 ex.s. c 239 § 2.]

70.62.220 License required—Fee—Display. The person operating a transient accommodation as defined in this chapter shall secure each year an annual operating license and shall pay a fee to cover the cost of licensure and enforcement activities as established by the department under RCW 43.70.110 and 43.70.250. The initial licensure period shall run for one year from the date of issuance, and the license shall be renewed annually on that date. The license fee shall be paid to the department. The license shall be conspicuously displayed in the lobby or office of the facility for which it is issued. [1994 c 250 § 2; 1987 c 75 § 9; 1982 c 201 § 10; 1971 ex.s. c 239 § 3.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

70.62.240 Rules. The board shall adopt such rules as may be necessary to assure that each transient accommoda-

tion will be operated and maintained in a manner consistent with the health and safety of the members of the public using such facilities. Such rules shall provide for adequate light, heat, ventilation, cleanliness, and sanitation and shall include provisions to assure adequate maintenance. All rules and amendments thereto shall be adopted in conformance with the provisions of chapter 34.05 RCW. [1994 c 250 § 3; 1971 ex.s. c 239 § 5.]

70.62.250 Powers and duties of department. The department is hereby granted and shall have and exercise, in addition to the powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the power:

(1) To develop such rules and regulations for proposed adoption by the board as may be necessary to implement the purposes of this chapter;

(2) To enter and inspect at any reasonable time any transient accommodation and to make such investigations as are reasonably necessary to carry out the provisions of this chapter and any rules and regulations promulgated thereunder: PROVIDED, That no room or suite shall be entered for inspection unless said room or suite is not occupied by any patron or guest of the transient accommodation at the time of entry;

(3) To perform such other duties and employ such personnel as may be necessary to carry out the provisions of this chapter; and

(4) To administer and enforce the provisions of this chapter and the rules and regulations promulgated thereunder by the board. [1971 ex.s. c 239 § 6; (1994 c 250 § 4 expired June 30, 1997).]

Contingent expiration date—1994 c 250 § 4: "The 1994 amendments to RCW 70.62.250, section 4, chapter 250, Laws of 1994, expire on June 30, 1997, unless specifically extended by the legislature by an act of law. The department of health shall report to the legislature by December 1, 1996, on the impact of these amendments on transient accommodation licensees in the state of Washington." [1994 c 250 § 5.]

70.62.260 Licenses—Applications—Expiration—Renewal. (1) No person shall operate a transient accommodation as defined in this chapter without having a valid license issued by the department. Applications for a transient accommodation license shall be filed with the department sixty days or more before initiating business as a transient accommodation. All licenses issued under the provisions of this chapter shall expire one year from the effective date.

(2) All applications for renewal of licenses shall be either: (a) Postmarked no later than midnight on the date the license expires; or (b) if personally presented to the department or sent by electronic means, received by the department by 5:00 p.m. on the date the license expires.

(3) A licensee that submits a license renewal application in accordance with this section and the rules and fee schedule adopted under this chapter shall be deemed to possess a valid license for the year following the expiration date of the expiring license, or until the department suspends or revokes the license pursuant to RCW 70.62.270.

(4) The license of a licensee that fails to submit a license renewal application in accordance with this section, and the rules and fee schedule adopted under this chapter, shall

become invalid on the thirty-fifth day after the expiration date, unless the licensee shall have corrected any and all deficiencies in the renewal application and paid a penalty fee as established by rule by the department before the thirty-fifth day following the expiration date. An invalid license may be reinstated upon reapplication as an applicant for a new license under subsection (1) of this section.

(5) Each license shall be issued only for the premises and persons named in the application. [2004 c 162 § 1; 1994 c 250 § 6; 1971 ex.s. c 239 § 7.]

70.62.270 Suspension or revocation of licenses—Civil fine. (1) Licenses issued under this chapter may be suspended or revoked upon the failure or refusal of the person operating a transient accommodation to comply with the provisions of this chapter, or of any rules adopted under this chapter by the board. All such proceedings shall be governed by the provisions of chapter 34.05 RCW.

(2) In lieu of or in addition to license suspension or revocation, the department may assess a civil fine in accordance with RCW 43.70.095. [1994 c 250 § 7; 1971 ex.s. c 239 § 8.]

70.62.280 Violations—Penalty. Any violation of this chapter or the rules and regulations promulgated hereunder by any person operating a transient accommodation shall be a misdemeanor and shall be punished as such. Each day of operation of a transient accommodation in violation of this chapter shall constitute a separate offense. [1971 ex.s. c 239 § 10.]

70.62.290 Adoption of fire and safety rules. Rules establishing fire and life safety requirements, not inconsistent with the provisions of this chapter, shall continue to be adopted by the director of community, trade, and economic development, through the director of fire protection. [1994 c 250 § 8; 1986 c 266 § 95; 1971 ex.s. c 239 § 11.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.62.900 Severability—1971 ex.s. c 239. If any section or any portion of any section of this 1971 amendatory act is found to be unconstitutional, the finding shall be to the individual section or portion of section specifically found to be unconstitutional and the balance of the act shall remain in full force and effect. [1971 ex.s. c 239 § 12.]

Chapter 70.74 RCW

WASHINGTON STATE EXPLOSIVES ACT

Sections

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70.74.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) The terms "authorized", "approved" or "approval" shall be held to mean authorized, approved, or approval by the department of labor and industries.

(2) The term "blasting agent" shall be held to mean and include any material or mixture consisting of a fuel and oxidizer, that is intended for blasting and not otherwise defined as an explosive; if the finished product, as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined. A number 8 test blasting cap is one containing two grams of a mixture of eighty percent mercury fulminate and twenty percent potassium chlorate, or a blasting cap of equivalent strength. An equivalent strength cap comprises 0.40-0.45 grams of PETN base charge pressed in an aluminum shell with bottom thickness not to exceed 0.03 of an inch, to a specific gravity of not less than 1.4 g/cc., and primed with standard weights of primer depending on the manufacturer.

(3) The term "explosive" or "explosives" whenever used in this chapter, shall be held to mean and include any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that

contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing, that an ignition by fire, by friction, by concussion, by percussion, or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. In addition, the term "explosives" shall include all material which is classified as division 1.1, 1.2, 1.3, 1.4, 1.5, or 1.6 explosives by the United States department of transportation. For the purposes of this chapter small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder not exceeding five pounds shall not be defined as explosives, unless possessed or used for a purpose inconsistent with small arms use or other lawful purpose.

(4) Classification of explosives shall include but not be limited to the following:

(a) DIVISION 1.1 and 1.2 EXPLOSIVES: Possess mass explosion or detonating hazard and include dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, black powder exceeding five pounds, blasting caps in quantities of 1001 or more, and detonating primers.

(b) DIVISION 1.3 EXPLOSIVES: Possess a minor blast hazard, a minor projection hazard, or a flammable hazard and include propellant explosives, including smokeless powder exceeding fifty pounds.

(c) DIVISION 1.4, 1.5, and 1.6 EXPLOSIVES: Include certain types of manufactured articles which contain division 1.1, 1.2, or 1.3 explosives, or all, as components, but in restricted quantities, and also include blasting caps in quantities of 1000 or less.

(5) The term "explosive-actuated power devices" shall be held to mean any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices.

(6) The term "magazine", shall be held to mean and include any building or other structure, other than an explosives manufacturing building, used for the storage of explosives.

(7) The term "improvised device" means a device which is fabricated with explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals and which is designed, or has the capacity, to disfigure, destroy, distract, or harass.

(8) The term "inhabited building", shall be held to mean and include only a building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble, other than any building or structure occupied in connection with the manufacture, transportation, storage, or use of explosives.

(9) The term "explosives manufacturing plant" shall be held to mean and include all lands, with the buildings situated thereon, used in connection with the manufacturing or processing of explosives or in which any process involving explosives is carried on, or the storage of explosives thereat, as well as any premises where explosives are used as a component part or ingredient in the manufacture of any article or device.

(10) The term "explosives manufacturing building", shall be held to mean and include any building or other struc-

ture (excepting magazines) containing explosives, in which the manufacture of explosives, or any processing involving explosives, is carried on, and any building where explosives are used as a component part or ingredient in the manufacture of any article or device.

(11) The term "railroad" shall be held to mean and include any steam, electric, or other railroad which carries passengers for hire.

(12) The term "highway" shall be held to mean and include any public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public.

(13) The term "efficient artificial barricade" shall be held to mean an artificial mound or properly revetted wall of earth of a minimum thickness of not less than three feet or such other artificial barricade as approved by the department of labor and industries.

(14) The term "person" shall be held to mean and include any individual, firm, partnership, corporation, company, association, society, joint stock company, joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

(15) The term "dealer" shall be held to mean and include any person who purchases explosives or blasting agents for the sole purpose of resale, and not for use or consumption.

(16) The term "forbidden or not acceptable explosives" shall be held to mean and include explosives which are forbidden or not acceptable for transportation by common carriers by rail freight, rail express, highway, or water in accordance with the regulations of the federal department of transportation.

(17) The term "handloader" shall be held to mean and include any person who engages in the noncommercial assembling of small arms ammunition for his own use, specifically the operation of installing new primers, powder, and projectiles into cartridge cases.

(18) The term "handloader components" means small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder as used in muzzle loading firearms not exceeding five pounds.

(19) The term "fuel" shall be held to mean and include a substance which may react with the oxygen in the air or with the oxygen yielded by an oxidizer to produce combustion.

(20) The term "motor vehicle" shall be held to mean and include any self-propelled automobile, truck, tractor, semi-trailer or full trailer, or other conveyance used for the transportation of freight.

(21) The term "natural barricade" shall be held to mean and include any natural hill, mound, wall, or barrier composed of earth or rock or other solid material of a minimum thickness of not less than three feet.

(22) The term "oxidizer" shall be held to mean a substance that yields oxygen readily to stimulate the combustion of organic matter or other fuel.

(23) The term "propellant-actuated power device" shall be held to mean and include any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

(24) The term "public conveyance" shall be held to mean and include any railroad car, streetcar, ferry, cab, bus, airplane, or other vehicle which is carrying passengers for hire.

(25) The term "public utility transmission system" shall mean power transmission lines over 10 KV, telephone cables, or microwave transmission systems, or buried or exposed pipelines carrying water, natural gas, petroleum, or crude oil, or refined products and chemicals, whose services are regulated by the utilities and transportation commission, municipal, or other publicly owned systems.

(26) The term "purchaser" shall be held to mean any person who buys, accepts, or receives any explosives or blasting agents.

(27) The term "pyrotechnic" shall be held to mean and include any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects which are commonly referred to as fireworks as defined in chapter 70.77 RCW.

(28) The term "small arms ammunition" shall be held to mean and include any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges, incendiary, tracer, spotting, or pyrotechnic projectiles is excluded from this definition.

(29) The term "small arms ammunition primers" shall be held to mean small percussion-sensitive explosive charges encased in a cup, used to ignite propellant powder and shall include percussion caps as used in muzzle loaders.

(30) The term "smokeless powder" shall be held to mean and include solid chemicals or solid chemical mixtures in excess of fifty pounds which function by rapid combustion.

(31) The term "user" shall be held to mean and include any natural person, manufacturer, or blaster who acquires, purchases, or uses explosives as an ultimate consumer or who supervises such use.

Words used in the singular number shall include the plural, and the plural the singular. [2002 c 370 § 1; 1993 c 293 § 1; 1972 ex.s. c 88 § 5; 1970 ex.s. c 72 § 1; 1969 ex.s. c 137 § 3; 1931 c 111 § 1; RRS § 5440-1.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—1993 c 293: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 293 § 11.]

Severability—1931 c 111: "In case any provision of this act shall be adjudged unconstitutional, or void for any other reason, such adjudication shall not affect any of the other provisions of this act." [1931 c 111 § 19.]

70.74.013 Funds collected by department. All funds collected by the department under RCW 70.74.137 through 70.74.146 and 70.74.360 shall be transferred to the state treasurer for deposit into the accident and medical aid funds under RCW 51.44.010 and 51.44.020. [2008 c 285 § 11.]

Intent—Captions not law—Effective date—2008 c 285: See notes following RCW 43.22.434.

70.74.020 Restrictions on manufacture, sale, or storage—Users—Reports on storage—Waiver. (1) No person shall manufacture, possess, store, sell, purchase, transport, or use explosives or blasting agents except in compliance with this chapter.

(2) The director of the department of labor and industries shall make and promulgate rules and regulations concerning qualifications of users of explosives and shall have the authority to issue licenses for users of explosives to effectuate the purpose of this chapter: PROVIDED, That where there is a finding by the director that the use or disposition of explosives in any class of industry presents no unusual hazard to the safety of life or limb of persons employed therewith, and where the users are supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a license for such use under this chapter, the director in his discretion may exclude said users in those classes of industry from individual licensing.

(3) The director of the department of labor and industries shall make and promulgate rules and regulations concerning the manufacture, sale, purchase, use, transportation, storage, and disposal of explosives, and shall have the authority to issue licenses for the manufacture, purchase, sale, use, transportation, and storage of explosives to effectuate the purpose of this chapter. The director of the department of labor and industries is hereby delegated the authority to grant written waiver of this chapter whenever it can be shown that the manufacturing, handling, or storing of explosives are in compliance with applicable national or federal explosive safety standards: PROVIDED, That any resident of this state who is qualified to purchase explosives in this state and who has complied with the provisions of this chapter applicable to him may purchase explosives from an authorized dealer of a bordering state and may transport said explosives into this state for use herein: PROVIDED FURTHER, That residents of this state shall, within ten days of the date of purchase, present to the department of labor and industries a report signed by both vendor and vendee of every purchase from an out of state dealer, said report indicating the date of purchase, name of vendor, vendor's license number, vendor's business address, amount and kind of explosives purchased, the name of the purchaser, the purchaser's license number, and the name of receiver if different than purchaser.

(4) It shall be unlawful to sell, give away or otherwise dispose of, or deliver to any person under twenty-one years of age any explosives including black powder, and blasting caps or other explosive igniters, whether said person is acting for himself or for any other person: PROVIDED, That small arms ammunition and handloader components shall not be considered explosives for the purposes of this section: PROVIDED FURTHER, That if there is a finding by the director that said use or disposition of explosives poses no unusual hazard to the safety of life or limb in any class of industry, where persons eighteen years of age or older are employed as users, and where said persons are adequately trained and adequately supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a valid license for such use under this chapter, the director in his discretion may exclude said persons in that class of industry from said minimum age requirement.

(5) All persons engaged in keeping, using, or storing any compound, mixture, or material, in wet condition, or otherwise, which upon drying out or undergoing other physical changes, may become an explosive within the definition of

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RCW 70.74.010, shall report in writing subscribed to by such person or his agent, to the department of labor and industries, report blanks to be furnished by such department, and such reports to require:

- (a) The kind of compound, mixture, or material kept or stored, and maximum quantity thereof;
- (b) Condition or state of compound, mixture, or material;
- (c) Place where kept or stored.

The department of labor and industries may at any time cause an inspection to be made to determine whether the condition of the compound, mixture, or material is as reported. [1982 c 111 § 1; 1972 ex.s. c 88 § 6; 1969 ex.s. c 137 § 4; 1967 c 99 § 1; 1931 c 111 § 2; RRS § 5440-2.]

70.74.022 License required to manufacture, purchase, sell, use, possess, transport, or store explosives—Penalty—Surrender of explosives by unlicensed person—Other relief. (1) It is unlawful for any person to manufacture, purchase, sell, offer for sale, use, possess, transport, or store any explosive, improvised device, or components that are intended to be assembled into an explosive or improvised device without having a validly issued license from the department of labor and industries, which license has not been revoked or suspended. Violation of this section is a class C felony.

(2) Upon notice from the department of labor and industries or any law enforcement agency having jurisdiction, a person manufacturing, purchasing, selling, offering for sale, using, possessing, transporting, or storing any explosive, improvised device, or components of explosives or improvised devices without a license shall immediately surrender those explosives, improvised devices, or components to the department or to the respective law enforcement agency.

(3) At any time that the director of labor and industries requests the surrender of explosives, improvised devices, or components of explosives or improvised devices, from any person pursuant to subsection (2) of this section, the director may in addition request the attorney general to make application to the superior court of the county in which the unlawful practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances. [1993 c 293 § 2; 1988 c 198 § 10.]

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.025 Magazines—Classification, location and construction—Standards—Use. The director of the department of labor and industries shall establish by rule or regulation requirements for classification, location and construction of magazines for storage of explosives in compliance with accepted applicable explosive safety standards. All explosives shall be kept in magazines which meet the requirements of this chapter. [1969 ex.s. c 137 § 9.]

70.74.030 Quantity and distance tables for storage—Adoption by rule. All explosive manufacturing buildings and magazines in which explosives or blasting agents except small arms ammunition and smokeless powder are had, kept, or stored, must be located at distances from inhabited buildings, railroads, highways, and public utility transmission systems in conformity with the quantity and distance tables

adopted by the department of labor and industries by rule. The department of labor and industries shall adopt the quantity and distance tables promulgated by the federal bureau of alcohol, tobacco, and firearms unless the department determines the tables to be inappropriate. The tables shall be the basis on which applications for storage license[s] are made and storage licenses issued as provided in RCW 70.74.110 and 70.74.120. [1988 c 198 § 1; 1972 ex.s. c 88 § 7; 1969 ex.s. c 137 § 10; 1931 c 111 § 5; RRS § 5440-5.]

70.74.040 Limit on storage quantity. No quantity in excess of three hundred thousand pounds, or the equivalent in blasting caps shall be had, kept or stored in any factory building or magazine in this state. [1970 ex.s. c 72 § 2; 1931 c 111 § 4; RRS § 5440-4.]

70.74.050 Quantity and distance table for explosives manufacturing buildings. All explosives manufacturing buildings shall be located one from the other and from other buildings on explosives manufacturing plants in which persons are regularly employed, and all magazines shall be located from factory buildings and buildings on explosives plants in which persons are regularly employed, in conformity with the intraexplosives plant quantity and distance table below set forth:

EXPLOSIVES		
Pounds Over	Pounds Not Over	Distance Feet
		Separate Building or Within Substantial Dividing Walls
.....	10	
10	25	40
25	50	60
50	100	80
100	200	100
200	300	120
300	400	130
400	500	140
500	750	160
750	1,000	180
1,000	1,500	210
1,500	2,000	230
2,000	3,000	260
3,000	4,000	280
4,000	5,000	300
5,000	6,000	320
6,000	7,000	340
7,000	8,000	360
8,000	9,000	380
9,000	10,000	400
10,000	12,500	420
12,500	15,000	450
15,000	17,500	470
17,500	20,000	490

20,000	25,000	530
25,000	30,000	560
30,000	35,000	590
35,000	40,000	620
40,000	45,000	640
45,000	50,000	660
50,000	55,000	680
55,000	60,000	700
60,000	65,000	720
65,000	70,000	740
70,000	75,000	770
75,000	80,000	780
80,000	85,000	790
85,000	90,000	800
90,000	95,000	820
95,000	100,000	830
100,000	125,000	900
125,000	150,000	950
150,000	175,000	1,000
175,000	200,000	1,050
200,000	225,000	1,100
225,000	250,000	1,150

[1972 ex.s. c 88 § 8; 1931 c 111 § 5; RRS § 5440-5.]

70.74.061 Quantity and distance tables for separation between magazines—Adoption by rule. Magazines containing blasting caps and electric blasting caps shall be separated from other magazines containing like contents, or from magazines containing explosives by distances set in the quantity and distance tables adopted by the department of labor and industries by rule. The department of labor and industries shall adopt the quantity and distance tables promulgated by the federal bureau of alcohol, tobacco, and firearms unless the department determines the tables to be inappropriate. The tables shall be the basis on which applications for storage license[s] are made and storage licenses issued as provided in RCW 70.74.110 and 70.74.120. [1988 c 198 § 2; 1969 ex.s. c 137 § 11.]

70.74.100 Storage of caps with explosives prohibited. No blasting caps, or other detonating or fulminating caps, or detonators, or flame-producing devices shall be kept or stored in any magazine in which other explosives are kept or stored. [1969 ex.s. c 137 § 12; 1931 c 111 § 10; RRS § 5440-10.]

70.74.110 Manufacturer’s report—Inspection—License. All persons engaged in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device, on August 11, 1969, shall within sixty days thereafter, and all persons engaging in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device after August 11, 1969, shall, before so engaging, make an application in writing, subscribed to by such person or his agent, to the department of labor and industries, the application stating:

- (1) Location of place of manufacture or processing;
- (2) Kind of explosives manufactured, processed or used;

(3) The distance that such explosives manufacturing building is located or intended to be located from the other factory buildings, magazines, inhabited buildings, railroads and highways and public utility transmission systems;

(4) The name and address of the applicant;

(5) The reason for desiring to manufacture explosives;

(6) The applicant's citizenship, if the applicant is an individual;

(7) If the applicant is a partnership, the names and addresses of the partners, and their citizenship;

(8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof, and their citizenship; and

(9) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

There shall be kept in the main office on the premises of each explosives manufacturing plant a plan of said plant showing the location of all explosives manufacturing buildings and the distance they are located from other factory buildings where persons are employed and from magazines, and these plans shall at all times be open to inspection by duly authorized inspectors of the department of labor and industries. The superintendent of each plant shall upon demand of said inspector furnish the following information:

(a) The maximum amount and kind of explosive material which is or will be present in each building at one time.

(b) The nature and kind of work carried on in each building and whether or not said buildings are surrounded by natural or artificial barricades.

Except as provided in RCW 70.74.370, the department of labor and industries shall as soon as possible after receiving such application cause an inspection to be made of the explosives manufacturing plant, and if found to be in accordance with RCW 70.74.030 and 70.74.050 and 70.74.061, such department shall issue a license to the person applying therefor showing compliance with the provisions of this chapter if the applicant demonstrates that either the applicant or the officers, agents or employees of the applicant are sufficiently experienced in the manufacture of explosives and the applicant meets the qualifications for a license under RCW 70.74.360. Such license shall continue in full force and effect until expired, suspended, or revoked by the department pursuant to this chapter. [1997 c 58 § 870; 1988 c 198 § 5; 1969 ex.s. c 137 § 13; 1941 c 101 § 1; 1931 c 111 § 11; Rem. Supp. 1941 § 5440-1.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

70.74.120 Storage report—Inspection—License—Cancellation. All persons engaged in keeping or storing and all persons having in their possession explosives on August 11, 1969, shall within sixty days thereafter, and all persons engaging in keeping or storing explosives or coming into possession thereof after August 11, 1969, shall before engaging in the keeping or storing of explosives or taking possession thereof, make an application in writing subscribed to by

such person or his agent, to the department of labor and industries stating:

(1) The location of the magazine, if any, if then existing, or in case of a new magazine, the proposed location of such magazine;

(2) The kind of explosives that are kept or stored or possessed or intended to be kept or stored or possessed and the maximum quantity that is intended to be kept or stored or possessed thereat;

(3) The distance that such magazine is located or intended to be located from other magazines, inhabited buildings, explosives manufacturing buildings, railroads, highways and public utility transmission systems;

(4) The name and address of the applicant;

(5) The reason for desiring to store or possess explosives;

(6) The citizenship of the applicant if the applicant is an individual;

(7) If the applicant is a partnership, the names and addresses of the partners and their citizenship;

(8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship;

(9) And such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall, as soon as may be after receiving such application, cause an inspection to be made of the magazine, if then constructed, and, in the case of a new magazine, as soon as may be after same is found to be constructed in accordance with the specification provided in RCW 70.74.025, such department shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance tables specified in or adopted under this chapter and shall issue a license to the person applying therefor if the applicant demonstrates that either the applicant or the officers, agents, or employees of the applicant are sufficiently experienced in the handling of explosives and possess suitable storage facilities therefor, and that the applicant meets the qualifications for a license under RCW 70.74.360. Said license shall set forth the maximum quantity of explosives that may be had, kept or stored by said person. Such license shall be valid until canceled for one or more of the causes hereinafter provided. Whenever by reason of change in the physical conditions surrounding said magazine at the time of the issuance of the license therefor, such as:

(a) The erection of buildings nearer said magazine;

(b) The construction of railroads nearer said magazine;

(c) The opening for public travel of highways nearer said magazine; or

(d) The construction of public utilities transmission systems near said magazine; then the amounts of explosives which may be lawfully had, kept or stored in said magazine must be reduced to conform to such changed conditions in accordance with the quantity and distance table notwithstanding the license, and the department of labor and industries shall modify or cancel such license in accordance with the changed conditions. Whenever any person to whom a license has been issued, keeps or stores in the magazine or has in his possession, any quantity of explosives in excess of the maxi-

imum amount set forth in said license, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the department is authorized to cancel such license. Whenever a license is canceled by the department for any cause herein specified, the department shall notify the person to whom such license is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within ten days from the giving of said notice, or, if the cause of cancellation be the failure to pay the annual license fee, or the fact that explosives are kept for an unlawful purpose, the department of labor and industries shall order such person to dispossess himself of said explosives within ten days from the giving of said notice. Failure to remove the explosives stored in said magazine or to dispossess oneself of the explosives as herein provided within the time specified in said notice shall constitute a violation of this chapter. [1988 c 198 § 6; 1969 ex.s. c 137 § 14; 1941 c 101 § 2; 1931 c 111 § 12; Rem. Supp. 1941 § 5440-12.]

70.74.130 Dealer in explosives—Application—

License. Every person desiring to engage in the business of dealing in explosives shall apply to the department of labor and industries for a license therefor. Said application shall state, among other things:

- (1) The name and address of applicant;
- (2) The reason for desiring to engage in the business of dealing in explosives;
- (3) Citizenship, if an individual applicant;
- (4) If a partnership, the names and addresses of the partners and their citizenship;
- (5) If an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and
- (6) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

Except as provided in RCW 70.74.370, the department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the principal officers, agents, or employees of the applicant are experienced in the business of dealing in explosives, possess suitable facilities therefor, have not been convicted of any crime that would warrant revocation or nonrenewal of a license under this chapter, and have never had an explosives-related license revoked under this chapter or under similar provisions of any other state. [1997 c 58 § 871; 1988 c 198 § 7; 1969 ex.s. c 137 § 16; 1941 c 101 § 3; Rem. Supp. 1941 § 5440-12a.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

70.74.135 Purchaser of explosives—Application—

License. All persons desiring to purchase explosives except handloader components shall apply to the department of labor and industries for a license. Said application shall state, among other things:

- (1) The location where explosives are to be used;

- (2) The kind and amount of explosives to be used;
- (3) The name and address of the applicant;
- (4) The reason for desiring to use explosives;
- (5) The citizenship of the applicant if the applicant is an individual;
- (6) If the applicant is a partnership, the names and addresses of the partners and their citizenship;
- (7) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and
- (8) Such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the officers, agents or employees of the applicant are sufficiently experienced in the use of explosives to authorize a purchase license. However, no purchaser's license may be issued to any person who cannot document proof of possession or right to use approved and licensed storage facilities unless the person signs a statement certifying that explosives will not be stored. [1988 c 198 § 8; 1971 ex.s. c 302 § 7; 1970 ex.s. c 72 § 3; 1969 ex.s. c 137 § 18.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.74.137 Purchaser's license fee. Every person applying for a purchaser's license, or renewal thereof, shall pay an annual license fee of twenty-five dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed one hundred dollars.

Said license fee shall accompany the application and shall be transmitted by the department to the state treasurer: PROVIDED, That if the applicant is denied a purchaser's license the license fee shall be returned to said applicant by registered mail. [2008 c 285 § 5; 1988 c 198 § 12; 1972 ex.s. c 88 § 2.]

Intent—Captions not law—Effective date—2008 c 285: See notes following RCW 43.22.434.

70.74.140 Storage license fee. Every person engaging in the business of keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the department of labor and industries according to the quantity kept or stored therein, of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed four hundred dollars.

Said license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [2008 c 285 § 6; 1988 c 198 § 13; 1969 ex.s. c 137 § 15; 1931 c 111 § 13; RRS § 5440-13.]

Intent—Captions not law—Effective date—2008 c 285: See notes following RCW 43.22.434.

70.74.142 User's license or renewal—Fee. Every person applying for a user's license, or renewal thereof, under this chapter shall pay an annual license fee of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed two hundred dollars.

Said license fee shall accompany the application, and be transmitted by the department to the state treasurer: PROVIDED, That if the applicant is denied a user's license the license fee shall be returned to said applicant by registered mail. [2008 c 285 § 7; 1988 c 198 § 14; 1972 ex.s. c 88 § 1.]

Intent—Captions not law—Effective date—2008 c 285: See notes following RCW 43.22.434.

70.74.144 Manufacturer's license fee—Manufacturers to comply with dealer requirements when selling. Every person engaged in the business of manufacturing explosives shall pay an annual license fee of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed two hundred dollars.

Businesses licensed to manufacture explosives are not required to have a dealer's license, but must comply with all of the dealer requirements of this chapter when they sell explosives.

The license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [2008 c 285 § 8; 1988 c 198 § 15.]

Intent—Captions not law—Effective date—2008 c 285: See notes following RCW 43.22.434.

70.74.146 Seller's license fee—Sellers to comply with dealer requirements. Every person engaged in the business of selling explosives shall pay an annual license fee of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed two hundred dollars.

Businesses licensed to sell explosives must comply with all of the dealer requirements of this chapter.

The license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [2008 c 285 § 9; 1988 c 198 § 16.]

Intent—Captions not law—Effective date—2008 c 285: See notes following RCW 43.22.434.

70.74.150 Annual inspection. The department of labor and industries shall make, or cause to be made, at least one inspection during every year, of each licensed explosives plant or magazine. [1931 c 111 § 14; RRS § 5440-14.]

70.74.160 Unlawful access to explosives. No person, except the director of labor and industries or the director's authorized agent, the owner, the owner's agent, or a person authorized to enter by the owner or owner's agent, or a law enforcement officer acting within his or her official capacity, may enter any explosives manufacturing building, magazine or car, vehicle or other common carrier containing explosives in this state. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW. [1993 c 293 § 3; 1969 ex.s. c 137 § 19; 1931 c 111 § 15; RRS § 5440-15.]

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.170 Discharge of firearms or igniting flame near explosives. No person shall discharge any firearms at or against any magazine or explosives manufacturing build-

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ings or ignite any flame or flame-producing device nearer than two hundred feet from said magazine or explosives manufacturing building. [1969 ex.s. c 137 § 20; 1931 c 111 § 16; RRS § 5440-16.]

70.74.180 Explosive devices prohibited—Penalty.

Any person who has in his or her possession or control any shell, bomb, or similar device, charged or filled with one or more explosives, intending to use it or cause it to be used for an unlawful purpose, is guilty of a class A felony, and upon conviction shall be punished by imprisonment in a state prison for a term of not more than twenty years. [2003 c 53 § 354; 1984 c 55 § 1; 1969 ex.s. c 137 § 21; 1931 c 111 § 18; RRS § 5440-18.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.74.191 Exemptions. The laws contained in this chapter and regulations prescribed by the department of labor and industries pursuant to this chapter shall not apply to:

(1) Explosives or blasting agents in the course of transportation by way of railroad, water, highway, or air under the jurisdiction of, and in conformity with, regulations adopted by the federal department of transportation, the Washington state utilities and transportation commission, and the Washington state patrol;

(2) The laboratories of schools, colleges, and similar institutions if confined to the purpose of instruction or research and if not exceeding the quantity of one pound;

(3) Explosives in the forms prescribed by the official United States Pharmacopoeia;

(4) The transportation, storage, and use of explosives or blasting agents in the normal and emergency operations of United States agencies and departments including the regular United States military departments on military reservations; arsenals, navy yards, depots, or other establishments owned by, operated by, or on behalf of, the United States; or the duly authorized militia of any state; or to emergency operations of any state department or agency, any police, or any municipality or county;

(5) A hazardous devices technician when carrying out normal and emergency operations, handling evidence, and operating and maintaining a specially designed emergency response vehicle that carries no more than ten pounds of explosive material or when conducting training and whose employer possesses the minimum safety equipment prescribed by the federal bureau of investigation for hazardous devices work. For purposes of this section, a hazardous devices technician is a person who is a graduate of the federal bureau of investigation hazardous devices school and who is employed by a state, county, or municipality;

(6) The importation, sale, possession, and use of fireworks as defined in chapter 70.77 RCW, signaling devices, flares, fuses, and torpedoes;

(7) The transportation, storage, and use of explosives or blasting agents in the normal and emergency avalanche control procedures as conducted by trained and licensed ski area operator personnel. However, the storage, transportation, and use of explosives and blasting agents for such use shall meet the requirements of regulations adopted by the director of labor and industries;

(8) The storage of consumer fireworks as defined in chapter 70.77 RCW pursuant to a forfeiture or seizure under chapter 70.77 RCW by the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority; and

(9) Any violation under this chapter if any existing ordinance of any city, municipality, or county is more stringent than this chapter. [2002 c 370 § 2; 1998 c 40 § 1; 1993 c 293 § 5; 1985 c 191 § 2; 1969 ex.s. c 137 § 5.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—1993 c 293: See note following RCW 70.74.010.

Purpose—1985 c 191: "It is the purpose of this 1985 act to protect the public by enabling ski area operators to exercise appropriate avalanche control measures. The legislature finds that avalanche control is of vital importance to safety in ski areas and that the provisions of the Washington state explosives act contain restrictions which do not reflect special needs for the use of explosives as a means of clearing an area of serious avalanche risks. This 1985 act recognizes these needs while providing for a system of regulations designed to ensure that the use of explosives for avalanche control conforms to fundamental safety requirements." [1985 c 191 § 1.]

70.74.201 Municipal or county ordinances unaffected—State preemption. This chapter shall not affect, modify or limit the power of a city, municipality or county in this state to make an ordinance that is more stringent than this chapter which is applicable within their respective corporate limits or boundaries: PROVIDED, That the state shall be deemed to have preempted the field of regulation of small arms ammunition and handloader components. [1970 ex.s. c 72 § 5; 1969 ex.s. c 137 § 6.]

70.74.210 Coal mining code unaffected. All acts and parts of acts inconsistent with this act are hereby repealed: PROVIDED, HOWEVER, That nothing in this act shall be construed as amending, limiting, or repealing any provision of chapter 36, session laws of 1917, known as the coal mining code. [1931 c 111 § 22; RRS § 5440-22.]

70.74.230 Shipments out of state—Dealer's records. If any manufacturer of explosives or dealer therein shall have shipped any explosives into another state, and the laws of such other state shall designate an officer or agency to regulate the possession, receipt or storage of explosives, and such officer or agency shall so require, such manufacturer shall, at least once each calendar month, file with such officer or agency of such other state a report giving the names of all purchasers and the amount and description of all explosives sold or delivered in such other state. Dealers in explosives shall keep a record of all explosives purchased or sold by them, which record shall include the name and address of each vendor and vendee, the date of each sale or purchase, and the amount and kind of explosives sold or purchased. Such records shall be open for inspection by the duly authorized agents of the department of labor and industries and by all federal, state and local law enforcement officers at all times, and a copy of such record shall be furnished once each calendar month to the department of labor and industries in such form as said department shall prescribe. [1941 c 101 § 4; Rem. Supp. 1941 § 5440-23.]

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70.74.240 Sale to unlicensed person prohibited. No dealer shall sell, barter, give or dispose of explosives to any person who does not hold a license to purchase explosives issued under the provisions of this chapter. [1970 ex.s. c 72 § 4; 1969 ex.s. c 137 § 17; 1941 c 101 § 5; Rem. Supp. 1941 § 5440-24.]

70.74.250 Blasting near fur farms and hatcheries. Between the dates of January 15th and June 15th of each year it shall be unlawful for any person to do, or cause to be done, any blasting within fifteen hundred feet from any fur farm or commercial hatchery except in case of emergency without first giving to the person in charge of such farm or hatchery twenty-four hours notice: PROVIDED, HOWEVER, That in the case of an established quarry and sand and gravel operations, and where it is necessary for blasting to be done continually, the notice required in this section may be made at the beginning of the period each year when blasting is to be done. [1941 c 107 § 1; Rem. Supp. 1941 § 5440-25.]

70.74.270 Malicious placement of an explosive—Penalties. A person who maliciously places any explosive or improvised device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, in such manner or under such circumstances as to destroy or injure it if exploded is guilty of:

(1) Malicious placement of an explosive in the first degree if the offense is committed with intent to commit a terrorist act. Malicious placement of an explosive in the first degree is a class A felony;

(2) Malicious placement of an explosive in the second degree if the offense is committed under circumstances not amounting to malicious placement of an explosive in the first degree and if the circumstances and surroundings are such that the safety of any person might be endangered by the explosion. Malicious placement of an explosive in the second degree is a class B felony;

(3) Malicious placement of an explosive in the third degree if the offense is committed under circumstances not amounting to malicious placement of an explosive in the first or second degree. Malicious placement of an explosive in the third degree is a class B felony. [1997 c 120 § 1; 1993 c 293 § 6; 1992 c 7 § 49; 1984 c 55 § 2; 1971 ex.s. c 302 § 8; 1969 ex.s. c 137 § 23; 1909 c 249 § 400; RRS § 2652.]

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.272 Malicious placement of an imitation device—Penalties. (1) A person who maliciously places any imitation device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, with the intent to give the appearance or impression that the imitation device is an explosive or improvised device, is guilty of:

(a) Malicious placement of an imitation device in the first degree if the offense is committed with intent to commit a terrorist act. Malicious placement of an imitation device in the first degree is a class B felony;

(b) Malicious placement of an imitation device in the second degree if the offense is committed under circum-

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stances not amounting to malicious placement of an imitation device in the first degree. Malicious placement of an imitation device in the second degree is a class C felony.

(2) For purposes of this section, "imitation device" means a device or substance that is not an explosive or improvised device, but which by appearance or representation would lead a reasonable person to believe that the device or substance is an explosive or improvised device. [1997 c 120 § 2.]

70.74.275 Intimidation or harassment with an explosive—Class C felony. Unless otherwise allowed to do so under this chapter, a person who exhibits a device designed, assembled, fabricated, or manufactured, to convey the appearance of an explosive or improvised device, and who intends to, and does, intimidate or harass a person, is guilty of a class C felony. [1993 c 293 § 4.]

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.280 Malicious explosion of a substance—Penalties. A person who maliciously, by the explosion of gunpowder or any other explosive substance or material, destroy or damage any building, car, airplane, vessel, common carrier, railroad track, or public utility transmission system or structure is guilty of:

(1) Malicious explosion of a substance in the first degree if the offense is committed with intent to commit a terrorist act. Malicious explosion of a substance in the first degree is a class A felony;

(2) Malicious explosion of a substance in the second degree if the offense is committed under circumstances not amounting to malicious explosion of a substance in the first degree and if thereby the life or safety of a human being is endangered. Malicious explosion of a substance in the second degree is a class A felony;

(3) Malicious explosion of a substance in the third degree if the offense is committed under circumstances not amounting to malicious explosion of a substance in the first or second degree. Malicious explosion of a substance in the third degree is a class B felony. [1997 c 120 § 3; 1992 c 7 § 50; 1971 ex.s. c 302 § 9; 1969 ex.s. c 137 § 24; 1909 c 249 § 401; RRS § 2653.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.74.285 "Terrorist act" defined. For the purposes of RCW 70.74.270, 70.74.272, and 70.74.280 "terrorist act" means an act that is intended to: (1) Intimidate or coerce a civilian population; (2) influence the policy of a branch or level of government by intimidation or coercion; (3) affect the conduct of a branch or level of government by intimidation or coercion; or (4) retaliate against a branch or level of government for a policy or conduct of the government. [1997 c 120 § 4.]

70.74.295 Abandonment of explosives. It shall be unlawful for any person to abandon explosives or improvised devices. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW. [1993 c 293 § 7; 1972 ex.s. c 88 § 3.]

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.297 Separate storage of components capable of detonation when mixed. Any two components which, when mixed, become capable of detonation by a No. 6 cap must be stored in separate locked containers or in a licensed, approved magazine. [1972 ex.s. c 88 § 4.]

70.74.300 Explosive containers to be marked—Penalty. Every person who shall put up for sale, or who shall deliver to any warehouseman, dock, depot, or common carrier any package, cask or can containing any explosive, nitroglycerin, dynamite, or powder, without having been properly labeled thereon to indicate its explosive classification, shall be guilty of a gross misdemeanor. [1969 ex.s. c 137 § 26; 1909 c 249 § 254; RRS § 2506.]

Reviser's note: Caption for 1909 c 249 § 254 reads as follows: "Sec. 254. TRANSPORTING EXPLOSIVES."

70.74.310 Gas bombs, explosives, stink bombs, etc. Any person other than a lawfully constituted peace officer of this state who shall deposit, leave, place, spray, scatter, spread or throw in any building, or any place, or who shall counsel, aid, assist, encourage, incite or direct any other person or persons to deposit, leave, place, spray, scatter, spread or throw, in any building or place, or who shall have in his possession for the purpose of, and with the intent of depositing, leaving, placing, spraying, scattering, spreading or throwing, in any building or place, or of counseling, aiding, assisting, encouraging, inciting or directing any other person or persons to deposit, leave, place, spray, scatter, spread or throw, any stink bomb, stink paint, tear bomb, tear shell, explosive or flame-producing device, or any other device, material, chemical or substance, which, when exploded or opened, or without such exploding or opening, by reason of its offensive and pungent odor, does or will annoy, injure, endanger or inconvenience any person or persons, shall be guilty of a gross misdemeanor: PROVIDED, That this section shall not apply to persons in the military service, actually engaged in the performance of military duties, pursuant to orders from competent authority nor to any property owner or person acting under his authority in providing protection against the commission of a felony. [1969 ex.s. c 137 § 27; 1927 c 245 § 1; RRS § 2504-1.]

70.74.320 Small arms ammunition, primers and propellants—Transportation regulations. The federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants are hereby adopted in this chapter by reference.

The director of the department of labor and industries has the authority to issue future regulations in accordance with amendments and additions to the federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants. [1969 ex.s. c 137 § 28.]

70.74.330 Small arms ammunition, primers and propellants—Separation from flammable materials. Small arms ammunition shall be separated from flammable liquids, flammable solids and oxidizing materials by a fire-resistant

wall of one-hour rating or by a distance of twenty-five feet. [1969 ex.s. c 137 § 29.]

70.74.340 Small arms ammunition, primers and propellants—Transportation, storage and display requirements. Quantities of small arms smokeless propellant (class B) in shipping containers approved by the federal department of transportation not in excess of fifty pounds may be transported in a private vehicle.

Quantities in excess of twenty-five pounds but not to exceed fifty pounds in a private passenger vehicle shall be transported in an approved magazine as specified by the department of labor and industries rules and regulations.

Transportation of quantities in excess of fifty pounds is prohibited in passenger vehicles: PROVIDED, That this requirement shall not apply to duly licensed dealers.

Transportation of quantities in excess of fifty pounds shall be in accordance with federal department of transportation regulations.

Small arms smokeless propellant intended for personal use in quantities not to exceed twenty-five pounds may be stored without restriction in residences; quantities over twenty-five pounds but not to exceed fifty pounds shall be stored in a strong box or cabinet constructed with three-fourths inch plywood (minimum), or equivalent, on all sides, top, and bottom.

Black powder as used in muzzle loading firearms may be transported in a private vehicle or stored without restriction in private residences in quantities not to exceed five pounds.

Not more than seventy-five pounds of small arms smokeless propellant, in containers of one pound maximum capacity may be displayed in commercial establishments.

Not more than twenty-five pounds of black powder as used in muzzle loading firearms may be stored in commercial establishments of which not more than four pounds in containers of one pound maximum capacity may be displayed.

Quantities in excess of one hundred fifty pounds of smokeless propellant or twenty-five pounds of black powder as used in muzzle loading firearms shall be stored in magazines constructed as specified in the rules and regulations for construction of magazines, and located in compliance with this chapter.

All small arms smokeless propellant when stored shall be packed in federal department of transportation approved containers. [1970 ex.s. c 72 § 6; 1969 ex.s. c 137 § 30.]

70.74.350 Small arms ammunition, primers and propellants—Primers, transportation and storage requirements. Small arms ammunition primers shall not be transported or stored except in the original shipping container approved by the federal department of transportation.

Truck or rail transportation of small arms ammunition primers shall be in accordance with the federal regulation of the United States department of transportation.

No more than twenty-five thousand small arms ammunition primers shall be transported in a private passenger vehicle: PROVIDED, That this requirement shall not apply to duly licensed dealers.

Quantities not to exceed ten thousand small arms ammunition primers may be stored in a residence.

Small arms ammunition primers shall be separate from flammable liquids, flammable solids, and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet.

Not more than seven hundred fifty thousand small arms ammunition primers shall be stored in any one building except as next provided; no more than one hundred thousand shall be stored in any one pile, and piles shall be separated by at least fifteen feet.

Quantities of small arms ammunition primers in excess of seven hundred fifty thousand shall be stored in magazines in accordance with RCW 70.74.025. [1969 ex.s. c 137 § 31.]

70.74.360 Licenses—Fingerprint and criminal record checks—Fee—Licenses prohibited for certain persons—License fees. (1) The director of labor and industries shall require, as a condition precedent to the original issuance or renewal of any explosive license, fingerprinting and criminal history record information checks of every applicant. In the case of a corporation, fingerprinting and criminal history record information checks shall be required for the management officials directly responsible for the operations where explosives are used if such persons have not previously had their fingerprints recorded with the department of labor and industries. In the case of a partnership, fingerprinting and criminal history record information checks shall be required of all general partners. Such fingerprints as are required by the department of labor and industries shall be submitted on forms provided by the department to the identification section of the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior convictions of the individuals fingerprinted. The Washington state patrol shall provide to the director of labor and industries such criminal record information as the director may request. The applicant shall give full cooperation to the department of labor and industries and shall assist the department of labor and industries in all aspects of the fingerprinting and criminal history record information check. The applicant shall be required to pay the current federal and state fee for fingerprint-based criminal history background checks.

(2) The director of labor and industries shall not issue a license to manufacture, purchase, store, use, or deal with explosives to:

(a) Any person under twenty-one years of age;

(b) Any person whose license is suspended or whose license has been revoked, except as provided in RCW 70.74.370;

(c) Any person who has been convicted in this state or elsewhere of a violent offense as defined in RCW 9.94A.030, perjury, false swearing, or bomb threats or a crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the director of labor and industries may issue a license if the person suffering a drug or alcohol related dependency is participating in or has completed an alcohol or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The director of labor and industries shall

require the applicant to provide proof of such participation and control; or

(d) Any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease and who has not at the time of application been restored to competency.

(3) The director of labor and industries may establish reasonable licensing fees for the manufacture, dealing, purchase, use, and storage of explosives. [2008 c 285 § 10; 1988 c 198 § 3.]

Intent—Captions not law—Effective date—2008 c 285: See notes following RCW 43.22.434.

70.74.370 License revocation, nonrenewal, or suspension. (1) The department of labor and industries shall revoke and not renew the license of any person holding a manufacturer, dealer, purchaser, user, or storage license upon conviction of any of the following offenses, which conviction has become final:

(a) A violent offense as defined in RCW 9.94A.030;

(b) A crime involving perjury or false swearing, including the making of a false affidavit or statement under oath to the department of labor and industries in an application or report made pursuant to this title;

(c) A crime involving bomb threats;

(d) A crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the department of labor and industries may condition renewal of the license to any convicted person suffering a drug or alcohol dependency who is participating in an alcoholism or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The department of labor and industries shall require the licensee to provide proof of such participation and control;

(e) A crime relating to possession, use, transfer, or sale of explosives under this chapter or any other chapter of the Revised Code of Washington.

(2) The department of labor and industries shall revoke the license of any person adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease. The director shall not renew the license until the person has been restored to competency.

(3) The department of labor and industries is authorized to suspend, for a period of time not to exceed six months, the license of any person who has violated this chapter or the rules promulgated pursuant to this chapter.

(4) The department of labor and industries may revoke the license of any person who has repeatedly violated this chapter or the rules promulgated pursuant to this chapter, or who has twice had his or her license suspended under this chapter.

(5) The department of labor and industries shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the depart-

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ment of labor and industries' receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(6) Upon receipt of notification by the department of labor and industries of revocation or suspension, a licensee must surrender immediately to the department any or all such licenses revoked or suspended. [1997 c 58 § 872; 1988 c 198 § 4.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

70.74.380 Licenses—Expiration—Extension of storage licenses. With the exception of storage licenses for permanent facilities, every license issued under the authority of this chapter shall expire after one year from the date issued unless suspended or revoked. The director of labor and industries may extend the duration of storage licenses for permanent facilities to two years provided the location, distances, and use of the facilities remain unchanged. The fee for the two-year storage license shall be twice the annual fee. [1988 c 198 § 9.]

70.74.390 Implementation of chapter and rules pursuant to chapter 49.17 RCW. Unless specifically provided otherwise by statute, this chapter and the rules adopted thereunder shall be implemented and enforced, including penalties, violations, citations, appeals, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW. [1988 c 198 § 11.]

70.74.400 Seizure and forfeiture. (1) Explosives, improvised devices, and components of explosives and improvised devices that are possessed, manufactured, delivered, imported, exported, stored, sold, purchased, transported, abandoned, detonated, or used, or intended to be used, in violation of a provision of this chapter are subject to seizure and forfeiture by a law enforcement agency and no property right exists in them.

(2) The law enforcement agency making the seizure shall notify the Washington state department of labor and industries of the seizure.

(3) Seizure of explosives, improvised devices, and components of explosives and improvised devices under subsection (1) of this section may be made if:

(a) The seizure is incident to arrest or a search under a search warrant;

(b) The explosives, improvised devices, or components have been the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the explosives, improvised devices, or compo-

nents are directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the explosives, improvised devices, or components were used or were intended to be used in violation of this chapter.

(4) A law enforcement agency shall destroy explosives seized under this chapter when it is necessary to protect the public safety and welfare. When destruction is not necessary to protect the public safety and welfare, and the explosives are not being held for evidence, a seizure pursuant to this section commences proceedings for forfeiture.

(5) The law enforcement agency under whose authority the seizure was made shall issue a written notice of the seizure and commencement of the forfeiture proceedings to the person from whom the explosives were seized, to any known owner of the explosives, and to any person who has a known interest in the explosives. The notice shall be issued within fifteen days of the seizure. The notice of seizure and commencement of the forfeiture proceedings shall be served in the same manner as provided in RCW 4.28.080 for service of a summons. The law enforcement agency shall provide a form by which the person or persons may request a hearing before the law enforcement agency to contest the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the explosives, improvised devices, or components within thirty days of the date the notice was issued, the seized explosives, devices, or components shall be deemed forfeited.

(7) If, within thirty days of the issuance of the notice, any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items seized, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement or the officer's designee of the seizing agency, except that the person asserting the claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the items seized is more than five hundred dollars. The hearing and any appeal shall be conducted according to chapter 34.05 RCW. The seizing law enforcement agency shall bear the burden of proving that the person (a) has no lawful right of ownership or possession and (b) that the items seized were possessed, manufactured, stored, sold, purchased, transported, abandoned, detonated, or used in violation of a provision of this chapter with the person's knowledge or consent.

(8) The seizing law enforcement agency shall promptly return the items seized to the claimant upon a determination that the claimant is entitled to possession of the items seized.

(9) If the items seized are forfeited under this statute, the seizing agency shall dispose of the explosives by summary destruction. However, when explosives are destroyed either to protect public safety or because the explosives were forfeited, the person from whom the explosives were seized loses all rights of action against the law enforcement agency or its employees acting within the scope of their employment, or other governmental entity or employee involved with the seizure and destruction of explosives.

(10) This section is not intended to change the seizure and forfeiture powers, enforcement, and penalties available

to the department of labor and industries pursuant to chapter 49.17 RCW as provided in RCW 70.74.390. [2002 c 370 § 3; 1993 c 293 § 8.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.410 Reporting theft or loss of explosives. A person who knows of a theft or loss of explosives for which that person is responsible under this chapter shall report the theft or loss to the local law enforcement agency within twenty-four hours of discovery of the theft or loss. The local law enforcement agency shall immediately report the theft or loss to the department of labor and industries. [1993 c 293 § 9.]

Severability—1993 c 293: See note following RCW 70.74.010.

Chapter 70.75 RCW

FIRE FIGHTING EQUIPMENT— STANDARDIZATION

Sections

70.75.010	Standard thread specified—Exceptions.
70.75.020	Duties of chief of the Washington state patrol.
70.75.030	Duties of chief of the Washington state patrol—Notification of industrial establishments and property owners having equipment.
70.75.040	Sale of nonstandard equipment as misdemeanor—Exceptions.
70.75.900	Severability—1967 c 152.

70.75.010 Standard thread specified—Exceptions. All equipment for fire protection purposes, other than for forest fire fighting, purchased by state and municipal authorities, or any other authorities having charge of public property, shall be equipped with the standard threads designated as the national standard thread as adopted by the American Insurance Association and defined in its pamphlet No. 194, dated 1963: PROVIDED, That this section shall not apply to steamer connections on fire hydrants. [1967 c 152 § 1.]

70.75.020 Duties of chief of the Washington state patrol. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the chief of the Washington state patrol, through the director of fire protection. He or she shall provide the appliances necessary for carrying on this work, shall proceed with such standardization as rapidly as possible, and shall require the completion of such work within a period of five years from June 8, 1967: PROVIDED, That the chief of the Washington state patrol, through the director of fire protection, may exempt special purpose fire equipment and existing fire protection equipment from standardization when it is established that such equipment is not essential to the coordination of public fire protection operations. [1995 c 369 § 41; 1986 c 266 § 96; 1967 c 152 § 2.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

State fire protection: Chapter 43.44 RCW.

70.75.030 Duties of chief of the Washington state patrol—Notification of industrial establishments and property owners having equipment. The chief of the Washington state patrol, through the director of fire protec-

tion, shall notify industrial establishments and property owners having equipment, which may be necessary for fire department use in protecting the property or putting out fire, of any changes necessary to bring their equipment up to the requirements of the standard established by RCW 70.75.020, and shall render such assistance as may be available for converting substandard equipment to meet standard specifications and requirements. [1995 c 369 § 42; 1986 c 266 § 97; 1967 c 152 § 3.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.75.040 Sale of nonstandard equipment as misdemeanor—Exceptions. Any person who, without approval of the chief of the Washington state patrol, through the director of fire protection, sells or offers for sale in Washington any fire hose, fire engine or other equipment for fire protection purposes which is fitted or equipped with other than the standard thread is guilty of a misdemeanor: PROVIDED, That fire equipment for special purposes, research, programs, forest fire fighting, or special features of fire protection equipment found appropriate for uniformity within a particular protection area may be specifically exempted from this requirement by order of the chief of the Washington state patrol, through the director of fire protection. [1995 c 369 § 43; 1986 c 266 § 98; 1967 c 152 § 4.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.75.900 Severability—1967 c 152. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 152 § 5.]

Chapter 70.76 RCW

POLYBROMINATED DIPHENYL ETHERS— FLAME RETARDANTS

Sections

70.76.005	Findings.
70.76.010	Definitions.
70.76.020	Manufacture, sale, or distribution of noncombustible products containing PBDEs—Exemptions.
70.76.030	Manufacture, sale, or distribution of products containing commercial deca-bde—Departments review of commercial deca-bde alternatives—Effective date of prohibitions.
70.76.040	Fire safety committee.
70.76.050	Departments review of commercial deca-bde alternatives and effects of PBDEs in waste stream—Publication.
70.76.060	Exclusions from chapter—Transportation and storage.
70.76.070	Notification to sellers.
70.76.080	Assistance to state agencies.
70.76.090	Retailers—Liability—Existing stock.
70.76.100	Enforcement—Achieving compliance with chapter—Enforcement sequence—Recall—Penalties.
70.76.110	Rules.

70.76.005 Findings. Polybrominated diphenyl ethers (PBDEs) have been used extensively as flame retardants in a large number of common household products for the past thirty years. Studies on animals show that PBDEs can impact the developing brain, affecting behavior and learning after birth and into adulthood, making exposure to fetuses and

children a particular concern. Levels of PBDEs are increasing in people, and in the environment, particularly in North America. Because people can be exposed to these chemicals through house dust and indoor air as well as through food, it is important to phase out their use in common household products, provided that effective flame retardants that are safer and technically feasible are available at a reasonable cost. [2007 c 65 § 1.]

70.76.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Comestible" means edible.

(2) "Commercial decabromo diphenyl ether" or "commercial deca-bde" means the chemical mixture of decabromo diphenyl ether, including associated polybrominated diphenyl ether impurities not intentionally added.

(3) "Department" means the department of ecology.

(4) "Electronic enclosure" means the plastic housing that encloses the components of electronic products, including but not limited to televisions and computers.

(5) "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product containing polybrominated diphenyl ethers or an importer or domestic distributor of a noncombustible product containing polybrominated diphenyl ethers. A manufacturer does not include a retailer who:

(a) Adds a private label brand or cobrands a product for sale; or

(b) Assembles components to create a single noncombustible product based on an individual consumer preference.

(6) "Mattress" has the same meaning as defined by the United States consumer product safety commission in 16 C.F.R. Part 1633 (2007) as it existed on July 22, 2007, and includes mattress sets, box springs, futons, crib mattresses, and youth mattresses. "Mattress" includes mattress pads.

(7) "Medical device" means an instrument, machine, implant, or diagnostic test used to help diagnose a disease or other condition or to cure, treat, or prevent disease.

(8) "Polybrominated diphenyl ethers" or "PBDEs" means chemical forms that consist of diphenyl ethers bound with bromine atoms. Polybrominated diphenyl ethers include, but are not limited to, the three primary forms of the commercial mixtures known as pentabromo diphenyl ether (penta-bde), octabromo diphenyl ether (octa-bde), and decabromo diphenyl ether (deca-bde).

(9) "Residential upholstered furniture" means residential seating products intended for indoor use in a home or other dwelling intended for residential occupancy that consists in whole or in part of resilient cushioning materials enclosed within a covering consisting of fabric or related materials, if the resilient cushioning materials are sold with the item of upholstered furniture and the upholstered furniture is constructed with a contiguous upholstered seat and back that may include arms.

(10) "Retailer" means a person who offers a product for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer. A retailer does not include a

person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that both manufactures and sells a product at retail.

(11) "Technically feasible" means an alternative that is available at a cost and in sufficient quantity to permit the manufacturer to produce an economically viable product.

(12) "Transportation vehicle" means a mechanized vehicle that is used to transport goods or people including, but not limited to, airplanes, automobiles, motorcycles, trucks, buses, trains, boats, ships, streetcars, or monorail cars. [2007 c 65 § 2.]

70.76.020 Manufacture, sale, or distribution of non-comestible products containing PBDEs—Exemptions. After January 1, 2008, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state noncomestible products containing PBDEs. Exemptions from the prohibition in this section are limited to the following:

(1) Products containing deca-bde, except as provided in RCW 70.76.030;

(2) The sale or distribution of any used transportation vehicle manufactured before January 1, 2008, with component parts containing PBDEs;

(3) The sale or distribution of any used transportation vehicle parts or new transportation vehicle parts manufactured before January 1, 2008, that contain PBDEs;

(4) The manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of equipment containing PBDEs and used primarily for military or federally funded space program applications. The exemption in this subsection (4) does not cover consumer-based goods with broad applicability;

(5) Federal aviation administration fire worthiness requirements and recommendations;

(6) The manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of any new raw material or component part used in a transportation vehicle with component parts, including original spare parts, containing deca-bde;

(7) The use of commercial deca-bde in the maintenance, refurbishment, or modification of transportation equipment;

(8) The sale or distribution of any product containing PBDEs that has been previously owned, purchased, or sold in commerce, provided it was manufactured before the effective date of the prohibition;

(9) The manufacture, sale, or distribution of any new product or product component consisting of recycled or used materials containing deca-bde;

(10) The sale or purchase of any previously owned product containing PBDEs made in casual or isolated sales as defined in RCW 82.04.040 and to sales by nonprofit organizations;

(11) The manufacture, sale, or distribution of new carpet cushion made from recycled foam containing less than one-tenth of one percent penta-bde; and

(12) Medical devices. [2007 c 65 § 3.]

70.76.030 Manufacture, sale, or distribution of products containing commercial deca-bde—Departments review of commercial deca-bde alternatives—Effective date of prohibitions. (1) Except as provided in RCW 70.76.090, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state mattresses containing commercial deca-bde after January 1, 2008.

(2) Except as provided in RCW 70.76.090, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state residential upholstered furniture that contains commercial deca-bde, or any television or computer that has an electronic enclosure that contains commercial deca-bde after the effective date established in subsection (3) of this section. This prohibition may not take effect until the department and the department of health identify that a safer and technically feasible alternative is available, and the fire safety committee, created in RCW 70.76.040, determines that the identified alternative meets applicable fire safety standards. The effective date of the prohibition must be established according to the following process:

(a) The department and the department of health shall review risk assessments, scientific studies, and other relevant findings regarding alternatives to the use of commercial deca-bde in residential upholstered furniture, televisions, and computers.

(b) If the department and the department of health jointly find that safer and technically feasible alternatives are available for any of these uses, the department shall convene the fire safety committee created in RCW 70.76.040 to determine whether the identified alternatives meet applicable fire safety standards.

(c) By majority vote, the fire safety committee created in RCW 70.76.040 shall make a finding whether an alternative identified under (b) of this subsection meets applicable fire safety standards. The fire safety committee shall report their finding to the state fire marshal. After reviewing the finding of the fire safety committee, the state fire marshal shall determine whether an alternative identified under (b) of this subsection meets applicable fire safety standards. The determination of the fire marshal must be based upon the finding of the fire safety committee. The state fire marshal shall report the determination to the department.

(d) The department shall seek public input on their findings, the findings of the fire safety committee, and the determination by the state fire marshal. The department shall publish these findings in the Washington State Register, and submit them in a report to the appropriate committees of the legislature. The department shall initially report these findings by December 31, 2008.

(3) The effective date of the prohibition is as follows:

(a) If the December 31, 2008, report required in subsection (2)(d) of this section finds that a safer and technically feasible alternative that meets applicable fire safety standards is available, the prohibition takes effect January 1, 2011;

(b) If the December 31, 2008, report required in subsection (2)(d) of this section does not find that a safer and technically feasible alternative that meets applicable fire safety standards is available, the prohibition does not take effect January 1, 2011. Beginning in 2009, by December 31st of

each year, the department shall review and report on alternatives as described in subsection (2) of this section. The prohibition in subsection (2) of this section takes effect two years after a report submitted to the legislature required under subsection (2)(d) of this section finds that a safer and technically feasible alternative that meets applicable fire safety standards is available. [2007 c 65 § 4.]

70.76.040 Fire safety committee. (1) The fire safety committee is created for the exclusive purpose of finding whether an alternative identified under RCW 70.76.030(2)(b) meets applicable fire safety standards.

(2) A majority vote of the members of the fire safety committee constitutes a finding that an alternative meets applicable fire safety standards.

(3) The fire safety committee consists of the following members:

(a) A representative from the department, who shall chair the fire safety committee, and serve as an ex officio nonvoting member.

(b) Five voting members, appointed by the governor, as follows:

(i) A representative of the office of the state fire marshal;

(ii) A representative of a statewide association representing the interests of fire chiefs;

(iii) A representative of a statewide association representing the interests of fire commissioners;

(iv) A representative of a recognized statewide council, affiliated with an international association representing the interests of firefighters; and

(v) A representative of a statewide association representing the interests of volunteer firefighters. [2007 c 65 § 5.]

70.76.050 Departments review of commercial deca-bde alternatives and effects of PBDEs in waste stream—Publication. The department and the department of health shall review risk assessments, scientific studies, and other relevant findings regarding alternatives to the use of commercial deca-bde in products not directly addressed in this chapter. If a flame retardant that is safer and technically feasible becomes available, the department shall convene the fire safety committee created in RCW 70.76.040. The fire safety committee and the state fire marshal shall proceed as required in RCW 70.76.030(2)(c) to determine if the identified alternative meets applicable fire safety standards. The department and the department of health shall also review risk assessments, scientific studies, and other findings regarding the potential effect of PBDEs in the waste stream. By December 31st of the year in which the finding is made, the department must publish the information required by this subsection in the Washington State Register and present it in a report to the appropriate committees of the legislature. [2007 c 65 § 6.]

70.76.060 Exclusions from chapter—Transportation and storage. Nothing in this chapter restricts the ability of a manufacturer, importer, or distributor from transporting products containing PBDEs through the state or storing the products in the state for later distribution outside the state. [2007 c 65 § 7.]

70.76.070 Notification to sellers. A manufacturer of products containing PBDEs that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions. [2007 c 65 § 8.]

70.76.080 Assistance to state agencies. The department shall assist state agencies to give priority and preference to the purchase of equipment, supplies, and other products that do not contain PBDEs. [2007 c 65 § 9.]

70.76.090 Retailers—Liability—Existing stock. (1) Retailers who unknowingly sell products prohibited under RCW 70.76.020 or 70.76.030 are not liable under this chapter.

(2) In-state retailers in possession of products on the date that restrictions on the sale of the products become effective under RCW 70.76.020 or 70.76.030 may exhaust their existing stock through sales to the public.

(3) The department must assist in-state retailers in identifying potential products containing PBDEs.

(4) If a retailer unknowingly possesses products that are prohibited for sale under RCW 70.76.020 or 70.76.030 and the manufacturer does not recall the products as required under RCW 70.76.100(2), the retailer may exhaust its existing stock through sales to the public. However, no additional prohibited stock may be sold or offered for sale. [2007 c 65 § 10.]

70.76.100 Enforcement—Achieving compliance with chapter—Enforcement sequence—Recall—Penalties. (1) Enforcement of this chapter must rely on notification and information exchange between the department and manufacturers. The department shall achieve compliance with this chapter using the following enforcement sequence:

(a) Before the effective date of the product prohibition in RCW 70.76.020 or 70.76.030, the department shall prepare and distribute information to in-state manufacturers and out-of-state manufacturers, to the maximum extent practicable, to assist them in identifying products prohibited for manufacture, sale, or distribution under this chapter.

(b) The department may request a certificate of compliance from a manufacturer. A certificate of compliance attests that a manufacturer's product or products meets the requirements of this chapter.

(c) The department may issue a warning letter to a manufacturer that produces, sells, or distributes prohibited products in violation of this chapter. The department shall offer information or other appropriate assistance to the manufacturer in complying with this chapter. If, after one year, compliance is not achieved, penalties may be assessed under subsection (3) of this section.

(2) A manufacturer that knowingly produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product and any applicable shipping and handling for returning the products.

(3) A manufacturer of products containing PBDEs in violation of this chapter is subject to a civil penalty not to

exceed one thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed five thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070. [2007 c 65 § 11.]

70.76.110 Rules. The department may adopt rules to fully implement this chapter. [2007 c 65 § 12.]

Chapter 70.77 RCW STATE FIREWORKS LAW

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70.77.910	Severability—1961 c 228.
70.77.911	Severability—1982 c 230.
70.77.912	Severability—1984 c 249.

State building code: Chapter 19.27 RCW.

70.77.111 Intent. The legislature declares that fireworks, when purchased and used in compliance with the laws of the state of Washington, are legal. The legislature intends that this chapter is regulatory only, and not prohibitory. [1995 c 61 § 1.]

Severability—1995 c 61: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 61 § 32.]

Effective date—1995 c 61: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 17, 1995]." [1995 c 61 § 33.]

70.77.120 Definitions—To govern chapter. The definitions set forth in this chapter shall govern the construction of this chapter, unless the context otherwise requires. [1961 c 228 § 1.]

70.77.124 Definitions—"City." "City" means any incorporated city or town. [1995 c 61 § 2; 1994 c 133 § 2.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.126 Definitions—"Fireworks." "Fireworks" means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and which meets the definition of articles pyrotechnic or consumer fireworks or display fireworks. [2002 c 370 § 4; 1995 c 61 § 3; 1984 c 249 § 1; 1982 c 230 § 1.]

Severability—2002 c 370: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 370 § 50.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.131 Definitions—"Display fireworks." "Display fireworks" means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as "consumer fireworks" and are classified as fireworks UN0333, UN0334, or UN0335 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and including fused setpieces containing components which exceed 50 mg of salute powder. [2002 c 370 § 5; 1995 c 61 § 4; 1984 c 249 § 2; 1982 c 230 § 2.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.136 Definitions—"Consumer fireworks." "Consumer fireworks" means any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the United States consumer product safety commission, as set forth in 16 C.F.R. Parts 1500 and 1507 and including some small devices designed to produce audible effects, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials and classified as fireworks UN0336 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and not including fused setpieces containing components which together exceed 50 mg of salute powder. [2002 c 370 § 6; 1995 c 61 § 5; 1984 c 249 § 3; 1982 c 230 § 3.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.138 Definitions—"Articles pyrotechnic." "Articles pyrotechnic" means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use which meet the weight limits for consumer fireworks but which are not labeled as such and which are classified as UN0431 or UN0432 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002. [2002 c 370 § 7.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.141 Definitions—"Agricultural and wildlife fireworks." "Agricultural and wildlife fireworks" includes fireworks devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the United States department of the interior or an equivalent state or local governmental agency. [2002 c 370 § 8; 1982 c 230 § 4.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.146 Definitions—"Special effects." "Special effects" means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment. [1995 c 61 § 8; 1994 c 133 § 1; 1984 c 249 § 4; 1982 c 230 § 5.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1994 c 133: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 133 § 17.]

Effective date—1994 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1994]." [1994 c 133 § 18.]

70.77.160 Definitions—"Public display of fireworks." "Public display of fireworks" means an entertainment feature where the public is or could be admitted or allowed to view the display or discharge of display fireworks. [2002 c 370 § 9; 1997 c 182 § 1; 1982 c 230 § 6; 1961 c 228 § 9.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—1997 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 182 § 26.]

Effective date—1997 c 182: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 1997]." [1997 c 182 § 27.]

70.77.165 Definitions—"Fire nuisance." "Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the cause of any obstruction, delay, or a hindrance to the prevention or extinguishment of fire. [1961 c 228 § 10.]

70.77.170 Definitions—"License." "License" means a nontransferable formal authorization which the chief of the Washington state patrol, through the director of fire protection, is authorized to issue under this chapter to allow a person to engage in the act specifically designated therein. [2002 c 370 § 10; 1995 c 369 § 44; 1986 c 266 § 99; 1982 c 230 § 7; 1961 c 228 § 11.]

Severability—2002 c 370: See note following RCW 70.77.126.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.175 Definitions—"Licensee." "Licensee" means any person issued a fireworks license in conformance with this chapter. [2002 c 370 § 11; 1961 c 228 § 12.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.177 Definitions—"Local fire official." "Local fire official" means the chief of a local fire department or a chief fire protection officer or such other person as may be designated by the governing body of a city or county to act as a local fire official under this chapter. [1994 c 133 § 3; 1984 c 249 § 6.]

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.180 Definitions—"Permit." "Permit" means the official authorization granted by a city or county for the purpose of establishing and maintaining a place within the jurisdiction of the city or county where fireworks are manufactured, constructed, produced, packaged, stored, sold, or exchanged and the official authorization granted by a city or county for a public display of fireworks. [2002 c 370 § 12; 1995 c 61 § 9; 1984 c 249 § 5; 1982 c 230 § 8; 1961 c 228 § 13.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.182 Definitions—"Permittee." "Permittee" means any person issued a fireworks permit in conformance with this chapter. [2002 c 370 § 13.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.190 Definitions—"Person." "Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit. [1961 c 228 § 15.]

70.77.200 Definitions—"Importer." "Importer" includes any person who for any purpose other than personal use:

- (1) Brings fireworks into this state or causes fireworks to be brought into this state;
- (2) Procures the delivery or receives shipments of any fireworks into this state; or
- (3) Buys or contracts to buy fireworks for shipment into this state. [1995 c 61 § 10; 1961 c 228 § 17.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.205 Definitions—"Manufacturer." "Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks or persons who assemble consumer fireworks items or sets or packages containing consumer fireworks items. [2002 c 370 § 14; 1995 c 61 § 11; 1961 c 228 § 18.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.210 Definitions—"Wholesaler." "Wholesaler" includes any person who sells fireworks to a retailer or any other person for resale and any person who sells display fireworks to public display licensees. [2002 c 370 § 15; 1982 c 230 § 9; 1961 c 228 § 19.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.215 Definitions—"Retailer." "Retailer" includes any person who, at a fixed location or place of business, offers for sale, sells, or exchanges for consideration consumer fireworks to a consumer or user. [2002 c 370 § 16; 1982 c 230 § 10; 1961 c 228 § 20.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.230 Definitions—"Pyrotechnic operator." "Pyrotechnic operator" includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging display fireworks. [2002 c 370 § 17; 1982 c 230 § 11; 1961 c 228 § 23.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.236 Definitions—"New fireworks item." (1) "New fireworks item" means any fireworks initially classified or reclassified as articles pyrotechnic, display fireworks, or consumer fireworks by the United States department of transportation after June 13, 2002, and which comply with the construction, chemical composition, and labeling regulations of the United States consumer products safety commission, 16 C.F.R., Parts 1500 and 1507.

(2) The chief of the Washington state patrol, through the director of fire protection, shall classify any new fireworks item in the same manner as the item is classified by the United States department of transportation and the United States consumer product safety commission. The chief of the Washington state patrol, through the director of fire protection, may determine, stating reasonable grounds, that the item should not be so classified. [2002 c 370 § 18; 1997 c 182 § 4; 1995 c 61 § 6.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.241 Definitions—"Permanent storage"—"Temporary storage." (1) "Permanent storage" means storage of display fireworks at any time and/or storage of consumer fireworks at any time other than the periods allowed under RCW 70.77.420(2) and 70.77.425 and which shall be in compliance with the requirements of chapter 70.74 RCW.

(2) "Temporary storage" means the storage of consumer fireworks during the periods allowed under RCW 70.77.420(2) and 70.77.425. [2002 c 370 § 34.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.250 Chief of the Washington state patrol to enforce and administer—Powers and duties. (1) The chief of the Washington state patrol, through the director of fire protection, shall enforce and administer this chapter.

(2) The chief of the Washington state patrol, through the director of fire protection, shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter.

(3) The chief of the Washington state patrol, through the director of fire protection, shall adopt those rules relating to fireworks as are necessary for the implementation of this chapter.

(4) The chief of the Washington state patrol, through the director of fire protection, shall adopt those rules as are necessary to ensure statewide minimum standards for the enforcement of this chapter. Counties and cities shall comply with these state rules. Any ordinances adopted by a county or city that are more restrictive than state law shall have an effective date no sooner than one year after their adoption.

(5) The chief of the Washington state patrol, through the director of fire protection, may exercise the necessary police powers to enforce the criminal provisions of this chapter. This grant of police powers does not prevent any other state agency and city, county, or local government agency having general law enforcement powers from enforcing this chapter within the jurisdiction of the agency and city, county, or local government.

(6) The chief of the Washington state patrol, through the director of fire protection, shall adopt rules necessary to enforce the civil penalty provisions for the violations of this chapter. A civil penalty under this subsection may not exceed one thousand dollars per day for each violation and is subject to the procedural requirements under RCW 70.77.252.

(7) The chief of the Washington state patrol, through the director of fire protection, may investigate or cause to be investigated all fires resulting, or suspected of resulting, from the use of fireworks. [2002 c 370 § 19; 1997 c 182 § 5. Prior: 1995 c 369 § 45; 1995 c 61 § 12; 1986 c 266 § 100; 1984 c 249 § 7; 1982 c 230 § 12; 1961 c 228 § 27.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.252 Civil penalty—Notice—Remission, mitigation, review. (1) The penalty provided for in RCW 70.77.250(6) shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner which shows proof of receipt. Any penalty imposed by RCW 70.77.250(6) shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (2) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (3) of this section.

(2008 Ed.)

(2) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the chief of the Washington state patrol, through the director of fire protection, for the remission or mitigation of the penalty. Upon receipt of the application, the chief of the Washington state patrol, through the director of fire protection, may remit or mitigate the penalty upon whatever terms the chief of the Washington state patrol, through the director of fire protection, deems proper, giving consideration to the degree of hazard associated with the violation. The chief of the Washington state patrol, through the director of fire protection, may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The chief of the Washington state patrol, through the director of fire protection, may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred under RCW 70.77.250(6) becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (3) of this section.

(3) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the chief of the Washington state patrol, through the director of fire protection.

(4) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(5) The attorney general may bring an action in the name of the chief of the Washington state patrol, through the director of fire protection, in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter.

(6) All penalties imposed under this section shall be paid to the state treasury and credited to the fire services trust fund and used as follows: At least fifty percent is for a statewide public education campaign developed by the chief of the Washington state patrol, through the director of fire protection, and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks; and the remainder is for statewide efforts to enforce this chapter. [2002 c 370 § 20.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.255 Acts prohibited without appropriate licenses and permits—Minimum age for license or permit—Activities permitted without license or permit. (1) Except as otherwise provided in this chapter, no person, without appropriate state licenses and city or county permits as required by this chapter may:

(a) Manufacture, import, possess, or sell any fireworks at wholesale or retail for any use;

(b) Make a public display of fireworks;

(c) Transport fireworks, except as a licensee or as a public carrier delivering to a licensee; or

(d) Knowingly manufacture, import, transport, store, sell, or possess with intent to sell, as fireworks, explosives, as

defined under RCW 70.74.010, that are not fireworks, as defined under this chapter.

(2) Except as authorized by a license and permit under subsection (1)(b) of this section or as provided in RCW 70.77.311, no person may discharge display fireworks at any place.

(3) No person less than eighteen years of age may apply for or receive a license or permit under this chapter.

(4) No license or permit is required for the possession or use of consumer fireworks lawfully purchased at retail. [2002 c 370 § 21; 1997 c 182 § 6; 1995 c 61 § 13; 1994 c 133 § 4; 1984 c 249 § 10; 1982 c 230 § 14; 1961 c 228 § 28.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.260 Application for permit. (1) Any person desiring to do any act mentioned in RCW 70.77.255(1) (a) or (c) shall apply in writing to a local fire official for a permit.

(2) Any person desiring to put on a public display of fireworks under RCW 70.77.255(1)(b) shall apply in writing to a local fire official for a permit. Application shall be made at least ten days in advance of the proposed display. [1984 c 249 § 11; 1982 c 230 § 15; 1961 c 228 § 29.]

General license holders to file license certificate with application for permit for public display of fireworks: RCW 70.77.355.

70.77.265 Investigation, report on permit application. The local fire official receiving an application for a permit under RCW 70.77.260(1) shall investigate the application and submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city or county. [1994 c 133 § 5; 1984 c 249 § 12; 1961 c 228 § 30.]

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.270 Governing body to grant permits—State-wide standards—Liability insurance. (1) The governing body of a city or county, or a designee, shall grant an application for a permit under RCW 70.77.260(1) if the application meets the standards under this chapter, and the applicable ordinances of the city or county. The permit shall be granted by June 10, or no less than thirty days after receipt of an application whichever date occurs first, for sales commencing on June 28 and on December 27; or by December 10, or no less than thirty days after receipt of an application whichever date occurs first, for sales commencing only on December 27.

(2) The chief of the Washington state patrol, through the director of fire protection, shall prescribe uniform, statewide standards for retail fireworks stands including, but not limited to, the location of the stands, setback requirements and siting of the stands, types of buildings and construction material that may be used for the stands, use of the stands and areas around the stands, cleanup of the area around the stands, transportation of fireworks to and from the stands, and tem-

porary storage of fireworks associated with the retail fireworks stands. All cities and counties which allow retail fireworks sales shall comply with these standards.

(3) No retail fireworks permit may be issued to any applicant unless the retail fireworks stand is covered by a liability insurance policy with coverage of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not readily available from at least three approved insurance companies. If insurance in this amount is not offered, each fireworks permit shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

No wholesaler may knowingly sell or supply fireworks to any retail fireworks licensee unless the wholesaler determines that the retail fireworks licensee is covered by liability insurance in the same, or greater, amount as provided in this subsection. [2002 c 370 § 22; 1997 c 182 § 8; 1995 c 61 § 14; 1994 c 133 § 6; 1984 c 249 § 13; 1961 c 228 § 31.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.280 Public display permit—Investigation—Governing body to grant—Conditions. The local fire official receiving an application for a permit under RCW 70.77.260(2) for a public display of fireworks shall investigate whether the character and location of the display as proposed would be hazardous to property or dangerous to any person. Based on the investigation, the official shall submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city or county. The governing body shall grant the application if it meets the requirements of this chapter and the ordinance of the city or county. [1995 c 61 § 15; 1994 c 133 § 7; 1984 c 249 § 14; 1961 c 228 § 33.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.285 Public display permit—Bond or insurance for liability. Except as provided in RCW 70.77.355, the applicant for a permit under RCW 70.77.260(2) for a public display of fireworks shall include with the application evidence of a bond issued by an authorized surety company. The bond shall be in the amount required by RCW 70.77.295 and shall be conditioned upon the applicant's payment of all damages to persons or property resulting from or caused by such public display of fireworks, or any negligence on the part of the applicant or its agents, servants, employees, or subcontractors in the presentation of the display. Instead of a bond, the applicant may include a certificate of insurance evidencing the carrying of appropriate liability insurance in the amount required by RCW 70.77.295 for the benefit of the

person named therein as assured, as evidence of ability to respond in damages. The local fire official receiving the application shall approve the bond or insurance if it meets the requirements of this section. [1995 c 61 § 16; 1984 c 249 § 15; 1982 c 230 § 16; 1961 c 228 § 34.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.290 Public display permit—Granted for exclusive purpose. If a permit under RCW 70.77.260(2) for the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. [1997 c 182 § 9; 1984 c 249 § 16; 1961 c 228 § 35.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

70.77.295 Public display permit—Amount of bond or insurance. In the case of an application for a permit under RCW 70.77.260(2) for the public display of fireworks, the amount of the surety bond or certificate of insurance required under RCW 70.77.285 shall be not less than fifty thousand dollars and one million dollars for bodily injury liability for each person and event, respectively, and not less than twenty-five thousand dollars for property damage liability for each event. [1984 c 249 § 17; 1982 c 230 § 17; 1961 c 228 § 36.]

70.77.305 Chief of the Washington state patrol to issue licenses—Registration of in-state agents. The chief of the Washington state patrol, through the director of fire protection, has the power to issue licenses for the manufacture, importation, sale, and use of all fireworks in this state, except as provided in RCW 70.77.311 and 70.77.395. A person may be licensed as a manufacturer, importer, or wholesaler under this chapter only if the person has a designated agent in this state who is registered with the chief of the Washington state patrol, through the director of fire protection. [2002 c 370 § 23; 1995 c 369 § 46; 1986 c 266 § 101; 1984 c 249 § 18; 1982 c 230 § 18; 1961 c 228 § 38.]

Severability—2002 c 370: See note following RCW 70.77.126.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.311 Exemptions from licensing—Purchase of certain agricultural and wildlife fireworks by government agencies—Purchase of consumer fireworks by religious or private organizations. (1) No license is required for the purchase of agricultural and wildlife fireworks by government agencies if:

(a) The agricultural and wildlife fireworks are used for wildlife control or are distributed to farmers, ranchers, or growers through a wildlife management program administered by the United States department of the interior or an equivalent state or local governmental agency;

(b) The distribution is in response to a written application describing the wildlife management problem that requires use of the devices;

(c) It is of no greater quantity than necessary to control the described problem; and

(d) It is limited to situations where other means of control are unavailable or inadequate.

(2) No license is required for religious organizations or private organizations or persons to purchase or use consumer fireworks and such audible ground devices as firecrackers, salutes, and chasers if:

(a) Purchased from a licensed manufacturer, importer, or wholesaler;

(b) For use on prescribed dates and locations;

(c) For religious or specific purposes; and

(d) A permit is obtained from the local fire official. No fee may be charged for this permit. [2002 c 370 § 24; 1995 c 61 § 17; 1984 c 249 § 19; 1982 c 230 § 19.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.315 Application for license. Any person who desires to engage in the manufacture, importation, sale, or use of fireworks, except use as provided in RCW 70.77.255(4), 70.77.311, and 70.77.395, shall make a written application to the chief of the Washington state patrol, through the director of fire protection, on forms provided by him or her. Such application shall be accompanied by the annual license fee as prescribed in this chapter. [2002 c 370 § 25; 1997 c 182 § 10. Prior: 1995 c 369 § 47; 1995 c 61 § 18; 1986 c 266 § 102; 1982 c 230 § 20; 1961 c 228 § 40.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.320 Application for license to be signed. The application for a license shall be signed by the applicant. If application is made by a partnership, it shall be signed by each partner of the partnership, and if application is made by a corporation, it shall be signed by an officer of the corporation and bear the seal of the corporation. [1961 c 228 § 41.]

70.77.325 Annual application for a license—Dates. (1) An application for a license shall be made annually by every person holding an existing license who wishes to continue the activity requiring the license during an additional year. The application shall be accompanied by the annual license fees as prescribed in RCW 70.77.343 and 70.77.340.

(2) A person applying for an annual license as a retailer under this chapter shall file an application no later than May 1 for annual sales commencing on June 28 and on December 27, or no later than November 1 for sales commencing only on December 27. The chief of the Washington state patrol, through the director of fire protection, shall grant or deny the license within fifteen days of receipt of the application.

(3) A person applying for an annual license as a manufacturer, importer, or wholesaler under this chapter shall file an application by January 31 of the current year. The chief of

the Washington state patrol, through the director of fire protection, shall grant or deny the license within ninety days of receipt of the application. [1997 c 182 § 11; 1994 c 133 § 8; 1991 c 135 § 4; 1986 c 266 § 103; 1984 c 249 § 20; 1982 c 230 § 21; 1961 c 228 § 42.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.43.946.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.330 License to engage in particular act to be issued if not contrary to public safety or welfare—Transportation of fireworks authorized. If the chief of the Washington state patrol, through the director of fire protection, finds that the granting of such license is not contrary to public safety or welfare, he or she shall issue a license authorizing the applicant to engage in the particular act or acts upon the payment of the license fee specified in this chapter. Licensees may transport the class of fireworks for which they hold a valid license. [2002 c 370 § 26; 1995 c 369 § 48; 1986 c 266 § 104; 1982 c 230 § 22; 1961 c 228 § 43.]

Severability—2002 c 370: See note following RCW 70.77.126.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.335 License authorizes activities of sellers, authorized representatives, employees. The authorization to engage in the particular act or acts conferred by a license to a person shall extend to sellers, authorized representatives, and other employees of such person. [2002 c 370 § 27; 1982 c 230 § 23; 1961 c 228 § 44.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.340 Annual license fees. The original and annual license fee shall be as follows:

Manufacturer	\$ 500.00
Importer	100.00
Wholesaler	1,000.00
Retailer (for each separate retail outlet)	10.00
Public display for display fireworks	10.00
Pyrotechnic operator for display fireworks	5.00

[2002 c 370 § 28; 1982 c 230 § 24; 1961 c 228 § 45.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.343 License fees—Additional. (1) License fees, in addition to the fees in RCW 70.77.340, shall be charged as follows:

Manufacturer	\$ 1,500.00
Importer	900.00
Wholesaler	1,000.00
Retailer (for each separate outlet)	30.00

Public display for display fireworks	40.00
Pyrotechnic operator for display fireworks	5.00

(2) All receipts from the license fees in this section shall be placed in the fire services trust fund and at least seventy-five percent of these receipts shall be used to fund a statewide public education campaign developed by the chief of the Washington state patrol and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks and the remaining receipts shall be used to fund statewide enforcement efforts against the sale and use of fireworks that are illegal under this chapter. [2002 c 370 § 29; 1997 c 182 § 12; 1995 c 61 § 19; 1991 c 135 § 6.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.43.946.

70.77.345 Duration of licenses and retail fireworks sales permits. Every license and every retail fireworks sales permit issued shall be for the period from January 1st of the year for which the application is made through January 31st of the subsequent year, or the remaining portion thereof. [1997 c 182 § 13; 1995 c 61 § 20; 1991 c 135 § 5; 1982 c 230 § 25; 1961 c 228 § 46.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.43.946.

70.77.355 General license for public display—Surety bond or insurance—Filing of license certificate with local permit application. (1) Any adult person may secure a general license from the chief of the Washington state patrol, through the director of fire protection, for the public display of fireworks within the state of Washington. A general license is subject to the provisions of this chapter relative to the securing of local permits for the public display of fireworks in any city or county, except that in lieu of filing the bond or certificate of public liability insurance with the appropriate local official under RCW 70.77.260 as required in RCW 70.77.285, the same bond or certificate shall be filed with the chief of the Washington state patrol, through the director of fire protection. The bond or certificate of insurance for a general license in addition shall provide that: (a) The insurer will not cancel the insured's coverage without fifteen days prior written notice to the chief of the Washington state patrol, through the director of fire protection; (b) the duly licensed pyrotechnic operator required by law to supervise and discharge the public display, acting either as an employee of the insured or as an independent contractor and the state of Washington, its officers, agents, employees, and servants are included as additional insureds, but only insofar as any operations under contract are concerned; and (c) the

state is not responsible for any premium or assessments on the policy.

(2) The chief of the Washington state patrol, through the director of fire protection, may issue such general licenses. The holder of a general license shall file a certificate from the chief of the Washington state patrol, through the director of fire protection, evidencing the license with any application for a local permit for the public display of fireworks under RCW 70.77.260. [1997 c 182 § 14; 1994 c 133 § 9; 1986 c 266 § 105; 1984 c 249 § 21; 1982 c 230 § 26; 1961 c 228 § 48.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.360 Denial of license for material misrepresentation or if contrary to public safety or welfare. If the chief of the Washington state patrol, through the director of fire protection, finds that an application for any license under this chapter contains a material misrepresentation or that the granting of any license would be contrary to the public safety or welfare, the chief of the Washington state patrol, through the director of fire protection, may deny the application for the license. [1995 c 369 § 49; 1986 c 266 § 106; 1984 c 249 § 22; 1982 c 230 § 27; 1961 c 228 § 49.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.365 Denial of license for failure to meet qualifications or conditions. A written report by the chief of the Washington state patrol, through the director of fire protection, or a local fire official, or any of their authorized representatives, disclosing that the applicant for a license, or the premises for which a license is to apply, do not meet the qualifications or conditions for a license constitutes grounds for the denial by the chief of the Washington state patrol, through the director of fire protection, of any application for a license. [1995 c 369 § 50; 1986 c 266 § 107; 1984 c 249 § 23; 1982 c 230 § 28; 1961 c 228 § 50.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.370 Hearing on denial of license. Any applicant who has been denied a license for reasons other than making application after the date set forth in RCW 70.77.325 is entitled to a hearing in accordance with the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [1994 c 133 § 10; 1989 c 175 § 129; 1982 c 230 § 29; 1961 c 228 § 51.]

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Effective date—1989 c 175: See note following RCW 34.05.010.

70.77.375 Revocation of license. The chief of the Washington state patrol, through the director of fire protection, upon reasonable opportunity to be heard, may revoke any license issued pursuant to this chapter, if he or she finds that:

(1) The licensee has violated any provisions of this chapter or any rule made by the chief of the Washington state patrol, through the director of fire protection, under and with the authority of this chapter;

(2) The licensee has created or caused a fire nuisance;

(3) Any licensee has failed or refused to file any required reports; or

(4) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the chief of the Washington state patrol, through the director of fire protection, in refusing originally to issue such license. [1997 c 182 § 16; 1995 c 369 § 51; 1995 c 61 § 21; 1986 c 266 § 108; 1982 c 230 § 30; 1961 c 228 § 52.]

Reviser's note: RCW 70.77.375 was amended twice during the 1995 legislative session, each without reference to the other. This section was subsequently amended by 1997 c 182 § 16, combining the text of the 1995 amendments, but not reenacting those sections. Any subsequent amendments to this section should include the 1997 and both 1995 histories in a reenactment.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.381 Wholesalers and retailers—Liability insurance requirements. (1) Every wholesaler shall carry liability insurance for each wholesale and retail fireworks outlet it operates in the amount of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not available from at least three approved insurance companies. If insurance in this amount is not offered, each wholesale and retail outlet shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

(2) No wholesaler may knowingly sell or supply fireworks to any retail licensee unless the wholesaler determines that the retail licensee carries liability insurance in the same, or greater, amount as provided in subsection (1) of this section. [2002 c 370 § 30; 1995 c 61 § 27.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.386 Retailers—Purchase from licensed wholesalers. Retail fireworks licensees shall purchase all fireworks from wholesalers possessing a valid wholesale license issued by the state of Washington. [1995 c 61 § 28.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.395 Dates and times consumer fireworks may be sold or discharged—Local governments may limit, prohibit sale or discharge of fireworks. (1) It is legal to sell and purchase consumer fireworks within this state from twelve o'clock noon to eleven o'clock p.m. on the twenty-eighth of June, from nine o'clock a.m. to eleven o'clock p.m.

on each day from the twenty-ninth of June through the fourth of July, from nine o'clock a.m. to nine o'clock p.m. on the fifth of July, from twelve o'clock noon to eleven o'clock p.m. on each day from the twenty-seventh of December through the thirty-first of December of each year, and as provided in RCW 70.77.311.

(2) Consumer fireworks may be used or discharged each day between the hours of twelve o'clock noon and eleven o'clock p.m. on the twenty-eighth of June and between the hours of nine o'clock a.m. and eleven o'clock p.m. on the twenty-ninth of June to the third of July, and on July 4th between the hours of nine o'clock a.m. and twelve o'clock midnight, and between the hours of nine o'clock a.m. and eleven o'clock p.m. on July 5th, and from six o'clock p.m. on December 31st until one o'clock a.m. on January 1st of the subsequent year, and as provided in RCW 70.77.311.

(3) A city or county may enact an ordinance within sixty days of June 13, 2002, to limit or prohibit the sale, purchase, possession, or use of consumer fireworks on December 27, 2002, through December 31, 2002, and thereafter as provided in RCW 70.77.250(4). [2002 c 370 § 31; 1995 c 61 § 22; 1984 c 249 § 24; 1982 c 230 § 31; 1961 c 228 § 56.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.401 Sale of certain fireworks prohibited. No fireworks may be sold or offered for sale to the public as consumer fireworks which are classified as sky rockets, or missile-type rockets, firecrackers, salutes, or chasers as defined by the United States department of transportation and the federal consumer products safety commission except as provided in RCW 70.77.311. [2002 c 370 § 32; 1995 c 61 § 7.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.405 Authorized sales of toy caps, tricks, and novelties. Toy paper caps containing not more than twenty-five hundredths grain of explosive compound for each cap and trick or novelty devices not classified as consumer fireworks may be sold at all times unless prohibited by local ordinance. [2002 c 370 § 33; 1982 c 230 § 32; 1961 c 228 § 58.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.410 Public displays not to be hazardous. All public displays of fireworks shall be of such a character and so located, discharged, or fired as not to be hazardous or dangerous to persons or property. [1961 c 228 § 59.]

70.77.415 Supervision of public displays. Every public display of fireworks shall be handled or supervised by a pyrotechnic operator licensed by the chief of the Washington state patrol, through the director of fire protection, under RCW 70.77.255. [1995 c 369 § 52; 1986 c 266 § 109; 1984 c 249 § 25; 1982 c 230 § 33; 1961 c 228 § 60.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.420 Permanent storage permit required—Application—Investigation—Grant or denial—Conditions. (1) It is unlawful for any person to store permanently fireworks of any class without a permit for such permanent storage from the city or county in which the storage is to be made. A person proposing to store permanently fireworks shall apply in writing to a city or county at least ten days prior to the date of the proposed permanent storage. The city or county receiving the application for a permanent storage permit shall investigate whether the character and location of the permanent storage as proposed meets the requirements of the zoning, building, and fire codes or constitutes a hazard to property or is dangerous to any person. Based on the investigation, the city or county may grant or deny the application. The city or county may place reasonable conditions on any permit granted.

(2) For the purposes of this section the temporary storing or keeping of consumer fireworks when in conjunction with a valid retail sales license and permit shall comply with RCW 70.77.425 and the standards adopted under RCW 70.77.270(2) and not this section. [2002 c 370 § 35; 1997 c 182 § 18; 1984 c 249 § 26; 1982 c 230 § 34; 1961 c 228 § 61.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

70.77.425 Approved permanent storage facilities required. It is unlawful for any person to store permanently stocks of fireworks remaining unsold after the lawful period of sale as provided in the person's permit except in such places of permanent storage as the city or county issuing the permit approves. Unsold stocks of consumer fireworks remaining after the authorized retail sales period from nine o'clock a.m. on June 28th to twelve o'clock noon on July 5th shall be returned on or before July 31st of the same year, or remaining after the authorized retail sales period from twelve o'clock noon on December 27th to eleven o'clock p.m. on December 31st shall be returned on or before January 10th of the subsequent year, to the approved permanent storage facilities of a licensed fireworks wholesaler or to a magazine or permanent storage place approved by a local fire official. [2002 c 370 § 36; 1984 c 249 § 27; 1982 c 230 § 35; 1961 c 228 § 62.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.430 Sale of stock after revocation or expiration of license. Notwithstanding RCW 70.77.255, following the revocation or expiration of a license, a licensee in lawful possession of a lawfully acquired stock of fireworks may sell such fireworks, but only under supervision of the chief of the Washington state patrol, through the director of fire protection. Any sale under this section shall be solely to persons who are authorized to buy, possess, sell, or use such fireworks. [1995 c 369 § 53; 1986 c 266 § 110; 1984 c 249 § 28; 1982 c 230 § 36; 1961 c 228 § 63.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.435 Seizure of fireworks. Any fireworks which are illegally sold, offered for sale, used, discharged, pos-

essed, or transported in violation of the provisions of this chapter or the rules or regulations of the chief of the Washington state patrol, through the director of fire protection, are subject to seizure by the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority. [2002 c 370 § 37; 1997 c 182 § 20; 1995 c 61 § 23; 1994 c 133 § 11; 1986 c 266 § 111; 1982 c 230 § 37; 1961 c 228 § 64.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.440 Seizure of fireworks—Proceedings for forfeiture—Disposal of confiscated fireworks. (1) In the event of seizure under RCW 70.77.435, proceedings for forfeiture shall be deemed commenced by the seizure. The chief of the Washington state patrol or a designee, through the director of fire protection or the agency conducting the seizure, under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the fireworks seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(2) If no person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or right to lawful possession of seized fireworks within thirty days of the seizure, the seized fireworks shall be deemed forfeited.

(3) If any person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or possession of the fireworks within thirty days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the seized fireworks is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to have the lawful right to possession of the seized fireworks. The chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, shall promptly return the fireworks to the claimant upon a determi-

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nation by the administrative law judge or court that the claimant is lawfully entitled to possession of the fireworks.

(4) When fireworks are forfeited under this chapter the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, may:

(a) Dispose of the fireworks by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under this section, whichever is later; or

(b) Sell the forfeited fireworks and chemicals used to make fireworks, that are legal for use and possession under this chapter, to wholesalers or manufacturers, authorized to possess and use such fireworks or chemicals under a license issued by the chief of the Washington state patrol, through the director of fire protection. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section may be retained by the agency conducting the seizure and used to offset the costs of seizure and/or storage costs of the seized fireworks. The remaining proceeds, if any, shall be deposited in the fire services trust fund and shall be used as follows: At least fifty percent is for a statewide public education campaign developed by the chief of the Washington state patrol, through the director of fire protection, and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks; and the remainder is for statewide efforts to enforce this chapter. [2002 c 370 § 38; 1997 c 182 § 21; 1995 c 61 § 24; 1994 c 133 § 12; 1986 c 266 § 112; 1984 c 249 § 29; 1961 c 228 § 65.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.450 Examination, inspection of books and premises. The chief of the Washington state patrol, through the director of fire protection, may make an examination of the books and records of any licensee, or other person relative to fireworks, and may visit and inspect the premises of any licensee he may deem at any time necessary for the purpose of enforcing the provisions of this chapter. The licensee, owner, lessee, manager, or operator of any such building or premises shall permit the chief of the Washington state patrol, through the director of fire protection, his or her deputies or salaried assistants, the local fire official, and their authorized representatives to enter and inspect the premises at the time and for the purpose stated in this section. [1997 c 182 § 22; 1994 c 133 § 13; 1986 c 266 § 113; 1961 c 228 § 67.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.455 Licensees to maintain and make available complete records—Exemption from public records act.

(1) All licensees shall maintain and make available to the chief of the Washington state patrol, through the director of fire protection, full and complete records showing all production, imports, exports, purchases, and sales of fireworks items by class.

(2) All records obtained and all reports produced, as required by this chapter, are not subject to disclosure through the public records act under chapter 42.56 RCW. [2005 c 274 § 337; 1997 c 182 § 23. Prior: 1995 c 369 § 54; 1995 c 61 § 25; 1986 c 266 § 114; 1982 c 230 § 38; 1961 c 228 § 68.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.460 Reports, payments deemed made when filed or paid or date mailed. When reports on fireworks transactions or the payments of license fees or penalties are required to be made on or by specified dates, they shall be deemed to have been made at the time they are filed with or paid to the chief of the Washington state patrol, through the director of fire protection, or, if sent by mail, on the date shown by the United States postmark on the envelope containing the report or payment. [1995 c 369 § 55; 1986 c 266 § 115; 1961 c 228 § 69.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.480 Prohibited transfers of fireworks. The transfer of fireworks ownership whether by sale at wholesale or retail, by gift or other means of conveyance of title, or by delivery of any fireworks to any person in the state who does not possess and present to the carrier for inspection at the time of delivery a valid license, where such license is required to purchase, possess, transport, or use fireworks, is prohibited. [1982 c 230 § 39; 1961 c 228 § 73.]

70.77.485 Unlawful possession of fireworks—Penalties. It is unlawful to possess any class or kind of fireworks in violation of this chapter. A violation of this section is:

(1) A misdemeanor if involving less than one pound of fireworks, exclusive of external packaging; or

(2) A gross misdemeanor if involving one pound or more of fireworks, exclusive of external packaging.

For the purposes of this section, "external packaging" means any materials that are not an integral part of the operative unit of fireworks. [1984 c 249 § 30; 1961 c 228 § 74.]

70.77.488 Unlawful discharge or use of fireworks—Penalty. It is unlawful for any person to discharge or use fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another. A violation of this section is a gross misdemeanor. [1984 c 249 § 37.]

70.77.495 Forestry permit to set off fireworks in forest, brush, fallow, etc. It is unlawful for any person to set off fireworks of any kind in forest, fallows, grass or brush covered land, either on his own land or the property of another, between April 15th and December 1st of any year, unless it is done under a written permit from the Washington state department of natural resources or its duly authorized agent, and in strict accordance with the terms of the permit and any other applicable law. [2002 c 370 § 39; 1988 c 128 § 11; 1961 c 228 § 76.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.510 Unlawful sales or transfers of display fireworks—Penalty. It is unlawful for any person knowingly to sell, transfer, or agree to sell or transfer any display fireworks to any person who is not a fireworks licensee as provided for by this chapter. A violation of this section is a gross misdemeanor. [2002 c 370 § 40; 1984 c 249 § 31; 1982 c 230 § 40; 1961 c 228 § 79.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.515 Unlawful sales or transfers of consumer fireworks—Penalty. (1) It is unlawful for any person to offer for sale, sell, or exchange for consideration, any consumer fireworks to a consumer or user other than at a fixed place of business of a retailer for which a license and permit have been issued.

(2) No licensee may sell any fireworks to any person under the age of sixteen.

(3) A violation of this section is a gross misdemeanor. [2002 c 370 § 41; 1984 c 249 § 32; 1982 c 230 § 41; 1961 c 228 § 80.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.517 Unlawful transportation of fireworks—Penalty. It is unlawful for any person, except in the course of continuous interstate transportation through any state, to transport fireworks from this state into any other state, or deliver them for transportation into any other state, or attempt so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such other state specifically prohibiting or regulating the use of fireworks. A violation of this section is a gross misdemeanor.

This section does not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of fireworks into a state for the use of United States agencies in the carrying out or the furtherance of their operations.

In the enforcement of this section, the definitions of fireworks contained in the laws of the respective states shall be applied.

As used in this section, the term "state" includes the several states, territories, and possessions of the United States, and the District of Columbia. [2002 c 370 § 42; 1984 c 249 § 34.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.520 Unlawful to permit fire nuisance where fireworks kept—Penalty. It is unlawful for any person to allow any combustibles to accumulate in any premises in which fireworks are stored or sold or to permit a fire nuisance to exist in such a premises. A violation of this section is a misdemeanor. [2002 c 370 § 43; 1984 c 249 § 33; 1961 c 228 § 81.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.525 Manufacture or sale of fireworks for out-of-state shipment. This chapter does not prohibit any manufacturer, wholesaler, dealer, or jobber, having a license and a permit secured under the provisions of this chapter, from manufacturing or selling any kind of fireworks for direct shipment out of this state. [1982 c 230 § 42; 1961 c 228 § 82.]

70.77.530 Nonprohibited acts—Signal purposes, forest protection. This chapter does not prohibit the use of torpedoes, flares, or fuses by motor vehicles, railroads, or other transportation agencies for signal purposes or illumination or for use in forest protection activities. [1961 c 228 § 83.]

70.77.535 Articles pyrotechnic, special effects for entertainment media. The assembling, compounding, use, and display of articles pyrotechnic or special effects in the production of motion pictures, radio or television productions, or live entertainment shall be under the direction and control of a pyrotechnic operator licensed by the state of Washington and who possesses a valid permit from the city or county. [2002 c 370 § 44; 1994 c 133 § 14; 1984 c 249 § 35; 1982 c 230 § 43; 1961 c 228 § 84.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.540 Penalty. Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter or any rules issued thereunder is guilty of a misdemeanor. [1984 c 249 § 36; 1961 c 228 § 85.]

70.77.545 Violation a separate, continuing offense. A person is guilty of a separate offense for each day during which he commits, continues, or permits a violation of any provision of, or any order, rule, or regulation made pursuant to this chapter. [1961 c 228 § 86.]

70.77.547 Civil enforcement not precluded. The inclusion in this chapter of criminal penalties does not preclude enforcement of this chapter through civil means. [1994 c 133 § 15.]

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.548 Attorney general may institute civil proceedings—Venue. Civil proceedings to enforce this chapter may be brought in the superior court of Thurston county or the county in which the violation occurred by the attorney general or the attorney of the city or county in which the violation occurred on his or her own motion or at the request of

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the chief of the Washington state patrol, through the director of fire protection. [2002 c 370 § 48.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.549 Civil penalty—Costs. In addition to criminal penalties, a person who violates this chapter is also liable for a civil penalty and for the costs incurred with enforcing this chapter and bringing the civil action, including court costs and reasonable investigative and attorneys' fees. [2002 c 370 § 49.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.550 Short title. This chapter shall be known and may be cited as the state fireworks law. [1961 c 228 § 87.]

70.77.555 Local permit and license fees—Limits. (1) A city or county may provide by ordinance for a fee in an amount sufficient to cover all legitimate costs for all needed permits, licenses, and authorizations from application to and through processing, issuance, and inspection, but in no case to exceed a total of one hundred dollars for any one retail sales permit for any one selling season in a year, whether June 28th through July 5th or December 27th through December 31st, or a total of two hundred dollars for both selling seasons.

(2) A city or county may provide by ordinance for a fee in an amount sufficient to cover all legitimate costs for all display permits, licenses, and authorizations from application to and through processing, issuance, and inspection, not to exceed actual costs and in no case more than a total of five thousand dollars for any one display permit. [2002 c 370 § 45; 1995 c 61 § 26; 1982 c 230 § 44; 1961 c 228 § 88.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.575 Chief of the Washington state patrol to provide list of consumer fireworks that may be sold to the public. (1) The chief of the Washington state patrol, through the director of fire protection, shall adopt by rule a list of the consumer fireworks that may be sold to the public in this state pursuant to this chapter. The chief of the Washington state patrol, through the director of fire protection, shall file the list by October 1st of each year with the code reviser for publication, unless the previously published list has remained current.

(2) The chief of the Washington state patrol, through the director of fire protection, shall provide the list adopted under subsection (1) of this section by November 1st of each year to all manufacturers, wholesalers, and importers licensed under this chapter, unless the previously distributed list has remained current. [2002 c 370 § 46; 1995 c 369 § 57; 1986 c 266 § 117; 1984 c 249 § 8.]

Severability—2002 c 370: See note following RCW 70.77.126.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.580 Retailers to post list of consumer fireworks. Retailers required to be licensed under this chapter shall post prominently at each retail location a list of the con-

sumer fireworks that may be sold to the public in this state pursuant to this chapter. The posted list shall be in a form approved by the chief of the Washington state patrol, through the director of fire protection. The chief of the Washington state patrol, through the director of fire protection, shall make the list available. [2002 c 370 § 47; 1995 c 369 § 58; 1986 c 266 § 118; 1984 c 249 § 9.]

Severability—2002 c 370: See note following RCW 70.77.126.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.900 Effective date—1961 c 228. This act shall take effect on January 1, 1962. [1961 c 228 § 90.]

70.77.910 Severability—1961 c 228. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 228 § 91.]

70.77.911 Severability—1982 c 230. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 230 § 45.]

70.77.912 Severability—1984 c 249. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 249 § 41.]

Chapter 70.79 RCW

BOILERS AND UNFIRED PRESSURE VESSELS

Sections

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70.79.010 Board of boiler rules—Members—Terms—Meetings. There is hereby created within this state a board of boiler rules, which shall hereafter be referred to as the board, consisting of five members who shall be appointed to the board by the governor, one for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. At the expiration of their respective terms of office, they, or their successors identifiable with the same interests respectively as hereinafter provided, shall be appointed for terms of four years each. The governor may at any time remove any member of the board for inefficiency or neglect of duty in office. Upon the death or incapacity of any member the governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his or her predecessor was identified. Of these five appointed members, one shall be representative of owners and users of boilers and unfired pressure vessels within the state, one shall be representative of the boiler or unfired pressure vessel manufacturers within the state, one shall be a representative of a boiler insurance company licensed to do business within the state, one shall be a mechanical engineer on the faculty of a recognized engineering college or a graduate mechanical engineer having equivalent experience, and one shall be representative of the boilermakers, stationary operating engineers, or pressure vessel operators. The board shall elect one of its members to serve as chair and, at the call of the chair, the board shall meet at least four times each year at the state capitol or other place designated by the board. [1999 c 183 § 1; 1951 c 32 § 1.]

70.79.020 Compensation and travel expenses. The members of the board shall be compensated in accordance with RCW 43.03.240 and shall receive travel expenses incurred while in the performance of their duties as members of the board, in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 105; 1975-'76 2nd ex.s. c 34 § 159; 1951 c 32 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.79.030 Duties of board. The board shall formulate definitions and rules for the safe and proper construction, installation, repair, use, and operation of boilers and for the safe and proper construction, installation, and repair of unfired pressure vessels in this state. The definitions and rules so formulated shall be based upon, and, at all times, follow the nationally or internationally accepted engineering

standards, formulae, and practices established and pertaining to boiler and unfired pressure vessel construction and safety, and the board may by resolution adopt existing published codifications thereof, and when so adopted the same shall be deemed incorporated into, and to constitute a part or the whole of the definitions and rules of the board. Amendments and interpretations to the code shall be enforceable immediately upon being adopted, to the end that the definitions and rules shall at all times follow nationally or internationally accepted engineering standards. However, all rules adopted by the board shall be adopted in compliance with the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended. [1999 c 183 § 2; 1972 ex.s. c 86 § 1; 1951 c 32 § 3.]

70.79.040 Rules and regulations—Scope. The board shall promulgate rules and regulations for the safe and proper installation, repair, use and operation of boilers, and for the safe and proper installation and repair of unfired pressure vessels which were in use or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter. [1951 c 32 § 4.]

70.79.050 Rules and regulations—Effect. (1) The rules and regulations formulated by the board shall have the force and effect of law, except that the rules applying to the construction of new boilers and unfired pressure vessels shall not be construed to prevent the installation thereof until twelve months after their approval by the director of the department of labor and industries.

(2) Subsequent amendments to the rules and regulations adopted by the board shall be permissive immediately and shall become mandatory twelve months after such approval. [1951 c 32 § 5.]

70.79.060 Construction, installation must conform to rules—Special installation and operating permits. (1) Except as provided in subsection (2) of this section, no power boiler, low pressure boiler, or unfired pressure vessel which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after twelve months from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective, unless the boiler or unfired pressure vessel is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case a special installation and operating permit may at its discretion be granted by the board.

(2) A special permit may also be granted for boilers and pressure vessels manufactured before 1951 which do not comply with the code requirements of the American Society of Mechanical Engineers adopted under this chapter, if the boiler or pressure vessel is operated exclusively for the purposes of public exhibition, and the board finds, upon inspection, that operation of the boiler or pressure vessel for such purposes is not unsafe. [1984 c 93 § 1; 1951 c 32 § 6.]

70.79.070 Existing installations—Conformance required—Miniature hobby boilers. (1) All boilers and unfired pressure vessels which were in use, or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition.

(3) A special permit may also be granted for miniature hobby boilers that do not comply with the code requirements of the American society of mechanical engineers adopted under this chapter and do not exceed any of the following limits:

- (a) Sixteen inches inside diameter of the shell;
- (b) Twenty square feet of total heating surface;
- (c) Five cubic feet of gross volume of vessel; and

(d) One hundred fifty p.s.i.g. maximum allowable working pressure, and if the boiler is to be operated exclusively not for commercial or industrial use and the department of labor and industries finds, upon inspection, that operation of the boiler for such purposes is not unsafe. [1995 c 41 § 1; 1993 c 193 § 1; 1951 c 32 § 7.]

70.79.080 Exemptions from chapter. This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

(1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;

(2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;

(3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;

(4) Air tanks installed on the right-of-way of railroads and used directly in the operation of trains;

(5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;

(6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge;

(7) Tanks used in connection with heating water for domestic and/or residential purposes;

(8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels;

(9) Tanks containing water with no air cushion and no direct source of energy that operate at a temperature of one hundred thirty degrees Fahrenheit or less;

(10) Electric boilers:

(a) Having a tank volume of not more than one and one-half cubic feet;

(b) Having a maximum allowable working pressure of one hundred pounds per square inch or less, with a pressure relief system to prevent excess pressure; and

(c) If constructed after June 10, 1994, constructed to American society of mechanical engineers code, or approved or otherwise certified by a nationally recognized or recognized foreign testing laboratory or construction code, including but not limited to Underwriters Laboratories, Edison Testing Laboratory, or Instituto Superiore Per La Prevenzione E La Sicurezza Del Lavoro;

(11) Electrical switchgear and control apparatus that have no external source of energy to maintain pressure and are located in restricted access areas under the control of an electric utility;

(12) Regardless of location, unfired pressure vessels and hot water heaters less than one and one-half cubic feet (11.25 gallons) in volume with a safety valve setting of one hundred fifty pounds per square inch gauge (psig) or less, or less than six inches in diameter and less than five cubic feet (37.5 gallons) in volume with a safety valve set at any pressure, or less than fifteen psig containing substances other than steam, lethal substances, or liquids with low flash points. [2005 c 22 § 1; 1999 c 183 § 3; 1996 c 72 § 1; 1994 c 64 § 2; 1986 c 97 § 1; 1951 c 32 § 8.]

Finding—Intent—1994 c 64: See note following RCW 70.79.095.

70.79.090 Exemptions from certain provisions. The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220 and 70.79.240 through 70.79.330:

(1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;

(2) Unfired pressure vessels that are part of fertilizer applicator rigs designed and used exclusively for fertilization in the conduct of agricultural operations;

(3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;

(4) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;

(5) Approved pressure vessels (hot water heaters, hot water storage tanks, hot water supply boilers, and hot water heating boilers listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, used for hot water supply at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred ten degrees Fahrenheit or less: PROVIDED, HOWEVER, That such pressure vessels are not installed in schools, child care cen-

ters, public and private hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(6) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families, or in public water systems as defined in RCW 70.119.020;

(7) Unfired pressure vessels containing liquified petroleum gases. [2005 c 22 § 2; 1999 c 183 § 4; 1988 c 254 § 20; 1983 c 3 § 174; 1972 ex.s. c 86 § 2; 1951 c 32 § 9.]

70.79.095 Espresso machines—Local regulation prohibited. A county, city, or other political subdivision of the state may not enforce any law specifically regulating the manufacture, installation, operation, maintenance, or inspection of any electric boiler exempt from this chapter by RCW 70.79.080(10). [1994 c 64 § 3.]

Finding—Intent—1994 c 64: "The legislature finds that small low-pressure boilers are found in devices such as espresso coffee machines and cleaning equipment common throughout Washington state. Such systems present little threat to public health and safety. Government regulation of such systems could impose a substantial burden on many small businesses and provide minimal public benefit. It is therefore the intent of the legislature to exempt these boilers from regulation under chapter 70.79 RCW and similar laws adopted by local governments." [1994 c 64 § 1.]

70.79.100 Chief inspector—Qualifications—Appointment, removal. (1) Within sixty days after the effective date of this chapter, and at any time thereafter that the office of the chief inspector may become vacant, the director of the department of labor and industries shall appoint a chief inspector who shall have had at the time of such appointment not less than ten years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels, as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the same kind of examination as that prescribed for deputy or special inspectors in RCW 70.79.170 to be chief inspector until his successor shall have been appointed and qualified. Such chief inspector may be removed for cause after due investigation by the board and its recommendation to the director of the department of labor and industries. [1951 c 32 § 10.]

70.79.110 Chief inspector—Duties in general. The chief inspector, if authorized by the director of the department of labor and industries is hereby charged, directed and empowered:

(1) To cause the prosecution of all violators of the provisions of this chapter;

(2) To issue, or to suspend, or revoke for cause, inspection certificates as provided for in RCW 70.79.290;

(3) To take action necessary for the enforcement of the laws of the state governing the use of boilers and unfired pressure vessels and of the rules and regulations of the board;

(4) To keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last recorded internal inspection of all

boilers and unfired pressure vessels to which this chapter applies;

(5) To publish and distribute, among manufacturers and others requesting them, copies of the rules and regulations adopted by the board. [1951 c 32 § 11.]

70.79.120 Deputy inspectors—Qualifications—Employment. The director shall employ deputy inspectors who shall have had at time of appointment not less than five years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels as a mechanical engineer, steam engineer, boiler-maker, or boiler inspector, and who shall have passed the examination provided for in RCW 70.79.170. [1994 c 164 § 27; 1951 c 32 § 12.]

70.79.130 Special inspectors—Qualifications—Commission. In addition to the deputy boiler inspectors authorized by RCW 70.79.120, the chief inspector shall, upon the request of any company authorized to insure against loss from explosion of boilers and unfired pressure vessels in this state, or upon the request of any company operating boilers or unfired pressure vessels in this state, issue to any inspectors of said company commissions as special inspectors, provided that each such inspector before receiving his or her commission shall satisfactorily pass the examination provided for in RCW 70.79.170, or, in lieu of such examination, shall hold a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state or a certificate as an inspector of boilers and unfired pressure vessels from the national board of boiler and pressure vessel inspectors. A commission as a special inspector for a company operating boilers or unfired pressure vessels in this state shall be issued only if, in addition to meeting the requirements stated herein, the inspector is continuously employed by the company for the purpose of making inspections of boilers or unfired pressure vessels used, or to be used, by such company. [1999 c 183 § 5; 1951 c 32 § 13.]

70.79.140 Special inspectors—Compensation—Continuance of commission. Special inspectors shall receive no salary from, nor shall any of their expenses be paid by the state, and the continuance of a special inspector's commission shall be conditioned upon his or her continuing in the employ of a boiler insurance company duly authorized as aforesaid or upon continuing in the employ of a company operating boilers or unfired pressure vessels in this state and upon his or her maintenance of the standards imposed by this chapter. [1999 c 183 § 6; 1951 c 32 § 14.]

70.79.150 Special inspectors—Inspections—Exempts from inspection fees. Special inspectors shall inspect all boilers and unfired pressure vessels insured or operated by their respective companies and, when so inspected, the owners and users of such insured boilers and unfired pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in RCW 70.79.330. [1999 c 183 § 7; 1951 c 32 § 15.]

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70.79.160 Report of inspection by special inspector—Filing. Each company employing special inspectors shall, within thirty days following each internal or external boiler or unfired pressure vessel inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms. [2005 c 22 § 3; 1999 c 183 § 8; 1951 c 32 § 16.]

70.79.170 Examinations for inspector's appointment or commission—Reexamination. Examinations for deputy or special inspectors shall be in writing and shall be held by the chief and a member of the board, or by at least two national board commissioned inspectors. Such examinations shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service. In case an applicant for an inspector's appointment or commission fails to pass the examination, he may appeal to the board for another examination which shall be given by the chief within ninety days. The record of an applicant's examination shall be accessible to said applicant and his employer. [2005 c 22 § 7; 1951 c 32 § 18.]

70.79.180 Suspension, revocation of inspector's commission—Grounds—Reinstatement. A commission may be suspended or revoked after due investigation and recommendation by the board to the director of the department of labor and industries for the incompetence or untrustworthiness of the holder thereof, or for wilful falsification of any matter or statement contained in his application or in a report of any inspection. A person whose commission has been suspended or revoked, except for untrustworthiness, shall be entitled to apply to the board for reinstatement or, in the case of a revocation, for a new examination and commission after ninety days from such revocation. [1951 c 32 § 19.]

70.79.190 Suspension, revocation of commission—Appeal. A person whose commission has been suspended or revoked shall be entitled to an appeal as provided in RCW 70.79.361 and to be present in person and/or represented by counsel on the hearing of the appeal. [2005 c 22 § 5; 1951 c 32 § 20.]

70.79.200 Lost or destroyed certificate or commission. If a certificate or commission is lost or destroyed, a new certificate or commission shall be issued in its place without another examination. [1951 c 32 § 21.]

70.79.210 Inspectors—Performance bond required. The chief inspector shall furnish a bond in the sum of five thousand dollars and each of the deputy inspectors, employed and paid by the state, shall furnish a bond in the sum of two thousand dollars conditioned upon the faithful performance of their duties and upon a true account of moneys handled by them respectively and the payment thereof to the proper recipient. The cost of said bonds shall be paid by the state. [1951 c 32 § 35.]

70.79.220 Inspections—Who shall make. The inspections herein required shall be made by the chief inspector, by

a deputy inspector, or by a special inspector provided for in this chapter. [1951 c 32 § 25.]

70.79.230 Access to premises by inspectors. The chief inspector, or any deputy or special inspector, shall have free access, during reasonable hours, to any premises in the state where a boiler or unfired pressure vessel is being constructed, or is being installed or operated, for the purpose of ascertaining whether such boiler or unfired pressure vessel is constructed, installed and operated in accordance with the provisions of this chapter. [1951 c 32 § 17.]

70.79.240 Inspection of boilers, unfired pressure vessels—Scope—Frequency. Each boiler and unfired pressure vessel used or proposed to be used within this state, except boilers or unfired pressure vessels exempt in RCW 70.79.080 and 70.79.090, shall be thoroughly inspected as to their construction, installation, condition and operation, as follows:

(1) Power boilers shall be inspected annually both internally and externally while not under pressure, except that the board may provide for longer periods between inspections where the contents, history, or operation of the power boiler or the material of which it is constructed warrant special consideration. Power boilers shall also be inspected annually externally while under pressure if possible;

(2) Low pressure heating boilers shall be inspected both internally and externally biennially where construction will permit;

(3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between inspections;

(4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board, but internal inspections shall not be required of unfired pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, head, or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the board or in accordance with standards substantially equivalent to the rules and regulations of the board, in effect at the time of manufacture. [1993 c 391 § 1; 1951 c 32 § 22.]

70.79.250 Inspection—Frequency—Grace period. In the case of power boilers a grace period of not more than two months longer than the period established by the board under RCW 70.79.240(1) may elapse between internal inspections of a boiler while not under pressure or between external inspections of a boiler while under pressure; in the case of low pressure heating boilers not more than twenty-six months shall elapse between inspections, and in the case of unfired pressure vessels not more than two months longer than the period between inspections prescribed by the board shall elapse between internal inspections. [1993 c 391 § 2; 1951 c 32 § 23.]

70.79.260 Inspection—Frequency—Modification by rules. The rules and regulations formulated by the board applying to the inspection of unfired pressure vessels may be modified by the board to reduce or extend the interval between required inspections where the contents of the vessel or the material of which it is constructed warrant special consideration. [1951 c 32 § 24.]

70.79.270 Hydrostatic test. If at any time a hydrostatic test shall be deemed necessary to determine the safety of a boiler or unfired pressure vessel, [the] same shall be made, at the discretion of the inspector, by the owner or user thereof. [1951 c 32 § 26.]

70.79.280 Inspection during construction. All boilers and all unfired pressure vessels to be installed in this state after the twelve-month period from the date upon which the rules of the board shall become effective shall be inspected during construction as required by the applicable rules of the board by an inspector authorized to inspect boilers and unfired pressure vessels in this state, or, if constructed outside of the state, by an inspector holding a certificate from the national board of boiler and pressure vessel inspectors, or a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state as provided in RCW 70.79.170. [1999 c 183 § 9; 1951 c 32 § 27.]

70.79.290 Inspection certificate—Contents—Posting—Fee. If, upon inspection, a boiler or pressure vessel is found to comply with the rules and regulations of the board, and upon the appropriate fee payment made directly to the chief inspector, as required by RCW 70.79.160 or 70.79.330, the chief inspector shall issue to the owner or user of such a boiler or pressure vessel an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be operated. Such inspection certificate shall be valid for not more than fourteen months from its date in the case of power boilers and twenty-six months in the case of low pressure heating boilers, and for not more than two months longer than the authorized inspection period in the case of pressure vessels. Certificates shall be posted under glass in the room containing the boiler or pressure vessel inspected. If the boiler or pressure vessel is not located within a building, the certificate shall be posted in a location convenient to the boiler or pressure vessel inspected or, in the case of a portable boiler or pressure vessel, the certificate shall be kept in a protective container to be fastened to the boiler or pressure vessel or in a tool box accompanying the boiler or pressure vessel. [1977 ex.s. c 175 § 1; 1970 ex.s. c 21 § 1; 1951 c 32 § 28.]

70.79.300 Inspection certificate invalid on termination of insurance. No inspection certificate issued for an insured boiler or unfired pressure vessel inspected by a special inspector shall be valid after the boiler or unfired pressure vessel, for which it was issued, shall cease to be insured by a company duly authorized by this state to carry such insurance. [1951 c 32 § 29.]

70.79.310 Inspection certificate—Suspension—Reinstatement. The chief inspector, or his or her authorized representative, may at any time suspend an inspection certificate when, in his or her opinion, the boiler or unfired pressure vessel for which it was issued cannot be operated without menace to the public safety, or when the boiler or unfired pressure vessel is found not to comply with the rules herein provided. A special inspector shall have corresponding powers with respect to inspection certificates for boilers or unfired pressure vessels insured or operated by the company employing him or her. Such suspension of an inspection certificate shall continue in effect until such boiler or unfired pressure vessel shall have been made to conform to the rules of the board, and until said inspection certificate shall have been reinstated. [1999 c 183 § 10; 1951 c 32 § 30.]

70.79.320 Operating without inspection certificate prohibited—Penalty. (1) It shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter.

(2) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(3) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(4) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice by certified mail to the violator that a hearing may be requested under RCW 70.79.361. The hearing shall not stay the effect of the penalty. [2005 c 22 § 6; 1986 c 97 § 2; 1951 c 32 § 31.]

70.79.330 Inspection fees—Expenses—Schedules—Waiver of provisions during state of emergency. The owner or user of a boiler or pressure vessel required by this chapter to be inspected by the chief inspector, or his deputy inspector, shall pay directly to the chief inspector, upon completion of inspection, fees and expenses in accordance with a schedule adopted by the board and approved by the director of the department of labor and industries in accordance with the requirements of the administrative procedure act, chapter 34.05 RCW.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the collection of fees under this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 205; 1977 ex.s. c 175 § 2; 1970 ex.s. c 21 § 2; 1963 c 217 § 1; 1951 c 32 § 32.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

70.79.350 Inspection fees—Receipts for—Pressure systems safety fund. The chief inspector shall give an official receipt for all fees required by chapter 70.79 RCW and

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shall transfer all sums so received to the treasurer of the state of Washington as ex officio custodian thereof and the treasurer shall place all sums in a special fund hereby created and designated as the "pressure systems safety fund". Funds shall be paid out upon vouchers duly and regularly issued therefor and approved by the director of the department of labor and industries. The treasurer, as ex officio custodian of the fund, shall keep an accurate record of any payments into the fund, and of all disbursements therefrom. The fund shall be used exclusively to defray only the expenses of administering chapter 70.79 RCW by the chief inspector as authorized by law and the expenses incident to the maintenance of the office. The fund shall be charged with its pro rata share of the cost of administering the fund which is to be determined by the director of financial management and by the director of the department of labor and industries.

During the 2003-2005 fiscal biennium, the legislature may transfer from the pressure systems safety fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 931; 1979 c 151 § 171; 1977 ex.s. c 175 § 3; 1951 c 32 § 34.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

70.79.361 Board determinations—Appeals. (1) No person, firm, partnership, corporation, or other entity may install or maintain any standards that violate this chapter. In cases where the interpretation and application of the installation or maintenance standards prescribed in this chapter is in dispute, the board shall determine the methods of installation or maintenance to be used in the particular case submitted for its decision. To appeal the board's decision, a person, firm, partnership, corporation, or other entity shall, in writing, notify the chief boiler inspector. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired.

(2) Any person, firm, partnership, corporation, or other entity wishing to appeal a penalty issued under this chapter may appeal to the board. The appeal shall be filed within twenty days after service of the notice of the penalty to the assessed party by filing a written notice of appeal with the chief boiler inspector. The hearing and review procedures shall be conducted by the board in accordance with chapter 34.05 RCW. [2005 c 22 § 4.]

70.79.900 Severability—1951 c 32. The fact that any section, subsection, sentence, clause, or phrase of this chapter is declared unconstitutional or invalid for any reason shall not affect the remaining portions of this chapter. [1951 c 32 § 37.]

Chapter 70.82 RCW

CEREBRAL PALSY PROGRAM

Sections

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 70.82.040 Diagnosis.
 70.82.050 Powers, duties, functions, unallocated funds, transferred.

70.82.010 Purpose and aim of program. It is hereby declared to be of vital concern to the state of Washington that all persons who are bona fide residents of the state of Washington and who are afflicted with cerebral palsy in any degree be provided with facilities and a program of service for medical care, education, treatment and training to enable them to become normal individuals. In order to effectively accomplish such purpose the department of social and health services, hereinafter called the department, is authorized and instructed and it shall be its duty to establish and administer facilities and a program of service for the discovery, care, education, hospitalization, treatment and training of educable persons afflicted with cerebral palsy, and to provide in connection therewith nursing, medical, surgical and corrective care, together with academic, occupational and related training. Such program shall extend to developing, extending and improving service for the discovery of such persons and for diagnostication and hospitalization and shall include cooperation with other agencies of the state charged with the administration of laws providing for any type of service or aid to handicapped persons, and with the United States government through any appropriate agency or instrumentality in developing, extending and improving such service, program and facilities. Such facilities shall include field clinics, diagnosis and observation centers, boarding schools, special classes in day schools, research facilities and such other facilities as shall be required to render appropriate aid to such persons. Existing facilities, buildings, hospitals and equipment belonging to or operated by the state of Washington shall be made available for these purposes when use therefor does not conflict with the primary use of such existing facilities. Existing buildings, facilities and equipment belonging to private persons, firms or corporations or to the United States government may be acquired or leased. [1974 ex.s. c 91 § 2; 1947 c 240 § 1; Rem. Supp. 1947 § 5547-1.]

Severability—1974 ex.s. c 91: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 91 § 8.]

Effective date—1974 ex.s. c 91: "This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That sections 2 through 5 of this 1974 amendatory act shall not take effect until July 1, 1974." [1974 ex.s. c 91 § 7.]

Severability—1947 c 240: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application." [1947 c 240 § 5.]

70.82.021 Cerebral palsy fund—Moneys transferred to general fund. All moneys in the state treasury to the credit of the state cerebral palsy fund on the first day of May, 1955, and all moneys thereafter paid into the state treasury for or to the credit of the state cerebral palsy fund, shall be and are hereby transferred to and placed in the general fund. [1955 c 326 § 1.]

70.82.022 Cerebral palsy fund—Appropriations to be paid from general fund. From and after the first day of April, 1955, all appropriations made by the thirty-fourth legislature from the state cerebral palsy fund shall be paid out of moneys in the general fund. [1955 c 326 § 2.]

70.82.023 Cerebral palsy fund—Abolished. From and after the first day of May, 1955, the state cerebral palsy fund is abolished. [1955 c 326 § 3.]

70.82.024 Cerebral palsy fund—Warrants to be paid from general fund. From and after the first day of May, 1955, all warrants drawn on the state cerebral palsy fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he is hereby directed to pay such warrants when presented from the general fund. [1955 c 326 § 4.]

70.82.030 Eligibility. Any resident of this state who is educable but so severely handicapped as the result of cerebral palsy that he is unable to take advantage of the regular system of free education of this state may be admitted to or be eligible for any service and facilities provided hereunder, provided such resident has lived in this state continuously for more than one year before his application for such admission or eligibility. [1947 c 240 § 3; Rem. Supp. 1947 § 5547-2.]

70.82.040 Diagnosis. Persons shall be admitted to or be eligible for the services and facilities provided herein only after diagnosis according to procedures and regulations established and approved for this purpose by the department of social and health services. [1974 ex.s. c 91 § 3; 1947 c 240 § 4; Rem. Supp. 1947 § 5547-3.]

Severability—Effective date—1974 ex.s. c 91: See notes following RCW 70.82.010.

70.82.050 Powers, duties, functions, unallocated funds, transferred. All powers, duties and functions of the superintendent of public instruction or the state board of education relating to the Cerebral Palsy Center as referred to in chapter 39, Laws of 1973 2nd ex. sess. shall be transferred to the department of social and health services as created in chapter 43.20A RCW, and all unallocated funds within any account to the credit of the superintendent of public instruction or the state board of education for purposes of such Cerebral Palsy Center shall be transferred effective July 1, 1974 to the credit of the department of social and health services, which department shall hereafter expend such funds for such Cerebral Palsy Center purposes as contemplated in the appropriations therefor. All employees of the Cerebral Palsy Center on July 1, 1974 who are classified employees under chapter 41.06 RCW, the state civil service law, shall be assigned and transferred to the department of social and health services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law. [1974 ex.s. c 91 § 4.]

Severability—Effective date—1974 ex.s. c 91: See notes following RCW 70.82.010.

Chapter 70.83 RCW

PHENYLKETONURIA AND OTHER
PREVENTABLE HERITABLE DISORDERS

Sections

- 70.83.010 Declaration of policy and purpose.
 70.83.020 Screening tests of newborn infants.
 70.83.023 Specialty clinics—Defined disorders—Fee for infant screening.
 70.83.030 Report of positive test to department of health.
 70.83.040 Services and facilities of state agencies made available to families and physicians.
 70.83.050 Rules and regulations to be adopted by state board of health.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.83.010 Declaration of policy and purpose. It is hereby declared to be the policy of the state of Washington to make every effort to detect as early as feasible and to prevent where possible phenylketonuria and other preventable heritable disorders leading to developmental disabilities or physical defects. [1977 ex.s. c 80 § 40; 1967 c 82 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.83.020 Screening tests of newborn infants. It shall be the duty of the department of health to require screening tests of all newborn infants before they are discharged from the hospital for the detection of phenylketonuria and other heritable or metabolic disorders leading to mental retardation or physical defects as defined by the state board of health: PROVIDED, That no such tests shall be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices. [1991 c 3 § 348; 1975-'76 2nd ex.s. c 27 § 1; 1967 c 82 § 2.]

70.83.023 Specialty clinics—Defined disorders—Fee for infant screening. The department has the authority to collect a fee of three dollars and fifty cents from the parents or other responsible party of each infant screened for congenital disorders as defined by the state board of health under RCW 70.83.020 to fund specialty clinics that provide treatment services for those with the defined disorders. The fee may be collected through the facility where a screening specimen is obtained. [2007 c 259 § 8.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.83.030 Report of positive test to department of health. Laboratories, attending physicians, hospital administrators, or other persons performing or requesting the performance of tests for phenylketonuria shall report to the department of health all positive tests. The state board of health by rule shall, when it deems appropriate, require that positive tests for other heritable and metabolic disorders covered by this chapter be reported to the state department of health by such persons or agencies requesting or performing such tests. [1991 c 3 § 349; 1979 c 141 § 113; 1967 c 82 § 3.]

70.83.040 Services and facilities of state agencies made available to families and physicians. When notified

of positive screening tests, the state department of health shall offer the use of its services and facilities, designed to prevent mental retardation or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the department, and other state and local agencies cooperating with the department in carrying out programs of detection and prevention of mental retardation and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds. [2007 c 259 § 7; 2005 c 518 § 938; 1999 c 76 § 1; 1991 c 3 § 350; 1979 c 141 § 114; 1967 c 82 § 4.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

70.83.050 Rules and regulations to be adopted by state board of health. The state board of health shall adopt rules and regulations necessary to carry out the intent of this chapter. [1967 c 82 § 5.]

Chapter 70.83C RCW

ALCOHOL AND DRUG USE TREATMENT
ASSOCIATED WITH PREGNANCY—
FETAL ALCOHOL SYNDROME

Sections

- 70.83C.005 Intent.
 70.83C.010 Definitions.
 70.83C.020 Prevention strategies.

70.83C.005 Intent. The legislature recognizes that the use of alcohol and other drugs during pregnancy can cause medical, psychological, and social problems for women and infants. The legislature further recognizes that communities are increasingly concerned about this problem and the associated costs to the mothers, infants, and society as a whole. The legislature recognizes that the department of health and other agencies are focusing on primary prevention activities to reduce the use of alcohol or drugs during pregnancy but few efforts have focused on secondary prevention efforts aimed at intervening in the lives of women already involved in the use of alcohol or other drugs during pregnancy. The legislature recognizes that the best way to prevent problems for chemically dependent pregnant women and their resulting children is to engage the women in alcohol or drug treatment. The legislature acknowledges that treatment professionals find pretreatment services to clients to be important in engaging women in alcohol or drug treatment. The legislature further recognizes that pretreatment services should be provided at locations where chemically dependent women are likely to be found, including public health clinics and domestic violence or homeless shelters. Therefore the legislature intends to prevent the detrimental effects of alcohol or other drug use to women and their resulting infants by promoting the establishment of local programs to help facilitate a woman's entry into alcohol or other drug treatment. These programs shall provide secondary prevention services and provision of opportu-

nities for immediate treatment so that women who seek help are welcomed rather than ostracized. [1993 c 422 § 3.]

Finding—1993 c 422: See note following RCW 66.16.110.

70.83C.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of alcohol use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(2) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(3) "Assessment" means an interview with an individual to determine if he or she is chemically dependent and in need of referral to an approved treatment program.

(4) "Chemically dependent individual" means someone suffering from alcoholism or drug addiction, or dependence on alcohol or one or more other psychoactive chemicals.

(5) "Department" means the department of social and health services.

(6) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one family or household member against another.

(7) "Domestic violence program" means a shelter or other program which provides services to victims of domestic violence.

(8) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruptions of social or economic functioning.

(9) "Family or household members" means a family or household member as defined in RCW 10.99.020.

(10) "Pretreatment" means the period of time prior to an individual's enrollment in alcohol or drug treatment.

(11) "Pretreatment services" means activities taking place prior to treatment that include identification of individuals using alcohol or drugs, education, assessment of their use, evaluation of need for treatment, referral to an approved treatment program, and advocacy on a client's behalf with social service agencies or others to ensure and coordinate a client's entry into treatment.

(12) "Primary prevention" means providing information about the effects of alcohol or drug use to individuals so they will avoid using these substances.

(13) "Secondary prevention" means identifying and obtaining an assessment on individuals using alcohol or other drugs for referral to treatment when indicated.

(14) "Secretary" means the secretary of the department of social and health services.

(15) "Treatment" means the broad range of emergency detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological,

and social service care, vocational rehabilitation, and career counseling, that may be extended to chemically dependent individuals and their families.

(16) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of chemically dependent individuals. [1993 c 422 § 4.]

Finding—1993 c 422: See note following RCW 66.16.110.

70.83C.020 Prevention strategies. The secretary shall develop and promote statewide secondary prevention strategies designed to increase the use of alcohol and drug treatment services by women of child-bearing age, before, during, and immediately after pregnancy. These efforts are conducted through the division of alcohol and substance abuse. The secretary shall:

(1) Promote development of three pilot demonstration projects in the state to be called pretreatment projects for women of child bearing age.

(2) Ensure that two of the projects are located in public health department clinics that provide maternity services and one is located with a domestic violence program.

(3) Hire three certified chemical dependency counselors to work as substance abuse educators in each of the three demonstration projects. The counselors may rotate between more than one clinic or domestic violence program. The chemical dependency counselor for the domestic violence program shall also be trained in domestic violence issues.

(4) Ensure that the duties and activities of the certified chemical dependency counselors include, at a minimum, the following:

(a) Identifying substance-using pregnant women in the health clinics and domestic violence programs;

(b) Educating the women and agency staff on the effects of alcohol or drugs on health, pregnancy, and unborn children;

(c) Determining the extent of the women's substance use;

(d) Evaluating the women's need for treatment;

(e) Making referrals for chemical dependency treatment if indicated;

(f) Facilitating the women's entry into treatment; and

(g) Advocating on the client's behalf with other social service agencies or others to ensure and coordinate clients into treatment.

(5) Ensure that administrative costs of the department are limited to ten percent of the funds appropriated for the project. [1993 c 422 § 5.]

Finding—1993 c 422: See note following RCW 66.16.110.

Chapter 70.83E RCW

PRENATAL NEWBORN SCREENING FOR EXPOSURE TO HARMFUL DRUGS

Sections

70.83E.010 Declaration—Policy.

70.83E.020 Screening criteria, training protocols—Development of.

70.83E.030 Department of health—Duties.

70.83E.010 Declaration—Policy. The policy of the state of Washington is to make every effort to detect as early

as feasible and to prevent where possible preventable disorders resulting from parental use of alcohol and drugs. [1998 c 93 § 1.]

70.83E.020 Screening criteria, training protocols—Development of. The department of health, in consultation with appropriate medical professionals, shall develop screening criteria for use in identifying pregnant or lactating women addicted to drugs or alcohol who are at risk of producing a drug-affected baby. The department shall also develop training protocols for medical professionals related to the identification and screening of women at risk of producing a drug-affected baby. [1998 c 93 § 2.]

70.83E.030 Department of health—Duties. The department of health shall investigate the feasibility of medical protocols for laboratory testing or other screening of newborn infants for exposure to alcohol or drugs. The department of health shall consider how to improve the current system with respect to testing, considering such variables as whether such testing is available, its cost, which entity is currently responsible for ordering testing, and whether testing should be mandatory or targeted. [1998 c 93 § 3.]

Chapter 70.84 RCW

BLIND, HANDICAPPED, AND DISABLED PERSONS—"WHITE CANE LAW"

Sections

70.84.010	Declaration—Policy.
70.84.020	"Dog guide" defined.
70.84.021	"Service animal" defined.
70.84.040	Precautions for drivers of motor vehicles approaching pedestrian who is using a white cane, dog guide, or service animal.
70.84.050	Handicapped pedestrians not carrying white cane or using dog guide—Rights and privileges.
70.84.060	Unauthorized use of white cane, dog guide, or service animal.
70.84.070	Penalty for violations.
70.84.080	Employment of blind or other handicapped persons in public service.
70.84.900	Short title.

Dog guide or service animal, interfering with: RCW 9.91.170.

70.84.010 Declaration—Policy. The legislature declares:

(1) It is the policy of this state to encourage and enable the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled to participate fully in the social and economic life of the state, and to engage in remunerative employment.

(2) As citizens, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places.

(3) The blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public

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is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. [1980 c 109 § 1; 1969 c 141 § 1.]

70.84.020 "Dog guide" defined. For the purpose of this chapter, the term "dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons. [1997 c 271 § 18; 1980 c 109 § 2; 1969 c 141 § 2.]

70.84.021 "Service animal" defined. For the purpose of this chapter, "service animal" means an animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability. [1997 c 271 § 19; 1985 c 90 § 1.]

70.84.040 Precautions for drivers of motor vehicles approaching pedestrian who is using a white cane, dog guide, or service animal. The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white in color (with or without a red tip), a totally or partially blind or hearing impaired pedestrian using a dog guide, or an otherwise physically disabled person using a service animal shall take all necessary precautions to avoid injury to such pedestrian. Any driver who fails to take such precaution shall be liable in damages for any injury caused such pedestrian. It shall be unlawful for the operator of any vehicle to drive into or upon any crosswalk while there is on such crosswalk, such pedestrian, crossing or attempting to cross the roadway, if such pedestrian is using a white cane, using a dog guide, or using a service animal. The failure of any such pedestrian so to signal shall not deprive him of the right-of-way accorded him by other laws. [1997 c 271 § 20; 1985 c 90 § 3; 1980 c 109 § 4; 1971 ex.s. c 77 § 1; 1969 c 141 § 4.]

70.84.050 Handicapped pedestrians not carrying white cane or using dog guide—Rights and privileges. A totally or partially blind pedestrian not carrying a white cane or a totally or partially blind or hearing impaired pedestrian not using a dog guide in any of the places, accommodations, or conveyances listed in RCW 70.84.010, shall have all of the rights and privileges conferred by law on other persons. [1997 c 271 § 21; 1980 c 109 § 5; 1969 c 141 § 5.]

70.84.060 Unauthorized use of white cane, dog guide, or service animal. It shall be unlawful for any pedestrian who is not totally or partially blind to use a white cane or any pedestrian who is not totally or partially blind or is not hearing impaired to use a dog guide or any pedestrian who is not otherwise physically disabled to use a service animal in any of the places, accommodations, or conveyances listed in RCW 70.84.010 for the purpose of securing the rights and privileges accorded by the chapter to totally or partially blind, hearing impaired, or otherwise physically disabled people. [1997 c 271 § 22; 1985 c 90 § 4; 1980 c 109 § 6; 1969 c 141 § 6.]

70.84.070 Penalty for violations. Any person or persons, firm or corporation, or the agent of any person or per-

sons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities enumerated in RCW 70.84.010, or otherwise interferes with the rights of a totally or partially blind, hearing impaired, or otherwise physically disabled person as set forth in RCW 70.84.010 shall be guilty of a misdemeanor. [1985 c 90 § 5; 1980 c 109 § 7; 1969 c 141 § 7.]

70.84.080 Employment of blind or other handicapped persons in public service. In accordance with the policy set forth in RCW 70.84.010, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled shall be employed in the state service, in the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved. [1980 c 109 § 8; 1969 c 141 § 9.]

70.84.900 Short title. This chapter shall be known and may be cited as the "White Cane Law." [1969 c 141 § 11.]

Chapter 70.85 RCW

EMERGENCY PARTY LINE TELEPHONE CALLS— LIMITING TELEPHONE COMMUNICATION IN HOSTAGE SITUATIONS

Sections

70.85.010	Definitions.
70.85.020	Refusal to yield line—Penalty.
70.85.030	Request for line on pretext of emergency—Penalty.
70.85.040	Telephone directories—Notice.
70.85.100	Authority to isolate telephones in barricade or hostage situation—Definitions.
70.85.110	Telephone companies to provide contacting information.
70.85.120	Liability of telephone company.
70.85.130	Applicability.

Call to operator without charge or coin insertion be provided: RCW 80.36.225.

Fraud in operating coin-box telephone: RCW 9.26A.120.

Telecommunications companies: Chapter 80.36 RCW.

70.85.010 Definitions. "Party line" means a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

"Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential. [1953 c 25 § 1.]

70.85.020 Refusal to yield line—Penalty. Any person who shall wilfully refuse to yield or surrender the use of a party line to another person for the purpose of permitting such other person to report a fire or summon police, medical or other aid in case of emergency, shall be deemed guilty of a misdemeanor. [1953 c 25 § 2.]

70.85.030 Request for line on pretext of emergency—Penalty. Any person who shall ask for or request the use of a party line on pretext that an emergency exists, knowing that

no emergency in fact exists, shall be deemed guilty of a misdemeanor. [1953 c 25 § 3.]

70.85.040 Telephone directories—Notice. After September 9, 1953, every telephone directory thereafter distributed to the members of the general public shall contain a notice which explains this chapter, such notice to be printed in type which is no smaller than any other type on the same page and to be preceded by the word "warning": PROVIDED, That the provisions of this section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories. [1953 c 25 § 4.]

70.85.100 Authority to isolate telephones in barricade or hostage situation—Definitions. (1) The supervising law enforcement official having jurisdiction in a geographical area who reasonably believes that a person is barricaded, or one or more persons are holding another person or persons hostage within that area may order a telephone company employee designated pursuant to RCW 70.85.110 to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communications between the barricaded person or hostage holder and any person other than a peace officer or a person authorized by the peace officer.

(2) As used in this section:

(a) A "hostage holder" is one who commits or attempts to commit any of the offenses described in RCW 9A.40.020, 9A.40.030, or 9A.40.040; and

(b) A "barricaded person" is one who establishes a perimeter around an area from which others are excluded and either:

(i) Is committing or is immediately fleeing from the commission of a violent felony; or

(ii) Is threatening or has immediately prior threatened a violent felony or suicide; or

(iii) Is creating or has created the likelihood of serious harm within the meaning of chapter 71.05 RCW relating to mental illness. [1985 c 260 § 1; 1979 c 28 § 1.]

70.85.110 Telephone companies to provide contacting information. The telephone company providing service within the geographical jurisdiction of a law enforcement unit shall inform law enforcement agencies of the address and telephone number of its security office or other designated office to provide all required assistance to law enforcement officials to carry out the purpose of RCW 70.85.100 through 70.85.130. The designation shall be in writing and shall provide the telephone number or numbers through which the security representative or other telephone company official can be reached at any time. This information shall be served upon all law enforcement units having jurisdiction in a geographical area. Any change in address or telephone number or identity of the telephone company office to be contacted to provide required assistance shall be served upon all law enforcement units in the affected geographical area. [1979 c 28 § 2.]

70.85.120 Liability of telephone company. Good faith reliance on an order given under RCW 70.85.100 through 70.85.130 by a supervising law enforcement official shall constitute a complete defense to any civil or criminal action arising out of such ordered cutting, rerouting or diverting of telephone lines. [1979 c 28 § 3.]

70.85.130 Applicability. RCW 70.85.100 through 70.85.120 will govern notwithstanding the provisions of any other section of this chapter and notwithstanding the provisions of chapter 9.73 RCW. [1979 c 28 § 4.]

Chapter 70.86 RCW

EARTHQUAKE STANDARDS FOR CONSTRUCTION

(Formerly: Earthquake resistance standards)

Sections

70.86.010	Definitions.
70.86.020	Buildings to resist earthquake intensities.
70.86.030	Standards for design and construction.
70.86.040	Penalty.

70.86.010 Definitions. The word "person" includes any individual, corporation, or group of two or more individuals acting together for a common purpose, whether acting in an individual, representative, or official capacity. [1955 c 278 § 1.]

70.86.020 Buildings to resist earthquake intensities. Hospitals, schools, except one story, portable, frame school buildings, buildings designed or constructed as places of assembly accommodating more than three hundred persons; and all structures owned by the state, county, special districts, or any municipal corporation within the state of Washington shall hereafter be designed and constructed to resist probable earthquake intensities at the location thereof in accordance with RCW 70.86.030, unless other standards of design and construction for earthquake resistance are prescribed by enactments of the legislative authority of counties, special districts, and/or municipal corporations in which the structure is constructed. [1955 c 278 § 2.]

70.86.030 Standards for design and construction. Structural frames, exterior walls, and all appendages of the buildings described in RCW 70.86.020, whose collapse will endanger life and property shall be designed and constructed to withstand horizontal forces from any direction of not less than the following fractions of the weight of the structure and its parts acting at the centers of gravity:

Western Washington 0.05. [1955 c 278 § 3.]

70.86.040 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor: PROVIDED, That any person causing such a building to be built shall be entitled to rely on the certificate of a licensed professional engineer and/or registered architect that the standards of design set forth above have been met. [1955 c 278 § 4.]

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Chapter 70.87 RCW

ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

Sections

70.87.010	Definitions.
70.87.020	Conveyances to be safe and in conformity with law.
70.87.030	Rules—Waivers during state of emergency.
70.87.034	Additional powers of department.
70.87.036	Powers of attorney general.
70.87.040	Privately and publicly owned conveyances are subject to chapter.
70.87.050	Conveyances in buildings occupied by state, county, or political subdivision.
70.87.060	Responsibility for operation and maintenance of equipment and for periodic tests.
70.87.070	Serial numbers.
70.87.080	Permits—When required—Application for—Posting.
70.87.090	Operating permits—Limited permits—Duration—Posting.
70.87.100	Conveyance work to be performed by elevator contractors—Acceptance tests—Inspections.
70.87.110	Exceptions authorized.
70.87.120	Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Penalties—Investigation by department—Waiver of provisions during state of emergency.
70.87.125	Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit.
70.87.140	Operation without permit enjoined.
70.87.145	Order to discontinue operation—Notice—Conditions—Contents of order—Rescission of order—Violation—Penalty—Random inspections.
70.87.170	Review of department action in accordance with administrative procedure act.
70.87.180	Violations.
70.87.185	Penalty for violation of chapter—Rules—Notice.
70.87.190	Accidents—Report and investigation—Cessation of use—Removal of damaged parts.
70.87.200	Exemptions.
70.87.205	Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement.
70.87.210	Disposition of revenue.
70.87.220	Elevator safety advisory committee.
70.87.230	Conveyance work—Who may perform.
70.87.240	Elevator contractor license, elevator mechanic license—Qualifications—Reciprocity.
70.87.245	Material lift mechanic license.
70.87.250	Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records.
70.87.260	Liability not limited or assumed by state.
70.87.270	Exemptions from licensure.
70.87.280	License categories—Rules.
70.87.290	Rules—Effective date.
70.87.305	Private residence conveyances—Licensing requirements—Rules.
70.87.900	Severability.

State building code: Chapter 19.27 RCW.

70.87.010 Definitions. For the purposes of this chapter, except where a different interpretation is required by the context:

- (1) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise;
- (2) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, moving walk, and other elevating devices, as defined in this section;
- (3) "Existing installations" means an installation defined as an "installation, existing" in this chapter or in rules adopted under this chapter;
- (4) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) does not have a landing opening into the building at its upper limit of travel, and (iii) is not used to carry automobiles;

(d) "Hand elevator" means an elevator utilizing manual energy to move the car;

(e) "Inclined elevator" means an elevator that travels at an angle of inclination of seventy degrees or less from the horizontal;

(f) "Multideck elevator" means an elevator having two or more compartments located one immediately above the other;

(g) "Observation elevator" means an elevator designed to permit exterior viewing by passengers while the car is traveling;

(h) "Power elevator" means an elevator utilizing energy other than gravitational or manual to move the car;

(i) "Electric elevator" means an elevator where the energy is applied by means of an electric driving machine;

(j) "Hydraulic elevator" means an elevator where the energy is applied by means of a liquid under pressure in a cylinder equipped with a plunger or piston;

(k) "Direct-plunger hydraulic elevator" means a hydraulic elevator having a plunger or cylinder directly attached to the car frame or platform;

(l) "Electro-hydraulic elevator" means a direct-plunger elevator where liquid is pumped under pressure directly into the cylinder by a pump driven by an electric motor;

(m) "Maintained-pressure hydraulic elevator" means a direct-plunger elevator where liquid under pressure is available at all times for transfer into the cylinder;

(n) "Roped hydraulic elevator" means a hydraulic elevator having its plunger or piston connected to the car with wire ropes or indirectly coupled to the car by means of wire ropes and sheaves;

(o) "Rack and pinion elevator" means a power elevator, with or without a counterweight, that is supported, raised, and lowered by a motor or motors that drive a pinion or pinions on a stationary rack mounted in the hoistway;

(p) "Screw column elevator" means a power elevator having an uncounterweighted car that is supported, raised, and lowered by means of a screw thread;

(q) "Rooftop elevator" means a power passenger or freight elevator that operates between a landing at roof level and one landing below and opens onto the exterior roof level of a building through a horizontal opening;

(r) "Special purpose personnel elevator" means an elevator that is limited in size, capacity, and speed, and permanently installed in structures such as grain elevators, radio antenna, bridge towers, underground facilities, dams, power plants, and similar structures to provide vertical transporta-

tion of authorized personnel and their tools and equipment only;

(s) "Workmen's construction elevator" means an elevator that is not part of the permanent structure of a building and is used to raise and lower workers and other persons connected with, or related to, the building project;

(t) "Boat launching elevator" means a conveyance that serves a boat launching structure and a beach or water surface and is used for the carrying or handling of boats in which people ride;

(u) "Limited-use/limited-application elevator" means a power passenger elevator where the use and application is limited by size, capacity, speed, and rise, intended principally to provide vertical transportation for people with physical disabilities;

(5) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers;

(6) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials;

(7) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which persons are not normally stationed on any level except the receiving level;

(8) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion;

(9) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor;

(10) "Department" means the department of labor and industries;

(11) "Director" means the director of the department or his or her representative;

(12) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200;

(13) "Permit" means a permit issued by the department: (a) To perform conveyance work, other than maintenance; or (b) to operate a conveyance;

(14) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual;

(15) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings;

(16) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another;

(17) "Material hoist" means a hoist that is not a part of a permanent structure used to raise or lower materials during construction, alteration, or demolition. It is not applicable to the temporary use of permanently installed personnel elevators as material hoists;

(18) "Material lift" means a lift that (a) is permanently installed, (b) is comprised of a car or platform that moves in guides, (c) serves two or more floors or landings, (d) travels in a vertical or inclined position, (e) is an isolated, self-contained lift, (f) is not part of a conveying system, and (g) is installed in a commercial or industrial area not accessible to the general public or intended to be operated by the general public;

(19) "Casket lift" means a lift that (a) is installed at a mortuary, (b) is designed exclusively for carrying of caskets, (c) moves in guides in a basically vertical direction, and (d) serves two or more floors or landings;

(20) "Wheelchair lift" means a lift that travels in a vertical or inclined direction and is designed for use by physically handicapped persons;

(21) "Stairway chair lift" means a lift that travels in a basically inclined direction and is designed for use by physically handicapped persons;

(22) "Personnel hoist" means a hoist that is not a part of a permanent structure, is installed inside or outside buildings during construction, alteration, or demolition, and used to raise or lower workers and other persons connected with, or related to, the building project. The hoist may also be used for transportation of materials;

(23) "Advisory committee" means the elevator advisory committee as described in this chapter;

(24) "Elevator helper/apprentice" means a person who works under the general direction of a licensed elevator mechanic. A license is not required to be an elevator helper/apprentice;

(25) "Elevator contractor" means any person, firm, or company that possesses an elevator contractor license in accordance with this chapter and who is engaged in the business of performing conveyance work covered by this chapter;

(26) "Elevator mechanic" means any person who possesses an elevator mechanic license in accordance with this chapter and who is engaged in performing conveyance work covered by this chapter;

(27) "License" means a written license, duly issued by the department, authorizing a person, firm, or company to carry on the business of performing conveyance work or to perform conveyance work covered by this chapter;

(28) "Elevator contractor license" means a license that is issued to an elevator contractor who has met the qualification requirements established in RCW 70.87.240;

(29) "Elevator mechanic license" means a license that is issued to a person who has met the qualification requirements established in RCW 70.87.240;

(30) "Licensee" means the elevator mechanic or elevator contractor;

(31) "Conveyance work" means the alteration, construction, dismantling, erection, installation, maintenance, relocation, and wiring of a conveyance;

(32) "Alteration" means any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement;

(33) "Maintenance" means a process of routine examination, lubrication, cleaning, servicing, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with this chapter. "Maintenance" includes repair and replacement, but not alteration;

(34) "Repair" means the reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with this chapter;

(35) "Replacement" means the substitution of a device, component, and/or subsystem in its entirety with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with this chapter;

(36) "Public agency" means a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision, or other public agency and includes any department, bureau, office, board, commission or institution of such public entities;

(37) "Platform" means a rigid surface that is maintained in a horizontal position at all times when in use, and upon which passengers stand or a load is carried. [2003 c 143 § 9; 2002 c 98 § 1; 1998 c 137 § 1; 1997 c 216 § 1; 1983 c 123 § 1; 1973 1st ex.s. c 52 § 9; 1969 ex.s. c 108 § 1; 1963 c 26 § 1.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

70.87.020 Conveyances to be safe and in conformity with law. (1) The purpose of this chapter is to provide for safety of life and limb, to promote safety awareness, and to ensure the safe design, mechanical and electrical operation, and inspection of conveyances, and performance of conveyance work, and all such operation, inspection, and conveyance work subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington, and all orders, and rules of the department. The use of unsafe and defective conveyances imposes a substantial probability of serious and preventable injury to employees and the public exposed to unsafe conditions. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state. Personnel performing work covered by this chapter must, by documented training or experience or both, be familiar with the operation and safety functions of the components and equipment. Training and experience must include, but not be limited to, recognizing the safety hazards and performing the procedures to which the personnel performing conveyance work covered by this chapter are assigned in conformance with the requirements of this chapter. This chapter establishes the minimum standards for personnel performing conveyance work.

(2) This chapter is not intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability, and safety to those required by this chapter, provided that there is technical documentation to demonstrate the equivalency of the system, method, or device, as prescribed in this chapter and the rules adopted under this chapter.

(3) In any suit for damages allegedly caused by a failure or malfunction of the conveyance, conformity with the rules

of the department is prima facie evidence that the conveyance work, operation, and inspection is reasonably safe to persons and property. [2003 c 143 § 10; 2002 c 98 § 2; 1983 c 123 § 2; 1963 c 26 § 2.]

Part headings and captions not law—2003 c 143: "Part headings and captions used in this act are not any part of the law." [2003 c 143 § 23.]

Effective date—2003 c 143: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 143 § 24.]

70.87.030 Rules—Waivers during state of emergency. The department shall adopt rules governing the mechanical and electrical operation, acceptance tests, conveyance work, operation, and inspection that are necessary and appropriate and shall also adopt minimum standards governing existing installations. In the execution of this rule-making power and before the adoption of rules, the department shall consider the rules for safe conveyance work, operation, and inspection, including the American National Standards Institute Safety Code for Personnel and Material Hoists, the American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, and Escalators, and any amendatory or supplemental provisions thereto. The department by rule shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter limits the authority of the department to prescribe or enforce general or special safety orders as provided by law.

The department may consult with: Engineering authorities and organizations concerned with standard safety codes; rules and regulations governing conveyance work, operation, and inspection; and the qualifications that are adequate, reasonable, and necessary for the elevator mechanic, contractor, and inspector.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the collection of fees under this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 206; 2003 c 143 § 11; 2002 c 98 § 3; 1998 c 137 § 2; 1994 c 164 § 28; 1983 c 123 § 3; 1973 1st ex.s. c 52 § 10; 1971 c 66 § 1; 1970 ex.s. c 22 § 1; 1963 c 26 § 3.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

70.87.034 Additional powers of department. The department also has the following powers:

(1) The department may adopt any rules necessary or helpful for the department to implement and enforce this chapter.

(2) The director may issue subpoenas for the production of persons, papers, or information in all proceedings and investigations within the scope of this chapter. If a person refuses to obey a subpoena, the director, through the attorney

general, may ask the superior court to order the person to obey the subpoena.

(3) The director may take the oral or written testimony of any person. The director has the power to administer oaths.

(4) The director may make specific decisions, cease and desist orders, other orders, and rulings, including demands and findings. [1983 c 123 § 19.]

70.87.036 Powers of attorney general. On request of the department, the attorney general may:

(1) File suit to collect a penalty assessed by the department;

(2) Seek a civil injunction, show cause order, or contempt order against the person who repeatedly violates a provision of this chapter;

(3) Seek an ex parte inspection warrant if the person refuses to allow the department to inspect a conveyance;

(4) File suit asking the court to enforce a cease and desist order or a subpoena issued by the director under this chapter; and

(5) Take any other legal action appropriate and necessary for the enforcement of the provisions of this chapter.

All suits shall be brought in the district or superior court of the district or county in which the defendant resides or transacts business. In any suit or other legal action, the department may ask the court to award costs and attorney's fees. If the department prevails, the court shall award the appropriate costs and attorney's fees. [1983 c 123 § 20.]

70.87.040 Privately and publicly owned conveyances are subject to chapter. All privately owned and publicly owned conveyances are subject to the provisions of this chapter except as specifically excluded by this chapter. [1983 c 123 § 4; 1963 c 26 § 4.]

70.87.050 Conveyances in buildings occupied by state, county, or political subdivision. The conveyance work on, and the operation and inspection of any conveyance located in, or used in connection with, any building owned by the state, a county, or a political subdivision, other than those located within and owned by a city having an elevator code, shall be under the jurisdiction of the department. [2003 c 143 § 12; 2002 c 98 § 4; 1983 c 123 § 5; 1969 ex.s. c 108 § 2; 1963 c 26 § 5.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.060 Responsibility for operation and maintenance of equipment and for periodic tests. (1) The person, elevator contractor, or public agency performing conveyance work is responsible for operation and maintenance of the conveyance until the department has issued an operating permit for the conveyance, except during the period when a limited operating permit in accordance with RCW 70.87.090(2) is in effect, and is also responsible for all tests of a new, relocated, or altered conveyance until the department has issued an operating permit for the conveyance.

(2) The owner or his or her duly appointed agent shall be responsible for the safe operation and proper maintenance of the conveyance after the department has issued the operating

permit and also during the period of effectiveness of any limited operating permit in accordance with RCW 70.87.090(2). The owner shall be responsible for all periodic tests required by the department. [2003 c 143 § 13; 1983 c 123 § 6; 1963 c 26 § 6.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.070 Serial numbers. All new and existing conveyances shall have a serial number painted on or attached as directed by the department. This serial number shall be assigned by the department and shown on all required permits. [1983 c 123 § 7; 1963 c 26 § 7.]

70.87.080 Permits—When required—Application for—Posting. (1) A permit shall be obtained from the department before performing work, other than maintenance, on a conveyance under the jurisdiction of the department.

(2) The installer of the conveyance shall submit an application for the permit in duplicate, in a form that the department may prescribe.

(3) The permit issued by the department shall be kept posted conspicuously at the site of installation.

(4) A permit is not required for maintenance.

(5) After the effective date of rules adopted under this chapter establishing licensing requirements, the department may issue a permit for conveyance work only to an elevator contractor unless the permit is for conveyance work on private residence conveyances. After July 1, 2004, the department may not issue a permit for conveyance work on private residence conveyances to a person other than an elevator contractor. [2003 c 143 § 14; 1983 c 123 § 8; 1963 c 26 § 8.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.090 Operating permits—Limited permits—Duration—Posting. (1) An operating permit is required for each conveyance operated in the state of Washington except during its erection by the person or firm responsible for its installation. A permit issued by the department shall be kept conspicuously posted near the conveyance.

(2) The department may permit the temporary use of a conveyance during its installation or alteration, under the authority of a limited permit issued by the department for each class of service. Limited permits shall be issued for a period not to exceed thirty days and may be renewed at the discretion of the department. This limited-use permit is to provide transportation for construction personnel, tools, and materials only. Where a limited permit is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted. [1998 c 137 § 3; 1983 c 123 § 9; 1963 c 26 § 9.]

70.87.100 Conveyance work to be performed by elevator contractors—Acceptance tests—Inspections. (1) All conveyance installations, relocations, or alterations must be performed by an elevator contractor employing an elevator mechanic.

(2) The elevator contractor employing an elevator mechanic performing such conveyance work shall notify the department before completion of the work, and shall subject

the new, moved, or altered portions of the conveyance to the acceptance tests.

(3) All new, altered, or relocated conveyances for which a permit has been issued, shall be inspected for compliance with the requirements of this chapter by an authorized representative of the department. The authorized representative shall also witness the test specified. [2003 c 143 § 15; 2002 c 98 § 5; 1983 c 123 § 11; 1963 c 26 § 10.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.110 Exceptions authorized. The requirements of this chapter are intended to apply to all conveyances except as modified or waived by the department. They are intended to be modified or waived whenever any requirements are shown to be impracticable, such as involving expense not justified by the protection secured. However, the department shall not allow the modification or waiver unless equivalent or safer construction is secured in other ways. An exception applies only to the installation covered by the application for waiver. [1983 c 123 § 12; 1963 c 26 § 11.]

70.87.120 Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Penalties—Investigation by department—Waiver of provisions during state of emergency. (1) The department shall appoint and employ inspectors, as may be necessary to carry out the provisions of this chapter, under the provisions of the rules adopted by the Washington personnel resources board in accordance with chapter 41.06 RCW.

(2)(a) Except as provided in (b) of this subsection, the department shall cause all conveyances to be inspected and tested at least once each year. Inspectors have the right during reasonable hours to enter into and upon any building or premises in the discharge of their official duties, for the purpose of making any inspection or testing any conveyance contained thereon or therein. Inspections and tests shall conform with the rules adopted by the department. The department shall inspect all installations before it issues any initial permit for operation. Permits shall not be issued until the fees required by this chapter have been paid.

(b)(i) Private residence conveyances operated exclusively for single-family use shall be inspected and tested only when required under RCW 70.87.100 or as necessary for the purposes of subsection (4) of this section and shall be exempt from RCW 70.87.090 unless an annual inspection and operating permit are requested by the owner.

(ii) The department may perform additional inspections of a private residence conveyance at the request of the owner of the conveyance. Fees for these inspections shall be in accordance with the schedule of fees adopted for operating permits pursuant to RCW 70.87.030. An inspection requested under this subsection (2)(b)(ii) shall not be performed until the required fees have been paid.

(3) If inspection shows a conveyance to be in an unsafe condition, the department shall issue an inspection report in writing requiring the repairs or alterations to be made to the conveyance that are necessary to render it safe and may also suspend or revoke a permit pursuant to RCW 70.87.125 or

order the operation of a conveyance discontinued pursuant to RCW 70.87.145.

(a) A penalty may be assessed under RCW 70.87.185 for failure to correct a violation within ninety days after the owner is notified in writing of inspection results.

(b) The owner may be assessed a penalty under RCW 70.87.185 for failure to submit official notification in writing to the department that all corrections have been completed.

(4) The department may investigate accidents and alleged or apparent violations of this chapter.

(5) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the collection of fees under this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 207; 1998 c 137 § 4; 1997 c 216 § 2; 1993 c 281 § 61; 1983 c 123 § 13; 1970 ex.s. c 22 § 2; 1963 c 26 § 12.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Effective date—1993 c 281: See note following RCW 41.06.022.

70.87.125 Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit. (1) A license issued under this chapter may be suspended, revoked, or subject to civil penalty by the department upon verification that any one or more of the following reasons exist:

(a) Any false statement as to a material matter in the application;

(b) Fraud, misrepresentation, or bribery in securing a license;

(c) Failure to notify the department and the owner or lessee of a conveyance or related mechanisms of any condition not in compliance with this chapter;

(d) A violation of any provisions of this chapter; and

(e) If the elevator contractor does not employ an individual designated as the primary point of contact with the department and who has successfully completed the elevator contractor examination. In the case of a separation of employment, termination of this relationship or designation, or death of the designated individual, the elevator contractor must, within ninety days, designate a new individual who has successfully completed the elevator contractor examination.

(2) The department may suspend or revoke a permit if:

(a) The permit was obtained through fraud or by error if, in the absence of error, the department would not have issued the permit;

(b) The conveyance for which the permit was issued has not been worked on in accordance with this chapter; or

(c) The conveyance has become unsafe.

(3) The department shall suspend any license issued under this chapter promptly after receiving notice from the department of social and health services that the holder of the license has been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a support order. If the person has continued to meet all other license requirements during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the

department of social and health services stating that the person is in compliance with the order.

(4) The department shall notify in writing the owner, licensee, or person performing conveyance work, of its action and the reason for the action. The department shall send the notice by certified mail to the last known address of the owner or person. The notice shall inform the owner or person that a hearing may be requested pursuant to RCW 70.87.170.

(5)(a) If the department has suspended or revoked a permit or license because of fraud or error, and a hearing is requested, the suspension or revocation shall be stayed until the hearing is concluded and a decision is issued.

(b) If the department has revoked or suspended a license because the licensee performing the work covered by this chapter is working in a manner that does not effectively prevent injuries or deaths or protect employees and the public from unsafe conditions as is required by this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(c) If the department has revoked or suspended a permit because the conveyance is unsafe or the conveyance work is not permitted and performed in accordance with this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(6) The department must remove a suspension or reinstate a revoked license if the licensee pays all the assessed civil penalties and is able to demonstrate to the department that the licensee has met all the qualifications established by this chapter.

(7) The department shall remove a suspension or reinstate a revoked permit if a conveyance is repaired or modified to bring it into compliance with this chapter. [2003 c 143 § 16; 2002 c 98 § 6; 1983 c 123 § 10.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.140 Operation without permit enjoined.

Whenever any conveyance is being operated without a permit required by this chapter, the attorney general or the prosecuting attorney of the county may apply to the superior court of the county in which the conveyance is located for a temporary restraining order or a temporary or permanent injunction restraining the operation of the conveyance until the department issues a permit for the conveyance. No bond may be required from the department in such proceedings. [1983 c 123 § 14; 1963 c 26 § 14.]

70.87.145 Order to discontinue operation—Notice—Conditions—Contents of order—Recision of order—Violation—Penalty—Random inspections. (1) An authorized representative of the department may order the owner or person operating a conveyance to discontinue the operation of a conveyance, and may place a notice that states that the conveyance may not be operated on a conspicuous place in the conveyance, if:

(a) The conveyance work has not been permitted and performed in accordance with this chapter; or

(b) The conveyance has otherwise become unsafe.

The order is effective immediately, and shall not be stayed by a request for a hearing.

(2) The department shall prescribe a form for the order to discontinue operation. The order shall specify why the conveyance violates this chapter or is otherwise unsafe, and shall inform the owner or operator that he or she may request a hearing pursuant to RCW 70.87.170. A request for a hearing does not stay the effect of the order.

(3) The department shall rescind the order to discontinue operation if the conveyance is fixed or modified to bring it into compliance with this chapter.

(4) An owner or a person that knowingly operates or allows the operation of a conveyance in contravention of an order to discontinue operation, or removes a notice not to operate, is:

- (a) Guilty of a misdemeanor; and
- (b) Subject to a civil penalty under RCW 70.87.185.

(5) The department may conduct random on-site inspections and tests on existing installations, witnessing periodic inspections and testing in order to ensure satisfactory conveyance work by persons, firms, or companies performing conveyance work, and assist in development of public awareness programs. [2003 c 143 § 17; 2002 c 98 § 7; 1983 c 123 § 15.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.170 Review of department action in accordance with administrative procedure act. (1) Any person aggrieved by an order or action of the department denying, suspending, revoking, or refusing to renew a permit or license; assessing a penalty for a violation of this chapter; or ordering the operation of a conveyance to be discontinued, may request a hearing within fifteen days after notice of the department's order or action is received. The date the hearing was requested shall be the date the request for hearing was postmarked. The party requesting the hearing must accompany the request with a certified or cashier's check for two hundred dollars payable to the department. The department shall refund the two hundred dollars if the party requesting the hearing prevails at the hearing; otherwise, the department shall retain the two hundred dollars.

If the department does not receive a timely request for hearing, the department's order or action is final and may not be appealed.

(2) If the aggrieved party requests a hearing, the department shall ask an administrative law judge to preside over the hearing. The hearing shall be conducted in accordance with chapter 34.05 RCW. [2003 c 143 § 18; 2002 c 98 § 8; 1983 c 123 § 16; 1963 c 26 § 17.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.180 Violations. (1) The performance of conveyance work, other than maintenance, or the operation of a conveyance without a permit by any person owning or having the custody, management, or operation thereof, except as provided in RCW 70.87.080 and 70.87.090, is a misdemeanor. Each day of violation is a separate offense. A prosecution may not be maintained if a person has requested the issuance or renewal of a permit but the department has not acted.

(2) The performance of conveyance work, other than the maintenance of conveyances as specified in RCW 70.87.270, without a license by any person is a misdemeanor. Each day

of violation is a separate offense. A prosecution may not be maintained if a person has requested the issuance or renewal of a license but the department has not acted. [2003 c 143 § 19; 2002 c 98 § 9; 1983 c 123 § 17; 1963 c 26 § 18.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.185 Penalty for violation of chapter—Rules—Notice. (1) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(2) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(3) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice by certified mail to the violator's last known address. The notice shall inform the violator that a hearing may be requested under RCW 70.87.170. The hearing shall not stay the effect of the penalty. [1983 c 123 § 18.]

70.87.190 Accidents—Report and investigation—Cessation of use—Removal of damaged parts. The owner or the owner's duly authorized agent shall promptly notify the department of each accident to a person requiring the service of a physician or resulting in a disability exceeding one day, and shall afford the department every facility for investigating and inspecting the accident. The department shall without delay, after being notified, make an inspection and shall place on file a full and complete report of the accident. The report shall give in detail all material facts and information available and the cause or causes, so far as they can be determined. The report shall be open to public inspection at all reasonable hours. When an accident involves the failure or destruction of any part of the construction or the operating mechanism of a conveyance, the use of the conveyance is forbidden until it has been made safe; it has been reinspected and any repairs, changes, or alterations have been approved by the department; and a permit has been issued by the department. The removal of any part of the damaged construction or operating mechanism from the premises is forbidden until the department grants permission to do so. [1983 c 123 § 21; 1963 c 26 § 19.]

70.87.200 Exemptions. (1) The provisions of this chapter do not apply where:

- (a) A conveyance is permanently removed from service or made effectively inoperative; or
- (b) Lifts, man hoists, or material hoists are erected temporarily for use during construction work only and are of such a design that they must be operated by a workman stationed at the hoisting machine.

(2) Except as limited by RCW 70.87.050, municipalities having in effect an elevator code prior to June 13, 1963 may continue to assume jurisdiction over conveyance work and may inspect, issue permits, collect fees, and prescribe minimum requirements for conveyance work and operation if the requirements are equal to the requirements of this chapter and

to all rules pertaining to conveyances adopted and administered by the department. Upon the failure of a municipality having jurisdiction over conveyances to carry out the provisions of this chapter with regard to a conveyance, the department may assume jurisdiction over the conveyance. If a municipality elects not to maintain jurisdiction over certain conveyances located therein, it may enter into a written agreement with the department transferring exclusive jurisdiction of the conveyances to the department. The city may not reassume jurisdiction after it enters into such an agreement with the department. [2003 c 143 § 20; 1983 c 123 § 22; 1969 ex.s. c 108 § 4; 1963 c 26 § 20.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.205 Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement. (1) Disputes arising under RCW 70.87.200(2) shall be resolved by arbitration. The request shall be sent by certified mail.

(2) The department shall appoint one arbitrator; the municipality shall appoint one arbitrator; and the arbitrators chosen by the department and the municipality shall appoint the third arbitrator. If the two arbitrators cannot agree on the third arbitrator, the presiding judge of the Thurston county superior court, or his or her designee, shall appoint the third arbitrator.

(3) The arbitration shall be held pursuant to the procedures in chapter 7.04A RCW, except that RCW 7.04A.280(1)(f) shall not apply. The decision of the arbitrators is final and binding on the parties. Neither party may appeal a decision to any court.

(4) A party may petition the Thurston county superior court to enforce a decision of the arbitrators. [2005 c 433 § 49; 1983 c 123 § 23.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

70.87.210 Disposition of revenue. All moneys received or collected under the terms of this chapter shall be deposited in the general fund. [1963 c 26 § 21.]

70.87.220 Elevator safety advisory committee. (1) The department may adopt the rules necessary to establish and administer the elevator safety advisory committee. The purpose of the advisory committee is to advise the department on the adoption of rules that apply to conveyances; methods of enforcing and administering this chapter; and matters of concern to the conveyance industry and to the individual installers, owners, and users of conveyances.

(2) The advisory committee shall consist of seven persons. The director of the department or his or her designee with the advice of the chief elevator inspector shall appoint the committee members as follows:

- (a) One representative of licensed elevator contractors;
- (b) One representative of elevator mechanics licensed to perform all types of conveyance work;
- (c) One representative of owner-employed mechanics exempt from licensing requirements under RCW 70.87.270;
- (d) One registered architect or professional engineer representative;

- (e) One building owner or manager representative;
- (f) One registered general commercial contractor representative; and

(g) One ad hoc member representing a municipality maintaining jurisdiction of conveyances in accordance with RCW 70.87.210 [70.87.200].

(3) The committee members shall serve terms of four years.

(4) The committee shall meet on the third Tuesday of February, May, August, and November of each year, and at other times at the discretion of the chief elevator inspector. The committee members shall serve without per diem or travel expenses.

(5) The chief elevator inspector shall be the secretary for the advisory committee. [2003 c 143 § 7; 2002 c 98 § 11.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.230 Conveyance work—Who may perform.

Except as provided in RCW 70.87.270, a person may not perform conveyance work within the state unless he or she is an elevator mechanic who is regularly employed by and is working: (1) For an owner exempt from licensing requirements under RCW 70.87.270 and performing maintenance; (2) for a public agency performing maintenance; or (3) under the direct supervision of an elevator contractor. A person, firm, public agency, or company is not required to be an elevator contractor for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the building is demolished back to the basic support structure whereby no access is permitted therein to endanger the safety and welfare of a person. [2003 c 143 § 1; 2002 c 98 § 10.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.240 Elevator contractor license, elevator mechanic license—Qualifications—Reciprocity. (1) Any person, firm, public agency, or company wishing to engage in the business of performing conveyance work within the state must apply for an elevator contractor license with the department on a form provided by the department and be a registered general or specialty contractor under chapter 18.27 RCW.

(2) Except as provided by RCW 70.87.270, any person wishing to perform conveyance work within the state must apply for an elevator mechanic license with the department on a form provided by the department.

(3) An elevator contractor license may not be granted to any person or firm who does not possess the following qualifications:

(a) Five years' experience performing conveyance work, as verified by current and previous elevator contractors licensed to do business; or

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(4) Except as provided in subsection (5) of this section, RCW 70.87.305, and 70.87.245, an elevator mechanic license may not be granted to any person who does not possess the following qualifications:

(a) An acceptable combination of documented experience and education credits: Not less than three years' experience performing conveyance work, as verified by current and previous employers licensed to do business in this state or public agency employers; and

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(5) Any person who furnishes the department with acceptable proof that he or she has performed conveyance work in the category for which a license is sought shall upon making application for a license and paying the license fee receive a license without an examination. The person must have:

(a) Worked without direct and immediate supervision for a general or specialty contractor registered under chapter 18.27 RCW and engaged in the business of performing conveyance work in this state. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(b) Worked without direct and immediate supervision for an owner exempt from licensing requirements under RCW 70.87.270 or a public agency as an individual responsible for maintenance of conveyances owned by the owner exempt from licensing requirements under RCW 70.87.270 or the public agency. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(c) Obtained a certificate of completion and successfully passed the mechanic examination of a nationally recognized training program for the elevator industry such as the national elevator industry educational program or its equivalent; or

(d) Obtained a certificate of completion of an apprenticeship program for an elevator mechanic, having standards substantially equal to those of this chapter, and registered with the Washington state apprenticeship and training council.

(6) A license must be issued to an individual holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of this chapter, upon application and without examination. [2004 c 66 § 2; 2003 c 143 § 2; 2002 c 98 § 12.]

Findings—2004 c 66: See note following RCW 70.87.305.

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.245 Material lift mechanic license. A material lift mechanic license to perform conveyance work on material lifts subject to WAC 296-96-05010 may be granted to any person who possesses the following qualifications:

(1) The person: (a) Must be employed by an elevator contractor that complies with subsections (2) and (3) of this section; (b) must have successfully completed the training described in subsection (2) of this section; and (c) after successfully completing such training, must have passed a written examination administered by the department that is

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designed to demonstrate competency with regard to conveyance work on material lifts;

(2) The employer must provide the persons specified in subsection (1) of this section adequate training, including any training provided by the manufacturer, ensuring worker safety and adherence to the published operating specifications of the conveyance manufacturer; and

(3) The employer must maintain: (a) A conveyance work log identifying the equipment, describing the conveyance work performed, and identifying the person who performed the conveyance work; (b) a training log describing the course of study applicable to each conveyance and identifying each employee who has successfully completed the training described in subsection (2) of this section and when such training was completed; and (c) a record evidencing that the employer has notified the conveyance owner in writing that the conveyance is not designed to, is not intended to, and should not be used to convey workers. [2003 c 143 § 3.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.250 Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records. (1) Upon approval of an application, the department may issue a license that is biennially renewable. The fee for the license and for any renewal shall be set by the department in rule.

(2) The department may issue temporary elevator mechanic licenses. These temporary elevator mechanic licenses will be issued to those certified as qualified and competent by licensed elevator contractors. The company shall furnish proof of competency as the department may require. Each license must recite that it is valid for a period of thirty days from the date of issuance and for such particular conveyance or geographical areas as the department may designate, and otherwise entitles the licensee to the rights and privileges of an elevator mechanic license issued in this chapter. A temporary elevator mechanic license may be renewed by the department and a fee as established in rule must be charged for any temporary elevator mechanic license or renewal.

(3) The renewal of all licenses granted under this section is conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing rules of the department. The course must consist of not less than eight hours of instruction that must be attended and completed within one year immediately preceding any license renewal.

(4) The courses must be taught by instructors through continuing education providers that may include, but are not limited to, association seminars and labor training programs. The department must approve the continuing education providers. All instructors must be approved by the department and are exempt from the requirements of subsection (3) of this section with regard to his or her application for license renewal, provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal.

(5) A licensee who is unable to complete the continuing education course required under this section before the expiration of his or her license due to a temporary disability may apply for a waiver from the department. This will be on a

form provided by the department and signed under the pains and penalties of perjury and accompanied by a certified statement from a competent physician attesting to the temporary disability. Upon the termination of the temporary disability, the licensee must submit to the department a certified statement from the same physician, if practicable, attesting to the termination of the temporary disability. At which time a waiver sticker, valid for ninety days, must be issued to the licensee and affixed to his or her license.

(6) Approved training providers must keep uniform records, for a period of ten years, of attendance of licensees and these records must be available for inspection by the department at its request. Approved training providers are responsible for the security of all attendance records and certificates of completion. However, falsifying or knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for suspension or revocation of the approval required under this section. [2003 c 143 § 21; 2002 c 98 § 13.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.260 Liability not limited or assumed by state.

This chapter cannot be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, testing, inspecting, or performing conveyance work on any conveyance or other related mechanisms covered by this chapter for damages to person or property caused by any defect therein, nor does the state assume any such liability or responsibility therefore or any liability to any person for whatever reason whatsoever by the adoption of this chapter or any acts or omissions arising hereunder. [2003 c 143 § 22; 2002 c 98 § 14.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.270 Exemptions from licensure. (1) The licensing requirements of this chapter do not apply to the maintenance of conveyances specified in (a) of this subsection if a person specified in (b) of this subsection performs the maintenance and the owner complies with the requirements specified in (c) and (d) of this subsection.

(a) The conveyance: (i) Must be a conveyance other than a passenger elevator to which the general public has access; and (ii) must be located in a facility in which agricultural products are stored, food products are processed, goods are manufactured, energy is generated, or similar industrial or agricultural processes are performed.

(b) The person performing the maintenance: (i) Must be regularly employed by the owner; (ii) must have completed the training described in (c) of this subsection; and (iii) must have attained journey level status in an electrical or mechanical trade, but only if the employer has or uses an established journey level program to train its electrical or mechanical trade employees and the employees perform maintenance in the course of their regular employment.

(c) The owner must provide the persons specified in (b) of this subsection adequate training to ensure worker safety and adherence to the published operating specifications of the conveyance manufacturer, the applicable provisions of this chapter, and any rules adopted under this chapter.

(d) The owner also must maintain both a maintenance log and a training log. The maintenance log must describe maintenance work performed on the conveyance and identify the person who performed the work. The training log must describe the course of study provided to the persons specified in (b) of this subsection, including whether it is general or conveyance specific, and when the persons completed the course of study.

(2) It is a violation of chapter 49.17 RCW for an owner or an employer: (a) To allow a conveyance exempt from the licensing requirements of this chapter under subsection (1) of this section to be maintained by a person other than a person specified in subsection (1)(b) of this section or a licensee; or (b) to fail to maintain the logs required under subsection (1)(d) of this section. [2003 c 143 § 4.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.280 License categories—Rules. In order to effectively administer and implement the elevator mechanic licensing of this chapter, the department may establish elevator mechanic license categories in rule. [2003 c 143 § 5.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.290 Rules—Effective date. The department of labor and industries may not adopt rules to implement chapter 98, Laws of 2002, and to implement chapter 143, Laws of 2003 that take effect before March 1, 2004. [2003 c 143 § 6.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.305 Private residence conveyances—Licensing requirements—Rules. (1) The department shall, by rule, establish licensing requirements for conveyance work performed on private residence conveyances. These rules shall include an exemption from licensing for maintenance work on private residence conveyances performed by an owner or at the direction of the owner, provided the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public. However, maintenance work performed on private residence conveyances located in or at adult family homes licensed under chapter 70.128 RCW, boarding homes licensed under chapter 18.20 RCW, or similarly licensed caregiving facilities must comply with the licensing requirements of this chapter.

(2) The rules adopted under this section take effect July 1, 2004. [2004 c 66 § 3.]

Findings—2004 c 66: "The legislature finds that individuals performing conveyance work on private residence conveyances must be licensed by the department of labor and industries. However, the licensing requirements for this type of work need not be to the same level as those established for conveyance work in circumstances where the general public has access to the conveyances. The legislature further finds that the department of labor and industries should be given the authority to develop the licensing requirements for this type of work using the normal rule-making process established under chapter 34.05 RCW. Lastly, the legislature finds that private residence conveyance maintenance work that is performed by an owner or at the direction of the owner is exempt from licensing if the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public." [2004 c 66 § 1.]

70.87.900 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected. [1983 c 123 § 24; 1963 c 26 § 22.]

Chapter 70.90 RCW

WATER RECREATION FACILITIES

(Formerly: Swimming pools)

Sections

70.90.101	Legislative findings.
70.90.110	Definitions.
70.90.120	Adoption of rules governing safety, sanitation, and water quality—Exceptions.
70.90.125	Regulation by local boards of health.
70.90.140	Enforcement.
70.90.150	Fees.
70.90.160	Modification or construction of facility—Permit required—Submission of plans.
70.90.170	Operating permit—Renewal.
70.90.180	State and local health jurisdictions—Chapter not basis for liability.
70.90.190	Reporting of injury, disease, or death.
70.90.200	Civil penalties.
70.90.205	Criminal penalties.
70.90.210	Adjudicative proceeding—Notice.
70.90.230	Insurance required.
70.90.240	Sale of spas, pools, and tubs—Operating instructions and health caution required.
70.90.250	Application of chapter.
70.90.910	Severability—1986 c 236.
70.90.911	Severability—1987 c 222.

70.90.101 Legislative findings. The legislature finds that water recreation facilities are an important source of recreation for the citizens of this state. To promote the public health, safety, and welfare, the legislature finds it necessary to continue to regulate these facilities. [1987 c 222 § 1.]

70.90.110 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Water recreation facility" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation, or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

(b) Recreational water contact facilities as defined in this chapter;

(c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and

(d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

(2) "Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to, water slides, wave pools, and water lagoons.

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(3) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

(4) "Secretary" means the secretary of health.

(5) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.

(6) "Department" means the department of health.

(7) "Board" means the state board of health. [1991 c 3 § 352; 1987 c 222 § 2; 1986 c 236 § 2.]

70.90.120 Adoption of rules governing safety, sanitation, and water quality—Exceptions. (1) The board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, governing safety, sanitation, and water quality for water recreation facilities. The rules shall include but not be limited to requirements for design; operation; injury and illness reporting; biological and chemical contamination standards; water quality monitoring; inspection; permit application and issuance; and enforcement procedures. However, a water recreation facility intended for the exclusive use of residents of any apartment house complex or of a group of rental housing units of less than fifteen living units, or of a mobile home park, or of a condominium complex or any group or association of less than fifteen home owners shall not be subject to preconstruction design review, routine inspection, or permit or fee requirements; and water treatment of hydroelectric reservoirs or natural streams, creeks, lakes, or irrigation canals shall not be required.

(2) In adopting rules under subsection (1) of this section regarding the operation or design of a recreational water contact facility, the board shall review and consider any recommendations made by the recreational water contact facility advisory committee. [1987 c 222 § 5; 1986 c 236 § 3.]

70.90.125 Regulation by local boards of health. Nothing in this chapter shall prohibit any local board of health from establishing and enforcing any provisions governing safety, sanitation, and water quality for any water recreation facility, regardless of ownership or use, in addition to those rules established by the state board of health under this chapter. [1987 c 222 § 6.]

70.90.140 Enforcement. The secretary shall enforce the rules adopted under this chapter. The secretary may develop joint plans of responsibility with any local health jurisdiction to administer this chapter. [1986 c 236 § 5.]

70.90.150 Fees. (1) Local health officers may establish and collect fees sufficient to cover their costs incurred in carrying out their duties under this chapter and the rules adopted under this chapter.

(2) The department may establish and collect fees sufficient to cover its costs incurred in carrying out its duties under this chapter. The fees shall be deposited in the state general fund.

(3) A person shall not be required to submit fees at both the state and local levels. [1986 c 236 § 6.]

70.90.160 Modification or construction of facility—Permit required—Submission of plans. A permit is required for any modification to or construction of any recreational water contact facility after June 11, 1986, and for any other water recreation facility after July 26, 1987. Water recreation facilities existing on July 26, 1987, which do not comply with the design and construction requirements established by the state board of health under this chapter may continue to operate without modification to or replacement of the existing physical plant, provided the water quality, sanitation, and life saving equipment are in compliance with the requirements established under this chapter. However, if any modifications are made to the physical plant of an existing water recreation facility the modifications shall comply with the requirements established under this chapter. The plans and specifications for the modification or construction shall be submitted to the applicable local authority or the department as applicable, but a person shall not be required to submit plans at both the state and local levels or apply for both a state and local permit. The plans shall be reviewed and may be approved or rejected or modifications or conditions imposed consistent with this chapter as the public health or safety may require, and a permit shall be issued or denied within thirty days of submittal. [1987 c 222 § 7; 1986 c 236 § 7.]

70.90.170 Operating permit—Renewal. An operating permit from the department or local health officer, as applicable, is required for each water recreation facility operated in this state. The permit shall be renewed annually. The permit shall be conspicuously displayed at the water recreation facility. [1987 c 222 § 8; 1986 c 236 § 8.]

70.90.180 State and local health jurisdictions—Chapter not basis for liability. Nothing in this chapter or the rules adopted under this chapter creates or forms the basis for any liability: (1) On the part of the state and local health jurisdictions, or their officers, employees, or agents, for any injury or damage resulting from the failure of the owner or operator of water recreation facilities to comply with this chapter or the rules adopted under this chapter; or (2) by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter or the rules adopted under this chapter on the part of the state and local health jurisdictions, or by their officers, employees, or agents.

All actions of local health officers and the secretary shall be deemed an exercise of the state's police power. [1987 c 222 § 9; 1986 c 236 § 9.]

70.90.190 Reporting of injury, disease, or death. Any person operating a water recreation facility shall report to the local health officer or the department any serious injury, communicable disease, or death occurring at or caused by the water recreation facility. [1987 c 222 § 10; 1986 c 236 § 10.]

70.90.200 Civil penalties. County, city, or town legislative authorities and the secretary, as applicable, may establish civil penalties for a violation of this chapter or the rules adopted under this chapter not to exceed five hundred dollars. Each day upon which a violation occurs constitutes a separate

violation. A person violating this chapter may be enjoined from continuing the violation. [1986 c 236 § 11.]

70.90.205 Criminal penalties. The violation of any provisions of this chapter and any rules adopted under this chapter shall be a misdemeanor punishable by a fine of not more than five hundred dollars. [1987 c 222 § 11.]

70.90.210 Adjudicative proceeding—Notice. (1) Any person aggrieved by an order of the department or by the imposition of a civil fine by the department has the right to an adjudicative proceeding. RCW 43.70.095 governs department notice of a civil fine and a person's right to an adjudicative proceeding.

(2) Any person aggrieved by an order of a local health officer or by the imposition of a civil fine by the officer has the right to appeal. The hearing is governed by the local health jurisdiction's administrative appeals process. Notice shall be provided by the local health jurisdiction consistent with its due process requirements. [1991 c 3 § 354; 1989 c 175 § 130; 1986 c 236 § 12.]

Effective date—1989 c 175: See note following RCW 34.05.010.

70.90.230 Insurance required. (1) A recreational water contact facility shall not be operated within the state unless the owner or operator has purchased insurance in an amount not less than one hundred thousand dollars against liability for bodily injury to or death of one or more persons in any one accident arising out of the use of the recreational water contact facility.

(2) The board may require a recreational water contact facility to purchase insurance in addition to the amount required in subsection (1) of this section. [1986 c 236 § 14.]

70.90.240 Sale of spas, pools, and tubs—Operating instructions and health caution required. Every seller of spas, pools and tubs under RCW 70.90.110(1) (a) and (c) shall furnish to the purchaser a complete set of operating instructions which shall include detailed instructions on the safe use of the spa, pool, or tub and for the proper treatment of water to reduce health risks to the purchaser. Included in the instructions shall be information about the health effects of hot water and a specific caution and explanation of the health effects of hot water on pregnant women. [1987 c 222 § 4.]

70.90.250 Application of chapter. This chapter applies to all water recreation facilities regardless of whether ownership is public or private and regardless of whether the intended use is commercial or private, except that this chapter shall not apply to:

- (1) Any water recreation facility for the sole use of residents and invited guests at a single family dwelling;
- (2) Therapeutic water facilities operated exclusively for physical therapy; and
- (3) Steam baths and saunas. [1987 c 222 § 3.]

70.90.910 Severability—1986 c 236. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1986 c 236 § 17.]

70.90.911 Severability—1987 c 222. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 222 § 13.]

Chapter 70.92 RCW

PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS

Sections

70.92.100	Legislative intent.
70.92.110	Buildings and structures to which standards and specifications apply—Exemptions.
70.92.120	Handicap symbol—Display—Signs showing location of entrance for handicapped.
70.92.130	Definitions.
70.92.140	Minimum standards for facilities—Adoption—Facilities to be included.
70.92.150	Standards adopted by other states to be considered—Majority vote.
70.92.160	Waiver from compliance with standards.
70.92.170	Personal wireless service facilities—Rules.

Making buildings and facilities accessible to and usable by individuals with disabilities: RCW 19.27.031(5).

70.92.100 Legislative intent. It is the intent of the legislature that, notwithstanding any law to the contrary, plans and specifications for the erection of buildings through the use of public or private funds shall make special provisions for elderly or physically disabled persons. [1975 1st ex.s. c 110 § 1.]

70.92.110 Buildings and structures to which standards and specifications apply—Exemptions. The standards and specifications adopted under this chapter shall, as provided in this section, apply to buildings, structures, or portions thereof used primarily for group A-1 through group U-1 occupancies, except for group R-3 occupancies, as defined in the Uniform Building Code, 1994 edition, published by the International Conference of Building Officials. All such buildings, structures, or portions thereof, which are constructed, substantially remodeled, or substantially rehabilitated after July 1, 1976, shall conform to the standards and specifications adopted under this chapter: PROVIDED, That the following buildings, structures, or portions thereof shall be exempt from this chapter:

(1) Buildings, structures, or portions thereof for which construction contracts have been awarded prior to July 1, 1976;

(2) Any building, structure, or portion thereof in respect to which the administrative authority deems, after considering all circumstances applying thereto, that full compliance is impracticable: PROVIDED, That, such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in chapter 1 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to

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grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein;

(3) Any building or structure used solely for dwelling purposes and which contains not more than two dwelling units;

(4) Any building or structure not used primarily for group A-1 through group U-1 occupancies, except for group R-3 occupancies, as set forth in the Uniform Building Code, 1994 edition, published by the International Conference of Building Officials; or

(5) Apartment houses with ten or fewer units. [1995 c 343 § 3; 1989 c 14 § 9; 1975 1st ex.s. c 110 § 2.]

70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped. All buildings built in accordance with the standards and specifications provided for in this chapter, and containing facilities that are in compliance therewith, shall display the following symbol which is known as the International Symbol of Access.



Such symbol shall be white on a blue background and shall indicate the location of facilities designed for the physically disabled or elderly. When a building contains an entrance other than the main entrance which is ramped or level for use by physically disabled or elderly persons, a sign with the symbol showing its location shall be posted at or near the main entrance which shall be visible from the adjacent public sidewalk or way. [1995 c 343 § 4; 1975 1st ex.s. c 110 § 3.]

70.92.130 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Administrative authority" means the building department of each county, city, or town of this state;

(2) "Substantially remodeled or substantially rehabilitated" means any alteration or restoration of a building or structure within any twelve-month period, the cost of which exceeds sixty percent of the value of the particular building or structure;

(3) "Council" means the state building code council. [1995 c 343 § 5; 1975 1st ex.s. c 110 § 4.]

70.92.140 Minimum standards for facilities—Adoption—Facilities to be included. The *state building code advisory council shall adopt minimum standards by rule and regulation for the provision of facilities in buildings and structures to accommodate the elderly, as well as physically disabled persons, which shall include but not be limited to standards for:

- (1) Ramps;
- (2) Doors and doorways;
- (3) Stairs;
- (4) Floors;
- (5) Entrances;
- (6) Toilet rooms and paraphernalia therein;
- (7) Water fountains;
- (8) Public telephones;
- (9) Elevators;
- (10) Switches and levers for the control of light, ventilation, windows, mirrors, etc.;
- (11) Plaques identifying such facilities;
- (12) Turnstiles and revolving doors;
- (13) Kitchen facilities, where appropriate;
- (14) Grading of approaches to entrances;
- (15) Parking facilities;
- (16) Seating facilities, where appropriate, in buildings where people normally assemble. [1975 1st ex.s. c 110 § 5.]

*Reviser's note: The "state building code advisory council" was redesignated the "state building code council" by 1985 c 360 § 11. See RCW 19.27.070.

70.92.150 Standards adopted by other states to be considered—Majority vote. The council in adopting these minimum standards shall consider minimum standards adopted by both law and rule and regulation in other states and the government of the United States: PROVIDED, That no standards adopted by the council pursuant to RCW 70.92.100 through 70.92.160 shall take effect until July 1, 1976. The council shall adopt such standards by majority vote pursuant to the provisions of chapter 34.05 RCW. [1995 c 343 § 6; 1975 1st ex.s. c 110 § 6.]

70.92.160 Waiver from compliance with standards. The administrative authority of any jurisdiction may grant a waiver from compliance with any standard adopted hereunder for a particular building or structure if it determines that compliance with the particular standard is impractical: PROVIDED, That such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in chapter 1 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein. [1995 c 343 § 7; 1975 1st ex.s. c 110 § 7.]

70.92.170 Personal wireless service facilities—Rules.

(1) The state building code council shall amend its rules under chapter 70.92 RCW, to the extent practicable while still maintaining the certification of those regulations under the federal Americans with disabilities act, to exempt personal wireless services equipment shelters, or the room or enclosure housing equipment for personal wireless service facilities, that meet the following conditions: (a) The shelter is not staffed; and (b) to conduct maintenance activities, employees who visit the shelter must be able to climb.

(2) For the purposes of this section, "personal wireless service facilities" means facilities for the provision of personal wireless services. [1996 c 323 § 5.]

Findings—1996 c 323: See note following RCW 43.70.600.

Chapter 70.93 RCW

WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

(Formerly: Model litter control and recycling act)

Sections

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Reviser's note: Throughout chapter 70.93 RCW, the term "this 1971 amendatory act" has been changed to "this chapter"; "this 1971 amendatory act" [1971 ex.s. c 307] consists of this chapter, the 1971 amendment to RCW 46.61.655 and the repeal of RCW 9.61.120, 9.66.060, 9.66.070, and 46.61.650.

Local adopt-a-highway programs: RCW 47.40.105.

Solid waste management, recovery and recycling: Chapter 70.95 RCW.

State parks: RCW 79A.05.045.

70.93.010 Legislative findings. (1) The legislature finds:

(a) Washington state is experiencing rapid population growth and its citizens are increasingly mobile;

(b) There is a fundamental need for a healthful, clean, and beautiful environment;

(c) The proliferation and accumulation of litter discarded throughout this state impairs this need and constitutes a public health hazard;

(d) There is a need to conserve energy and natural resources, and the effective litter control and recovery and recycling of litter materials will serve to accomplish such conservation;

(e) In addition to effective litter control, there must be effective programs to accomplish waste reduction, the state's highest waste management priority; and

(f) There must also be effective systems to accomplish all components of recycling, including collection and processing.

(2) Recognizing the multifaceted nature of the state's solid waste management problems, the legislation enacted in 1971 and entitled the "Model Litter Control and Recycling Act" is hereby renamed the "waste reduction, recycling, and model litter control act." [1998 c 257 § 1; 1992 c 175 § 1; 1979 c 94 § 1; 1971 ex.s. c 307 § 1.]

Effective date—1992 c 175: See RCW 82.19.900.

70.93.020 Declaration of purpose. The purpose of this chapter is to accomplish litter control, increase waste reduction, and stimulate all components of recycling throughout this state by delegating to the department of ecology the authority to:

(1) Conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible;

(2) Recover and recycle waste materials related to litter and littering;

(3) Foster public and private recycling of recyclable materials;

(4) Increase public awareness of the need for waste reduction, recycling, and litter control; and

(5) Coordinate the litter collection efforts and expenditure of funds for litter collection by other agencies identified in this chapter.

It is further the intent and purpose of this chapter to create jobs for employment of youth in litter cleanup and related activities and to stimulate and encourage small, private recycling centers. This program shall include the compatible goal of recovery of recyclable materials to conserve energy and natural resources wherever practicable. Every other department of state government and all local governmental units and agencies of this state shall cooperate with the department of ecology in the administration and enforcement of this chapter. The intent of this chapter is to add to and to coordinate existing recycling and litter control and removal efforts and not terminate or supplant such efforts. [1998 c 257 § 2; 1992 c 175 § 2; 1991 c 319 § 101; 1979 c 94 § 2; 1975-'76 2nd ex.s. c 41 § 7; 1971 ex.s. c 307 § 2.]

Effective date—1992 c 175: See RCW 82.19.900.

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Severability—1975-'76 2nd ex.s. c 41: See RCW 70.95.911.

Solid waste disposal, recovery and recycling: Chapter 70.95 RCW.

70.93.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Conveyance" means a boat, airplane, or vehicle.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Disposable package or container" means all packages or containers defined as such by rules adopted by the department of ecology.

(5) "Junk vehicle" has the same meaning as defined in RCW 46.55.010.

(6) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited and solid waste that is illegally dumped, but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing. "Litter" includes the material described in subsection (11) of this section as "potentially dangerous litter."

(7) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity.

(8) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter.

(9) "Official gathering" means an event where authorization to hold the event is approved, recognized, or issued by a government, public body, or authority, including but not limited to fairs, musical concerts, athletic games, festivals, tournaments, or any other formal or ceremonial event, during which beverages are sold by a vendor or vendors in single-use aluminum, glass, or plastic bottles or cans.

(10) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever.

(11) "Potentially dangerous litter" means litter that is likely to injure a person or cause damage to a vehicle or other property. "Potentially dangerous litter" means:

(a) Cigarettes, cigars, or other tobacco products that are capable of starting a fire;

(b) Glass;

(c) A container or other product made predominantly or entirely of glass;

(d) A hypodermic needle or other medical instrument designed to cut or pierce;

(e) Raw human waste, including soiled baby diapers, regardless of whether or not the waste is in a container of any sort; and

(f) Nails or tacks.

(12) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.

(13) "Recycling" means transforming or remanufacturing waste materials into a finished product for use other than landfill disposal or incineration.

(14) "Recycling center" means a central collection point for recyclable materials.

(15) "Sports facility" means an outdoor recreational sports facility, including but not limited to athletic fields and ballparks, at which beverages are sold by a vendor or vendors in single-use aluminum, glass, or plastic bottles or cans.

(16) "To litter" means a single or cumulative act of disposing of litter.

(17) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(18) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(19) "Watercraft" means any boat, ship, vessel, barge, or other floating craft. [2007 c 244 § 1; 2003 c 337 § 2; 2000 c 154 § 1; 1998 c 257 § 3; 1991 c 319 § 102; 1979 c 94 § 3; 1971 ex.s. c 307 § 3.]

Findings—2003 c 337: See note following RCW 70.93.060.

Severability—2000 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 154 § 5.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.93.040 Administrative procedure act—Application to chapter. In addition to his other powers and duties, the director shall have the power to propose and to adopt pursuant to chapter 34.05 RCW rules and regulations necessary to carry out the provisions, purposes, and intent of this chapter. [1971 ex.s. c 307 § 4.]

70.93.050 Enforcement of chapter. The director shall designate trained employees of the department to be vested with police powers to enforce and administer the provisions of this chapter and all rules adopted thereunder. The director shall also have authority to contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of this chapter. In addition, state patrol officers, fish and wildlife officers, fire wardens, deputy fire wardens and forest rangers, sheriffs and marshals and their deputies, and police officers, and those employees of the department of ecology and the parks and recreation commission vested with police powers all shall enforce the provisions of this chapter and all rules adopted thereunder and are hereby empowered to issue citations to and/or arrest without warrant, persons violating any provision of this chapter or any of the rules adopted hereunder. All of the foregoing enforcement officers may serve and execute all warrants, citations, and other process issued by the courts in enforcing the provisions of this chapter and rules adopted hereunder. In addition, mailing by registered mail of such warrant, citation, or other process to his or her last known place of residence shall be deemed as personal service upon the person charged. [2001 c 253 § 8; 1980 c 78 § 132; 1979 c 94 § 4; 1971 ex.s. c 307 § 5.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

70.93.060 Littering prohibited—Penalties—Litter cleanup restitution payment. (1) It is a violation of this section to abandon a junk vehicle upon any property. In addition, no person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or

upon private property in this state not owned by him or her or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

(a) When the property is designated by the state or its agencies or political subdivisions for the disposal of garbage and refuse, and the person is authorized to use such property for that purpose;

(b) Into a litter receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any part of the private or public property or waters.

(2)(a) Except as provided in subsection (4) of this section, it is a class 3 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(c) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(d) If a junk vehicle is abandoned in violation of this section, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(3) If the violation occurs in a state park, the court shall, in addition to any other penalties assessed, order the person to perform twenty-four hours of community restitution in the state park where the violation occurred if the state park has stated an intent to participate as provided in RCW 79A.05.050.

(4) It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to discard, in violation of this section, potentially dangerous litter in any amount. [2003 c 337 § 3; 2002 c 175 § 45; 2001 c 139 § 1; 2000 c 154 § 2; 1997 c 159

§ 1; 1996 c 263 § 1; 1993 c 292 § 1; 1983 c 277 § 1; 1979 ex.s. c 39 § 1; 1971 ex.s. c 307 § 6.]

Findings—2003 c 337: "(1) The legislature finds that the littering of potentially dangerous products poses a greater danger to the public safety than other classes of litter. Broken glass, human waste, and other dangerous materials along roadways, within parking lots, and on pedestrian, bicycle, and recreation trails elevates the risk to public safety, such as vehicle tire punctures, and the risk to the community volunteers who spend their time gathering and properly disposing of the litter left behind by others. As such, the legislature finds that a higher penalty should be imposed on those who improperly dispose of potentially dangerous products, such as is imposed on those who improperly dispose of tobacco products.

(2) The legislature further finds that litter is a nuisance, and, in order to alleviate such a nuisance, counties must be provided statutory authority to declare what shall be a nuisance, to abate a nuisance, and to impose and collect fines upon parties who may create, cause, or commit a nuisance." [2003 c 337 § 1.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Severability—2000 c 154: See note following RCW 70.93.030.

Lighted material, etc.—Receptacles in conveyances: RCW 76.04.455.

Throwing materials on highway prohibited—Removal: RCW 46.61.645.

70.93.070 Collection of fines and forfeitures. The director may prescribe the procedures for the collection of penalties, costs, and other charges allowed by chapter 7.80 RCW for violations of this chapter. [1996 c 263 § 2; 1993 c 292 § 2; 1983 c 277 § 2; 1971 ex.s. c 307 § 7.]

70.93.080 Notice to public—Contents of chapter—Required. Pertinent portions of this chapter shall be posted along the public highways of this state and in all campgrounds and trailer parks, at all entrances to state parks, forest lands, and recreational areas, at all public beaches, and at other public places in this state where persons are likely to be informed of the existence and content of this chapter and the penalties for violating its provisions. [1971 ex.s. c 307 § 8.]

70.93.090 Litter receptacles—Use of anti-litter symbol—Distribution—Placement—Violations—Penalties. The department shall design and the director shall adopt by rule or regulation one or more types of litter receptacles which are reasonably uniform as to size, shape, capacity and color, for wide and extensive distribution throughout the public places of this state. Each such litter receptacle shall bear an anti-litter symbol as designed and adopted by the department. In addition, all litter receptacles shall be designed to attract attention and to encourage the depositing of litter.

Litter receptacles of the uniform design shall be placed along the public highways of this state and at all parks, campgrounds, trailer parks, drive-in restaurants, gasoline service stations, tavern parking lots, shopping centers, grocery store parking lots, parking lots of major industrial firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches and bathing areas, and such other public places within this state as specified by rule or regulation of the director adopted pursuant to chapter 34.05 RCW. The number of such receptacles required to be placed as specified herein shall be determined by a formula related to the need for such receptacles.

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles of the uniform design are required by this section to procure and place such receptacles at their own expense on

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the premises in accord with rules and regulations adopted by the department.

Any person, other than a political subdivision, government agency, or municipality, who fails to place such litter receptacles on the premises in the numbers required by rule or regulation of the department, violating the provisions of this section or rules or regulations adopted thereunder shall be subject to a fine of ten dollars for each day of violation. [1998 c 257 § 4; 1979 c 94 § 5; 1971 ex.s. c 307 § 9.]

70.93.093 Official gatherings and sports facilities—Recycling. In communities where there is an established curbside service and where recycling service is available to businesses, a recycling program must be provided at every official gathering and at every sports facility by the vendors who sell beverages in single-use aluminum, glass, or plastic bottles or cans. A recycling program includes provision of receptacles or reverse vending machines, and provisions to transport and recycle the collected materials. Facility managers or event coordinators may choose to work with vendors to coordinate the recycling program. The recycling receptacles or reverse vending machines must be clearly marked, and must be provided for the aluminum, glass, or plastic bottles or cans that contain the beverages sold by the vendor. [2007 c 244 § 2.]

70.93.095 Marinas and airports—Recycling. (1) Each marina with thirty or more slips and each airport providing regularly scheduled commercial passenger service shall provide adequate recycling receptacles on, or adjacent to, its facility. The receptacles shall be clearly marked for the disposal of at least two of the following recyclable materials: Aluminum, glass, newspaper, plastic, and tin.

(2) Marinas and airports subject to this section shall not be required to provide recycling receptacles until the city or county in which it is located adopts a waste reduction and recycling element of a solid waste management plan pursuant to RCW 70.95.090. [1991 c 11 § 2.]

70.93.097 Transported waste must be covered or secured. (1) By January 1, 1994, each county or city with a staffed transfer station or landfill in its jurisdiction shall adopt an ordinance to reduce litter from vehicles. The ordinance shall require the operator of a vehicle transporting solid waste to a staffed transfer station or landfill to secure or cover the vehicle's waste in a manner that will prevent spillage. The ordinance may provide exemptions for vehicle operators transporting waste that is unlikely to spill from a vehicle.

The ordinance shall, in the absence of an exemption, require a fee, in addition to other landfill charges, for a person arriving at a staffed landfill or transfer station without a cover on the vehicle's waste or without the waste secured.

(2) The fee collected under subsection (1) of this section shall be deposited, no less often than quarterly, with the city or county in which the landfill or transfer station is located.

(3) A vehicle transporting sand, dirt, or gravel in compliance with the provisions of RCW 46.61.655 shall not be required to secure or cover a load pursuant to ordinances adopted under this section. [1993 c 399 § 1.]

70.93.110 Removal of litter—Responsibility.

Responsibility for the removal of litter from receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies performing litter removal. Removal of litter from litter receptacles placed on private property which is used by the public shall remain the responsibility of the owner of such private property. [1971 ex.s. c 307 § 11.]

70.93.180 Waste reduction, recycling, and litter control account—Distribution. (1) There is hereby created an account within the state treasury to be known as the "waste reduction, recycling, and litter control account". Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under RCW 70.93.220. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide, for the biennial litter survey under RCW 70.93.200(8), and for statewide public awareness programs under RCW 70.93.200(7). The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, and recycling, so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b) Twenty percent to the department for local government funding programs for waste reduction, litter control, and recycling activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; and

(c) Thirty percent to the department of ecology for waste reduction and recycling efforts.

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter control account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in RCW 70.93.220 for the remainder of the funds, so that the most effective waste reduction, litter control, and recycling programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

(4) During the 2005-2007 fiscal biennium, the legislature may transfer from the waste reduction, recycling, and litter

control account to the state general fund such amounts as reflect the excess fund balance of the account. [2005 c 518 § 939; 1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Effective date—1992 c 175: See RCW 82.19.900.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

70.93.200 Department of ecology—Administration of anti-litter and recycling programs—Guidelines—Report to legislature. In addition to the foregoing, the department of ecology shall:

(1) Serve as the coordinating agency between the various industry organizations seeking to aid in the waste reduction, anti-litter, and recycling efforts;

(2) Serve as the coordinating and administrating agency for all state agencies and local governments receiving funds for waste reduction, litter control, and recycling under this chapter;

(3) Recommend to the governing bodies of all local governments that they adopt ordinances similar to the provisions of this chapter;

(4) Cooperate with all local governments to accomplish coordination of local waste reduction, anti-litter, and recycling efforts;

(5) Encourage, organize, and coordinate all voluntary local waste reduction, anti-litter, and recycling campaigns seeking to focus the attention of the public on the programs of this state to reduce waste, control and remove litter, and foster recycling;

(6) Investigate the availability of, and apply for funds available from any private or public source to be used in the program outlined in this chapter;

(7) Develop statewide programs by working with local governments, payers of the waste reduction, recycling, and litter control tax, and industry organizations that are active in waste reduction, anti-litter, and recycling efforts to increase public awareness of and participation in recycling and to stimulate and encourage local private recycling centers, public participation in recycling and research and development in the field of litter control, and recycling, removal, and disposal of litter-related recycling materials;

(8) Conduct a biennial statewide litter survey targeted at litter composition, sources, demographics, and geographic trends; and

(9) Provide a biennial summary of all waste reduction, litter control, and recycling efforts statewide including those of the department of ecology, and other state agencies and local governments funded for such programs under this chapter. This report is due to the legislature in March of even-numbered years. [1998 c 257 § 8; 1979 c 94 § 7; 1971 ex.s. c 307 § 20.]

70.93.210 Waste reduction, anti-litter, and recycling campaign—Industrial cooperation requested. To aid in the statewide waste reduction, anti-litter, and recycling campaign, the state legislature requests that the payers of the waste reduction, recycling, and litter control tax and the vari-

ous industry organizations which are active in waste reduction, anti-litter, and recycling efforts provide active cooperation with the department of ecology so that additional effect may be given to the waste reduction, anti-litter, and recycling campaign of the state of Washington. [1998 c 257 § 9; 1979 c 94 § 8; 1971 ex.s. c 307 § 21.]

70.93.220 Litter collection programs—Department of ecology—Coordinating agency—Use of funds—Reporting. (1) The department of ecology is the coordinating and administrative agency working with the departments of natural resources, revenue, transportation, and corrections, and the parks and recreation commission in developing a biennial budget request for funds for the various agencies' litter collection programs.

(2) Funds may be used to meet the needs of efficient and effective litter collection and illegal dumping programs identified by the various agencies. The department shall develop criteria for evaluating the effectiveness and efficiency of the waste reduction, litter control, and recycling programs being administered by the various agencies listed in RCW 70.93.180, and shall distribute funds according to the effectiveness and efficiency of those programs. In addition, the department shall approve funding requests for efficient and effective waste reduction, litter control, and recycling programs, provide funds, and monitor the results of all agency programs.

(3) All agencies are responsible for reporting information on their litter collection programs, as requested by the department of ecology. Beginning in the year 2000, this information shall be provided to the department by March of even-numbered years. In 1998, this information shall be provided by July 1st.

(4) By December 1998, and in every even-numbered year thereafter, the department shall provide a report to the legislature summarizing biennial waste reduction, litter control, and recycling activities by state agencies and submitting the coordinated litter budget request of all agencies. [1998 c 257 § 6.]

70.93.230 Violations of chapter—Penalties. Every person convicted of a violation of this chapter for which no penalty is specially provided for shall be punished by a fine of not more than fifty dollars for each such violation. [1983 c 277 § 4; 1971 ex.s. c 307 § 23.]

70.93.250 Funding to local governments—Reports.

(1) The department shall provide funding to local units of government to establish, conduct, and evaluate community restitution and other programs for waste reduction, litter and illegal dump cleanup, and recycling. Programs eligible for funding under this section shall include, but not be limited to, programs established pursuant to RCW 72.09.260.

(2) Funds may be offered for costs associated with community waste reduction, litter cleanup and prevention, and recycling activities. The funding program must be flexible, allowing local governments to use funds broadly to meet their needs to reduce waste, control litter and illegal dumping, and promote recycling. Local governments are required to contribute resources or in-kind services. The department

shall evaluate funding requests from local government according to the same criteria as those developed in RCW 70.93.220, provide funds according to the effectiveness and efficiency of local government litter control programs, and monitor the results of all local government programs under this section.

(3) Local governments shall report information as requested by the department in funding agreements entered into by the department and a local government. The department shall report to the appropriate standing committees of the legislature by December of even-numbered years on the effectiveness of local government waste reduction, litter, and recycling programs funded under this section. [2002 c 175 § 46. Prior: 1998 c 257 § 10; 1998 c 245 § 128; 1990 c 66 § 3.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Findings—Intent—1990 c 66: See note following RCW 72.09.260.

70.93.900 Severability—1971 ex.s. c 307. If any provision of this 1971 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1971 ex.s. c 307 § 25.]

70.93.910 Alternative to Initiative 40—Placement on ballot—Force and effect of chapter. This 1971 amendatory act constitutes an alternative to Initiative 40. The secretary of state is directed to place this 1971 amendatory act on the ballot in conjunction with Initiative 40 at the next general election.

This 1971 amendatory act shall continue in force and effect until the secretary of state certifies the election results on this 1971 amendatory act. If affirmatively approved at the general election, this 1971 amendatory act shall continue in effect thereafter. [1971 ex.s. c 307 § 27.]

Reviser's note: Chapter 70.93 RCW [1971 ex.s. c 307] was approved and validated at the November 7, 1972, general election as Alternative Initiative Measure 40B.

70.93.920 Severability—1979 c 94. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 94 § 11.]

Chapter 70.94 RCW

WASHINGTON CLEAN AIR ACT

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Pollution Disclosure Act of 1971: Chapter 90.52 RCW.

Tax exemptions and credits for air pollution control facilities: Chapter 82.34 RCW.

Washington clean indoor air act: Chapter 70.160 RCW.

70.94.011 Declaration of public policies and purpose.

It is declared to be the public policy to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful

levels of pollution. Improving air quality is a matter of statewide concern and is in the public interest. It is the intent of this chapter to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population, to comply with the requirements of the federal clean air act, to prevent injury to plant, animal life, and property, to foster the comfort and convenience of Washington's inhabitants, to promote the economic and social development of the state, and to facilitate the enjoyment of the natural attractions of the state.

It is further the intent of this chapter to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

Because of the extent of the air pollution problem the legislature finds it necessary to return areas with poor air quality to levels adequate to protect health and the environment as expeditiously as possible but no later than December 31, 1995. Further, it is the intent of this chapter to prevent any areas of the state with acceptable air quality from reaching air contaminant levels that are not protective of human health and the environment.

The legislature recognizes that air pollution control projects may affect other environmental media. In selecting air pollution control strategies state and local agencies shall support those strategies that lessen the negative environmental impact of the project on all environmental media, including air, water, and land.

The legislature further recognizes that energy efficiency and energy conservation can help to reduce air pollution and shall therefore be considered when making decisions on air pollution control strategies and projects.

It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.

It is also declared as public policy that regional air pollution control programs are to be encouraged and supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

To these ends it is the purpose of this chapter to safeguard the public interest through an intensive, progressive, and coordinated statewide program of air pollution prevention and control, to provide for an appropriate distribution of responsibilities, and to encourage coordination and cooperation between the state, regional, and local units of government, to improve cooperation between state and federal government, public and private organizations, and the concerned individual, as well as to provide for the use of all known, available, and reasonable methods to reduce, prevent, and control air pollution.

The legislature recognizes that the problems and effects of air pollution cross political boundaries, are frequently regional or interjurisdictional in nature, and are dependent upon the existence of human activity in areas having common topography and weather conditions conducive to the buildup of air contaminants. In addition, the legislature recognizes that air pollution levels are aggravated and compounded by increased population, and its consequences.

These changes often result in increasingly serious problems for the public and the environment.

The legislature further recognizes that air emissions from thousands of small individual sources are major contributors to air pollution in many regions of the state. As the population of a region grows, small sources may contribute an increasing proportion of that region's total air emissions. It is declared to be the policy of the state to achieve significant reductions in emissions from those small sources whose aggregate emissions constitute a significant contribution to air pollution in a particular region.

It is the intent of the legislature that air pollution goals be incorporated in the missions and actions of state agencies. [1991 c 199 § 102; 1973 1st ex.s. c 193 § 1; 1969 ex.s. c 168 § 1; 1967 c 238 § 1.]

Finding—1991 c 199: "The legislature finds that ambient air pollution is the most serious environmental threat in Washington state. Air pollution causes significant harm to human health; damages the environment, including trees, crops, and animals; causes deterioration of equipment and materials; contributes to water pollution; and degrades the quality of life.

Over three million residents of Washington state live where air pollution levels are considered unhealthful. Of all toxic chemicals released into the environment more than half enter our breathing air. Citizens of Washington state spend hundreds of millions of dollars annually to offset health, environmental, and material damage caused by air pollution. The legislature considers such air pollution levels, costs, and damages to be unacceptable.

It is the intent of this act that the implementation of programs and regulations to control air pollution shall be the primary responsibility of the department of ecology and local air pollution control authorities." [1991 c 199 § 101.]

Alternative fuel and solar powered vehicles—1991 c 199: "The department of ecology shall contract with Western Washington University for the biennium ending June 30, 1993, for research and development of alternative fuel and solar powered vehicles. A report on the progress of such research shall be presented to the standing environmental committees and the department by January 1, 1994." [1991 c 199 § 230.]

70.94.015 Air pollution control account—Air operating permit account. (1) The air pollution control account is established in the state treasury. All receipts collected by or on behalf of the department from RCW 70.94.151(2), and receipts from nonpermit program sources under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW 70.94.650, 70.94.660, *82.44.020(2), and *82.50.405 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to develop and implement the provisions of chapters 70.94 and 70.120 RCW.

(2) The amounts collected and allocated in accordance with this section shall be expended upon appropriation except as otherwise provided in this section and in accordance with the following limitations:

Portions of moneys received by the department of ecology from the air pollution control account shall be distributed by the department to local authorities based on:

(a) The level and extent of air quality problems within such authority's jurisdiction;

(b) The costs associated with implementing air pollution regulatory programs by such authority; and

(c) The amount of funding available to such authority from other sources, whether state, federal, or local, that could be used to implement such programs.

(3) The air operating permit account is created in the custody of the state treasurer. All receipts collected by or on

behalf of the department from permit program sources under RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the account. Expenditures from the account may be used only for the activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7). Moneys in the account may be spent only after appropriation. [1998 c 321 § 33 (Referendum Bill No. 49, approved November 3, 1998); 1993 c 252 § 1; 1991 c 199 § 228.]

***Reviser's note:** RCW 82.44.020 and 82.50.405 were repealed by 2000 1st sp.s. c 1 § 2.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Contingent effective dates—1998 c 321 §§ 23-42: See note following RCW 35.58.410.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.017 Air pollution control account—Subaccount distribution. (Expires July 1, 2020.) (1) Money deposited in the segregated subaccount of the air pollution control account under RCW 46.68.020(2) shall be distributed as follows:

(a) Eighty-five percent shall be distributed to air pollution control authorities created under this chapter. The money must be distributed in direct proportion with the amount of fees imposed under RCW 46.12.080, 46.12.170, and 46.12.181 that are collected within the boundaries of each authority. However, an amount in direct proportion with those fees collected in counties for which no air pollution control authority exists must be distributed to the department.

(b) The remaining fifteen percent shall be distributed to the department.

(2) Money distributed to air pollution control authorities and the department under subsection (1) of this section must be used as follows:

(a) Eighty-five percent of the money received by an air pollution control authority or the department is available on a priority basis to retrofit school buses with exhaust emission control devices or to provide funding for fueling infrastructure necessary to allow school bus fleets to use alternative, cleaner fuels. In addition, the director of ecology or the air pollution control officer may direct funding under this section for other publicly or privately owned diesel equipment if the director of ecology or the air pollution control officer finds that funding for other publicly or privately owned diesel equipment will provide public health benefits and further the purposes of this chapter.

(b) The remaining fifteen percent may be used by the air pollution control authority or department to reduce transportation-related air contaminant emissions and clean up air pollution, or reduce and monitor toxic air contaminants.

(3) Money in the air pollution control account may be spent by the department only after appropriation.

(4) This section expires July 1, 2020. [2007 c 348 § 102; 2005 c 295 § 5; 2003 c 264 § 1.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Effective date—2005 c 295 §§ 5, 6, and 10: "Sections 5, 6, and 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 295 § 14.]

Findings—2005 c 295: See note following RCW 70.120A.010.

70.94.025 Pollution control hearings board of the state of Washington as affecting chapter 70.94 RCW. See chapter 43.21B RCW.

70.94.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) "Air quality standard" means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(4) "Ambient air" means the surrounding outside air.

(5) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(6) "Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under this chapter emitted from or that results from any new or modified stationary source, that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such a source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such a pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants that will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they exist on July 25, 1993, or their later enactments as adopted by reference by the director by rule. Emissions from any source utilizing clean fuels, or any other means, to comply with this subsection shall not be allowed to increase above levels that would have been required under the definition of BACT as it existed prior to enactment of the federal clean air act amendments of 1990.

(7) "Best available retrofit technology" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and

the degree of improvement in visibility that might reasonably be anticipated to result from the use of the technology.

(8) "Board" means the board of directors of an authority.

(9) "Control officer" means the air pollution control officer of any authority.

(10) "Department" or "ecology" means the department of ecology.

(11) "Emission" means a release of air contaminants into the ambient air.

(12) "Emission standard" and "emission limitation" mean a requirement established under the federal clean air act or this chapter that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard adopted under the federal clean air act or this chapter.

(13) "Fine particulate" means particulates with a diameter of two and one-half microns and smaller.

(14) "Lowest achievable emission rate" (LAER) means for any source that rate of emissions that reflects:

(a) The most stringent emission limitation that is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(15) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(16) "Multicounty authority" means an authority which consists of two or more counties.

(17) "New source" means (a) the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and (b) any other project that constitutes a new source under the federal clean air act.

(18) "Permit program source" means a source required to apply for or to maintain an operating permit under RCW 70.94.161.

(19) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(20) "Reasonably available control technology" (RACT) means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined

on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for a source or source category shall be adopted only after notice and opportunity for comment are afforded.

(21) "Silvicultural burning" means burning of wood fiber on forest land consistent with the provisions of RCW 70.94.660.

(22) "Source" means all of the emissions units including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products.

(23) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant.

(24) "Trigger level" means the ambient level of fine particulates, measured in micrograms per cubic meter, that must be detected prior to initiating a first or second stage of impaired air quality under RCW 70.94.473. [2005 c 197 § 2; 1993 c 252 § 2; 1991 c 199 § 103; 1987 c 109 § 33; 1979 c 141 § 119; 1969 ex.s. c 168 § 2; 1967 ex.s. c 61 § 1; 1967 c 238 § 2; 1957 c 232 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Capitions—1987 c 109: See notes following RCW 43.21B.001.

70.94.033 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 21.]

Purpose—1997 c 381: See RCW 43.21K.005.

70.94.035 Technical assistance program for regulated community. The department shall establish a technical assistance unit within its air quality program, consistent with the federal clean air act, to provide the regulated community, especially small businesses with:

(1) Information on air pollution laws, rules, compliance methods, and technologies;

(2) Information on air pollution prevention methods and technologies, and prevention of accidental releases;

(3) Assistance in obtaining permits and developing emission reduction plans;

(4) Information on the health and environmental effects of air pollution.

No representatives of the department designated as part of the technical assistance unit created in this section may have any enforcement authority. Staff of the technical assistance unit who provide on-site consultation at an industrial or commercial facility and who observe violations of air quality rules shall immediately inform the owner or operator of the facility of such violations. On-site consultation visits shall

not be regarded as an inspection or investigation and no notices or citations may be issued or civil penalties assessed during such a visit. However, violations shall be reported to the appropriate enforcement agency and the facility owner or operator shall be notified that the violations will be reported. No enforcement action shall be taken by the enforcement agency for violations reported by technical assistance unit staff unless and until the facility owner or operator has been provided reasonable time to correct the violation. Violations that place any person in imminent danger of death or substantial bodily harm or cause physical damage to the property of another in an amount exceeding one thousand dollars may result in immediate enforcement action by the appropriate enforcement agency. [1991 c 199 § 308.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.037 Transportation activities—"Conformity" determination requirements. In areas subject to a state implementation plan, no state agency, metropolitan planning organization, or local government shall approve or fund a transportation plan, program, or project within or that affects a nonattainment area unless a determination has been made that the plan, program, or project conforms with the state implementation plan for air quality as required by the federal clean air act.

Conformity determination shall be made by the state or local government or metropolitan planning organization administering or developing the plan, program, or project.

No later than eighteen months after May 15, 1991, the director of the department of ecology and the secretary of transportation, in consultation with other state, regional, and local agencies as appropriate, shall adopt by rule criteria and guidance for demonstrating and assuring conformity of plans, programs, and projects that are wholly or partially federally funded.

A project with a scope that is limited to preservation or maintenance, or both, shall be exempted from a conformity determination requirement. [1991 c 199 § 219.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.040 Causing or permitting air pollution unlawful—Exception. Except where specified in a variance permit, as provided in RCW 70.94.181, it shall be unlawful for any person to cause air pollution or permit it to be caused in violation of this chapter, or of any ordinance, resolution, rule or regulation validly promulgated hereunder. [1980 c 175 § 2; 1967 c 238 § 3; 1957 c 232 § 4.]

70.94.041 Exception—Burning wood at historic structure. Except as otherwise provided in this section, any building or structure listed on the national register of historic sites, structures, or buildings established pursuant to 80 Stat. 915, 16 U.S.C. Sec. 470a, or on the state register established pursuant to RCW 27.34.220, shall be permitted to burn wood as it would have when it was a functioning facility as an authorized exception to the provisions of this chapter. Such burning of wood shall not be exempted from the provisions of RCW 70.94.710 through 70.94.730. [1991 c 199 § 506; 1983 c 3 § 175; 1977 ex.s. c 38 § 1.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations. (1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) Except as provided in RCW 70.94.262, all authorities which are presently activated authorities shall carry out the duties and exercise the powers provided in this chapter. Those activated authorities which encompass contiguous counties are declared to be and directed to function as a multicounty authority.

(3) All other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such individuals as is provided in RCW 70.94.100. [1995 c 135 § 5. Prior: 1991 c 363 § 143; 1991 c 199 § 701; 1991 c 125 § 1; prior: 1987 c 505 § 60; 1987 c 109 § 34; 1979 c 141 § 120; 1967 c 238 § 4.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.055 Air pollution control authority may be activated by counties, when. The legislative authority of any county may activate an air pollution control authority following a public hearing on its own motion, or upon a filing of a petition signed by one hundred property owners within the county. If the county legislative authority determines as a result of the public hearing that:

(1) Air pollution exists or is likely to occur; and

(2) The city or town ordinances, or county resolutions, or their enforcement, are inadequate to prevent or control air pollution,

it may by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority. [1995 c 135 § 6. Prior: 1991 c 363 § 144; 1991 c 199 § 702; 1967 c 238 § 5.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.057 Multicounty authority may be formed by contiguous counties—Name. The boards of county commissioners of two or more contiguous counties may, by joint resolution, combine to form a multicounty air pollution control authority. Boundaries of such authority shall be coextensive with the boundaries of the counties forming the authority.

The name of the multicounty authority shall bear the names of the counties making up such multicounty authority

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or a name adopted by the board of such multicounty authority. [1967 c 238 § 6.]

70.94.068 Merger of active and inactive authorities to form multicounty or regional authority—Procedure. The respective boards of county commissioners of two or more contiguous counties may merge any combination of their several inactive or activated authorities to form one activated multicounty authority. Upon a determination that the purposes of this chapter will be served by such merger, each board of county commissioners may adopt the resolution providing for such merger. Such resolution shall become effective only when a similar resolution is adopted by the other contiguous county or counties comprising the proposed authority. The boundaries of such authority shall be coextensive with the boundaries of the counties within which it is located. [1969 ex.s. c 168 § 3; 1967 c 238 § 11.]

70.94.069 Merger of active and inactive authorities to form multicounty or regional authority—Reorganization of board of directors—Rules and regulations. Whenever there occurs a merger of an inactive authority with an activated authority or authorities, or of two activated authorities to form a multicounty authority, the board of directors shall be reorganized as provided in RCW 70.94.100, 70.94.110, and 70.94.120.

In the case of the merger of two or more activated authorities the rules and regulations of each authority shall continue in effect and shall be enforced within the jurisdiction of each until such time as the board of directors adopts rules and regulations applicable to the newly formed multicounty authority.

In the case of the merger of an inactive authority with an activated authority or authorities, upon approval of such merger by the board or boards of county commissioners of the county or counties comprising the existing activated authority or authorities, the rules and regulations of the activated authority or authorities shall remain in effect until superseded by the rules and regulations of the multicounty authority as provided in RCW 70.94.230. [1969 ex.s. c 168 § 4; 1967 c 238 § 12.]

70.94.070 Resolutions activating authorities—Contents—Filings—Effective date of operation. The resolution or resolutions activating an air pollution authority shall specify the name of the authority and participating political bodies; the authority's principal place of business; the territory included within it; and the effective date upon which such authority shall begin to transact business and exercise its powers. In addition, such resolution or resolutions may specify the amount of money to be contributed annually by each political subdivision, or a method of dividing expenses of the air pollution control program. Upon the adoption of a resolution or resolutions calling for the activation of an authority or the merger of an inactive or activated authority or several activated authorities to form a multicounty authority, the governing body of each shall cause a certified copy of each such ordinance or resolution to be filed in the office of the secretary of state of the state of Washington. From and after the date of filing with the secretary of state a certified copy of

each such resolution, or resolutions, or the date specified in such resolution or resolutions, whichever is later, the authority may begin to function and may exercise its powers.

Any authority activated by the provisions of this chapter shall cause a certified copy of all information required by this section to be filed in the office of the secretary of state of the state of Washington. [1969 ex.s. c 168 § 5; 1967 c 238 § 13; 1957 c 232 § 7.]

70.94.081 Powers and duties of authorities. An activated authority shall be deemed a municipal corporation; have right to perpetual succession; adopt and use a seal; may sue and be sued in the name of the authority in all courts and in all proceedings; and, may receive, account for, and disburse funds, employ personnel, and acquire or dispose of any interest in real or personal property within or without the authority in the furtherance of its purposes. [1969 ex.s. c 168 § 6; 1967 c 238 § 14.]

70.94.085 Cost-reimbursement agreements. (1) An authority may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the authority in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the air pollution control authority to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The air pollution control authority may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The air pollution control authority shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The air pollution control authority shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The air pollution control authority may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The provisions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. Members of

the air pollution control authority's board of directors shall be considered as state officers, and employees of the air pollution control authority shall be considered as state employees, for the sole purpose of applying the restrictions of chapter 42.52 RCW to this section. [2007 c 94 § 14; 2003 c 70 § 5; 2000 c 251 § 6.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

70.94.091 Excess tax levy authorized—Election, procedure, expense. An activated authority shall have the power to levy additional taxes in excess of the constitutional and/or statutory tax limitations for any of the authorized purposes of such activated authority, not in excess of twenty-five cents per thousand dollars of assessed value a year when authorized so to do by the electors of such authority by a three-fifths majority of those voting on the proposition at a special election, to be held in the year in which the levy is made, in the manner set forth in Article VII, section 2 (a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. Nothing herein shall be construed to prevent holding the foregoing special election at the same time as that fixed for a general election. The expense of all special elections held pursuant to this section shall be paid by the authority. [1973 1st ex.s. c 195 § 84; 1969 ex.s. c 168 § 7; 1967 c 238 § 15.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

70.94.092 Air pollution control authority—Fiscal year—Adoption of budget—Contents. Notwithstanding the provisions of RCW 1.16.030, the budget year of each activated authority shall be the fiscal year beginning July 1st and ending on the following June 30th. On or before the fourth Monday in June of each year, each activated authority shall adopt a budget for the following fiscal year. The activated authority budget shall contain adequate funding and provide for staff sufficient to carry out the provisions of all applicable ordinances, resolutions, and local regulations related to the reduction, prevention, and control of air pollution. The legislature acknowledges the need for the state to provide reasonable funding to local authorities to carry out the requirements of this chapter. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The remaining funds required to meet budget expenditures, if any, shall be designated as "supplemental income" and shall be obtained from the component cities, towns, and counties in the manner provided in this chapter. The affirmative vote of three-fourths of all members of the board shall be required to authorize emergency expenditures. [1991 c 199 § 703; 1975 1st ex.s. c 106 § 1; 1969 ex.s. c 168 § 8; 1967 c 238 § 16.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.093 Methods for determining proportion of supplemental income to be paid by component cities, towns and counties—Payment. (1) Each component city or town shall pay such proportion of the supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of

one and fifty percent of the other as provided in subsection (1)(c) of this section:

(a) Each component city or town shall pay such proportion of the supplemental income as the assessed valuation of property within its limits bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component city or town shall pay such proportion of the supplemental income as the total population of such city or town bears to the total population of the activated authority. The population of the city or town shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: PROVIDED, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(2) Each component county shall pay such proportion of such supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as prescribed in subsection (2)(c) of this section:

(a) Each component county shall pay such proportion of such supplemental income as the assessed valuation of the property within the unincorporated area of such county lying within the activated authority bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component county shall pay such proportion of the supplemental income as the total population of the unincorporated area of such county bears to the total population of the activated authority. The population of the county shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: PROVIDED, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(3) In making such determination of the assessed valuation of property in the component cities, towns and counties, the board shall use the last available assessed valuations. The board shall certify to each component city, town and county, prior to the fourth Monday in June of each year, the share of the supplemental income to be paid by such component city, town or county for the next calendar year. The latter shall then include such amount in its budget for the ensuing calendar year, and during such year shall pay to the activated authority, in equal quarterly installments, the amount of its supplemental share. [1969 ex.s. c 168 § 9; 1967 c 238 § 17.]

70.94.094 Designation of authority treasurer and auditor—Duties. The treasurer of each component city, town, or county shall create a separate fund into which shall be paid all money collected from taxes or from any other available sources, levied by or obtained for the activated authority on property or on any other available sources in such city, town, or county. The collected money shall be forwarded quarterly by the treasurer of each such city, town, or county to the treasurer of the county designated by the board

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as the treasurer for the authority. The treasurer of the county designated to serve as treasurer of the authority shall establish and maintain funds as authorized by the board.

Money shall be disbursed from funds collected under this section upon warrants drawn by either the authority or the auditor of the county designated by the board as the auditor for the authority, as authorized by the board.

If an authority chooses to use a county auditor for the disbursement of funds, the respective county shall be reimbursed by the board for services rendered by the auditor of the respective county in connection with the disbursement of funds under this section. [2007 c 164 § 1; 1969 ex.s. c 168 § 10; 1967 c 238 § 18.]

70.94.095 Assessed valuation of taxable property, certification by county assessors. It shall be the duty of the assessor of each component county to certify annually to the board the aggregate assessed valuation of all taxable property in all incorporated and unincorporated areas situated in any activated authority as the same appears from the last assessment roll of his county. [1969 ex.s. c 168 § 11; 1967 c 238 § 19.]

70.94.096 Authorization to borrow money. An activated authority shall have the power when authorized by a majority of all members of the board to borrow money from any component city, town or county and such cities, towns and counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the board and the legislative bodies of any such component city, town or county to provide funds to carry out the purposes of the activated authority. [1969 ex.s. c 168 § 12; 1967 c 238 § 20.]

70.94.097 Special air pollution studies—Contracts for conduct of. In addition to paying its share of the supplemental income of the activated authority, each component city, town, or county shall have the power to contract with such authority and expend funds for the conduct of special studies, investigations, plans, research, advice, or consultation relating to air pollution and its causes, effects, prevention, abatement, and control as such may affect any area within the boundaries of the component city, town, or county, and which could not be performed by the authority with funds otherwise available to it. Any component city, town or county which contracts for the conduct of such special air pollution studies, investigations, plans, research, advice or consultation with any entity other than the activated authority shall require that such an entity consult with the activated authority. [1975 1st ex.s. c 106 § 2.]

70.94.100 Air pollution control authority—Board of directors—Composition—Term. (1) The governing body of each authority shall be known as the board of directors.

(2)(a) In the case of an authority comprised of one county, with a population of less than four hundred thousand people, the board shall be comprised of two appointees of the city selection committee, at least one of whom shall represent the city having the most population in the county, and two

representatives to be designated by the board of county commissioners.

(b) In the case of an authority comprised of one county, with a population of equal to or greater than four hundred thousand people, the board shall be comprised of three appointees of cities, one each from the two cities with the most population in the county and one appointee of the city selection committee representing the other cities, and one representative to be designated by the board of county commissioners.

(c) In the case of an authority comprised of two, three, four, or five counties, the board shall be comprised of one appointee from each county, who shall represent the city having the most population in such county, to be designated by the mayor and city council of such city, and one representative from each county to be designated by the board of county commissioners of each county making up the authority.

(d) In the case of an authority comprised of six or more counties, the board shall be comprised of one representative from each county to be designated by the board of county commissioners of each county making up the authority, and three appointees, one each from the three largest cities within the local authority's jurisdiction to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be:

(a) In the case of an authority comprised of one county with a population of equal to or greater than four hundred thousand people, a citizen residing in the county who demonstrates significant professional experience in the field of public health, air quality protection, or meteorology; or

(b) In the case of an authority comprised of one county, with a population less than four hundred thousand people, or of more than one county, either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority.

(4) The terms of office of board members shall be four years.

(5) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action. [2006 c 227 § 1; 1991 c 199 § 704; 1989 c 150 § 1; 1969 ex.s. c 168 § 13; 1967 c 238 § 21; 1957 c 232 § 10.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.110 City selection committees. There shall be a separate and distinct city selection committee for each county making up an authority. The membership of such committee shall consist of the mayor of each incorporated city and town within such county, except that the mayors of the cities, with the most population in a county, having already designated appointees to the board of an air pollution control authority comprised of a single county shall not be members of the

committee. A majority of the members of each city selection committee shall constitute a quorum. [2006 c 227 § 2; 1967 c 238 § 22; 1963 c 27 § 1; 1957 c 232 § 11.]

70.94.120 City selection committees—Meetings, notice, recording officer—Alternative mail balloting—

Notice. (1) The city selection committee of each county which is included within an authority shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice given by the county auditor to each member of the city selection committee of each county and he shall give such notice upon request of any member of such committee. A similar notice shall be given to the general public by a publication of such notice in a newspaper of general circulation in such authority. The county auditor shall act as recording officer, maintain its records and give appropriate notice of its proceedings and actions.

(2) As an alternative to meeting in accordance with subsection (1) of this section, the county auditor may mail ballots by certified mail to the members of the city selection committee, specifying a date by which to complete the ballot, and a date by which to return the completed ballot. Each mayor who chooses to participate in the balloting shall write in the choice for appointment, sign the ballot, and return the ballot to the county auditor. Each completed ballot shall be date-stamped upon receipt by the mayor or staff of the mayor of the city or town. The timely return of completed ballots by a majority of the members of each city selection committee constitutes a quorum and the common choice by a majority of the quorum constitutes a valid appointment.

(3) Balloting shall be preceded by at least two weeks' written notice, given by the county auditor to each member of the city selection committee. A similar notice shall be given to the general public by publication in a newspaper of general circulation in the authority. [1995 c 261 § 2; 1969 ex.s. c 168 § 14; 1967 c 238 § 23; 1957 c 232 § 12.]

70.94.130 Air pollution control authority—Board of directors—Powers, quorum, officers, compensation.

The board shall exercise all powers of the authority except as otherwise provided. The board shall conduct its first meeting within thirty days after all of its members have been appointed or designated as provided in RCW 70.94.100. The board shall meet at least ten times per year. All meetings shall be publicly announced prior to their occurrence. All meetings shall be open to the public. A majority of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chair and such other officers as may be necessary. Any member of the board may designate a regular alternate to serve on the board in his or her place with the same authority as the member when he or she is unable to attend. In no event may a regular alternate serve as the permanent chair. Each member of the board, or his or her representative, shall receive from the authority compensation consistent with such authority's rates (but not to exceed one thousand dollars per year) for time spent in the performance of

duties under this chapter, plus the actual and necessary expenses incurred by the member in such performance. The board may appoint a control officer, and any other personnel, and shall determine their salaries, and pay same, together with any other proper indebtedness, from authority funds. [1998 c 342 § 1; 1991 c 199 § 705; 1969 ex.s. c 168 § 15; 1967 c 238 § 24; 1957 c 232 § 13.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.141 Air pollution control authority—Powers and duties of activated authority. The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own rules and regulations, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, *34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by an authority shall be in accordance with Part V of chapter 34.05 RCW. An air pollution control authority shall not be deemed to be a state agency.

(2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

(8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

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(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of this chapter. [1991 c 199 § 706; 1970 ex.s. c 62 § 56; 1969 ex.s. c 168 § 16; 1967 c 238 § 25.]

*Reviser's note: RCW 34.05.355 was repealed by 1995 c 403 § 305.

Finding—1991 c 199: See note following RCW 70.94.011.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.142 Subpoena powers—Witnesses, expenses and mileage—Rules and regulations. In connection with the subpoena powers given in RCW 70.94.141(2):

(1) In any hearing held under RCW 70.94.181 and 70.94.221, the board or the department, and their authorized agents:

(a) Shall issue a subpoena upon the request of any party and, to the extent required by rule or regulation, upon a statement or showing of general relevance and reasonable scope of the evidence sought;

(b) May issue a subpoena upon their own motion.

(2) The subpoena powers given in RCW 70.94.141(2) shall be statewide in effect.

(3) Witnesses appearing under the compulsion of a subpoena in a hearing before the board or the department shall be paid the same fees and mileage that are provided for witnesses in the courts of this state. Such fees and mileage, and the cost of duplicating records required to be produced by subpoena issued upon the motion of the board or department, shall be paid by the board or department. Such fees and mileage, and the cost of producing records required to be produced by subpoena issued upon the request of a party, shall be paid by that party.

(4) If an individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, the board or department shall file its written report thereof and proof of service of its subpoena, in any court of competent jurisdiction in the county where the examination, hearing or investigation is being conducted. Thereupon, the court shall forthwith cause the individual to be brought before it and, upon being satisfied that the subpoena is within the jurisdiction of the board or department and otherwise in accordance with law, shall punish him as if the failure or refusal related to a subpoena from or testimony in that court.

(5) The department may make such rules and regulations as to the issuance of its own subpoenas as are not inconsistent with the provisions of this chapter. [1987 c 109 § 35; 1969 ex.s. c 168 § 17; 1967 c 238 § 26.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.143 Federal aid. Any authority exercising the powers and duties prescribed in this chapter may make application for, receive, administer, and expend any federal aid, under federal legislation from any agency of the federal government, for the prevention and control of air pollution or the development and administration of programs related to air pollution control and prevention, as permitted by RCW 70.94.141(12): PROVIDED, That any such application shall be submitted to and approved by the department. The department shall adopt rules and regulations establishing standards for such approval and shall approve any such application, if it is consistent with this chapter, and any other applicable requirements of law. [1987 c 109 § 36; 1969 ex.s. c 168 § 18; 1967 c 238 § 27.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.151 Classification of air contaminant sources—Registration—Fee—Registration program defined—Adoption of rules requiring the reporting of emissions of greenhouse gases. (1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70.235.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from infor-

mation provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required under subsection (5) of this section.

All registration program and reporting fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually.

(4) For the purposes of subsection (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain;

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW; and

(c) "Grain" means a grain or a pulse.

(5)(a) The department shall adopt rules requiring the reporting of emissions of greenhouse gases as defined in RCW 70.235.010. The rules must include a de minimis amount of emissions below which reporting will not be required for both indirect and direct emissions. The rules must require that emissions of greenhouse gases resulting from the burning of fossil fuels be reported separately from emissions of greenhouse gases resulting from the burning of biomass. Except as provided in (b) of this subsection, the department shall, under the authority granted in subsection (1) of this section, adopt rules requiring any owner or operator: (i) Of a fleet of on-road motor vehicles that as a fleet emit at least twenty-five hundred metric tons of greenhouse gas annually in the state to report the emissions of greenhouse gases generated from or emitted by that fleet; or (ii) of a

source or combination of sources that emit at least ten thousand metric tons of greenhouse gas annually in the state to report their total annual emissions of greenhouse gases. In calculating emissions of greenhouse gases for purposes of determining whether or not reporting is required, only direct emissions shall be included. For purposes of reporting emissions of greenhouse gases in chapter 14, Laws of 2008, "source" means any stationary source as defined in RCW 70.94.030, or mobile source used for transportation of people or cargo. The emissions of greenhouse gases must be reported as carbon dioxide equivalents. The rules must require that persons report 2009 emissions starting in 2010. The rules must establish an annual reporting schedule that takes into account the time needed to allow the owner or operator reporting emissions of greenhouse gases to gather the information needed and to verify the emissions being reported. However, in no event may reports be submitted later than October 31st of the year in which the report is due. The department may phase in the reporting requirements for sources or combinations of sources under (a)(ii) of this subsection until the reporting threshold is met, which must be met by January 1, 2012. The department may from time to time amend the rules to include other persons that emit less than the annual greenhouse gas emissions levels set out in this subsection if necessary to comply with any federal reporting requirements for emissions of greenhouse gases.

(b) In its rules, the department may defer the reporting requirement under (a) of this subsection for emissions associated with interstate and international commercial aircraft, rail, truck, or marine vessels until (i) there is a federal requirement to report these emissions; or (ii) the department finds that there is a generally accepted reporting protocol for determining interstate emissions from these sources.

(c) The department shall share any reporting information reported to it with the local air authority in which the owner or operator reporting under the rules adopted by the department operates.

(d) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. Owners and operators required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements unless it approves a local air authority's request to enforce the requirements for sources operating within the authority's jurisdiction.

(e) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

(f) In developing its rules, the department shall, with the assistance of the department of transportation, identify a mechanism to report an aggregate estimate of the annual emissions of greenhouse gases generated from or emitted by otherwise unreported on-road motor vehicles.

(g) The inclusion or failure to include any person, source, classes of persons or sources, or types of emissions of greenhouse gases into the department's rules for reporting under this section does not indicate whether such a person, source, or category is appropriate for inclusion in the multi-sector market-based system designed under RCW 70.235.020.

(h) Should the federal government adopt rules sufficient to track progress toward the emissions reductions required by chapter 14, Laws of 2008 governing the reporting of greenhouse gases, the department shall amend its rules, as necessary, to seek consistency with the federal rules to ensure duplicate reporting is not required. Nothing in this section requires the department to increase the reporting threshold established in (a) of this subsection or otherwise require the department's rules be identical to the federal rules in scope.

(i) The definitions in RCW 70.235.010 apply throughout this subsection (5) unless the context clearly requires otherwise. [2008 c 14 § 5; 2005 c 138 § 1; 1997 c 410 § 1; 1993 c 252 § 3; 1987 c 109 § 37; 1984 c 88 § 2; 1969 ex.s. c 168 § 19; 1967 c 238 § 28.]

Findings—Intent—Scope of chapter 14, Laws of 2008—Severability—2008 c 14: See RCW 70.235.005, 70.235.900, and 70.235.901.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.152 Notice may be required of construction of proposed new contaminant source—Submission of plans—Approval, disapproval—Emission control—"De minimis new sources" defined. (1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources except single family and duplex dwellings or de minimis new sources as defined in rules adopted under subsection (11) of this section. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FURTHER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology.

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures. All new source fees collected by the delegated local air authorities from sources shall be deposited in the dedicated accounts of their respective treasuries. All new source fees collected by the department from sources shall be deposited in the air pollution control account.

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the

new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

(4) The determination required under subsection (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(5) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(6) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(7) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) or (3) of this section shall be maintained and operate in good working order.

(8) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his or her obligation to comply with applicable emission control requirements or with any other provision of law.

(9) Within thirty days of receipt of a notice of construction application the department of ecology or board shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by RCW 70.94.161 and the notice of construction application required

by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(10) A notice of construction approval required under subsection (3) of this section shall include a determination that the new source will achieve best available control technology. If more stringent controls are required under federal law, the notice of construction shall include a determination that the new source will achieve the more stringent federal requirements. Nothing in this subsection is intended to diminish other state authorities under this chapter.

(11) No person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimis new sources by category, size, or emission thresholds.

(12) For purposes of this section, "de minimis new sources" means new sources with trivial levels of emissions that do not pose a threat to human health or the environment. [1996 c 67 § 1; 1996 c 29 § 1; 1993 c 252 § 4; 1991 c 199 § 302; 1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29.]

Reviser's note: This section was amended by 1996 c 29 § 1 and by 1996 c 67 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—1991 c 199: See note following RCW 70.94.011.

Use of emission credits to be consistent with new source review program: RCW 70.94.850.

70.94.153 Existing stationary source—Replacement or substantial alteration of emission control technology.

Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall file a notice of construction application with the jurisdictional permitting authority. For projects not otherwise reviewable under RCW 70.94.152, the permitting authority may (1) require that the owner or operator employ reasonably available control technology for the affected emission unit and (2) may prescribe reasonable operation and maintenance conditions for the control equipment. Within thirty days of receipt of an application for notice of construction under this section the permitting authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty days of receipt of a complete application the permitting authority shall either issue an order of approval or a proposed RACT determination for the proposed project. Construction shall not commence on a project subject to review under this section until the permitting authority issues a final order of approval. However, any notice of construction application filed under this section shall be deemed to be approved without conditions if the permitting authority takes no action within thirty days of receipt of a complete application for a notice of construction. [1991 c 199 § 303.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.154 RACT requirements. (1) RACT as defined in RCW 70.94.030 is required for existing sources except as otherwise provided in RCW 70.94.331(9).

(2) RACT for each source category containing three or more sources shall be determined by rule except as provided in subsection (3) of this section.

(3) Source-specific RACT determinations may be performed under any of the following circumstances:

(a) As authorized by RCW 70.94.153;

(b) When required by the federal clean air act;

(c) For sources in source categories containing fewer than three sources;

(d) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(e) When a source-specific RACT determination is needed to address either specific air quality problems for which the source is a significant contributor or source-specific economic concerns.

(4) By January 1, 1994, ecology shall develop a list of sources and source categories requiring RACT review and a schedule for conducting that review. Ecology shall review the list and schedule within six months of receiving the initial operating permit applications and at least once every five years thereafter. In developing the list to determine the schedule of RACT review, ecology shall consider emission reductions achievable through the use of new available technologies and the impacts of those incremental reductions on air quality, the remaining useful life of previously installed control equipment, the impact of the source or source category on air quality, the number of years since the last BACT, RACT, or LAER determination for that source and other relevant factors. Prior to finalizing the list and schedule, ecology shall consult with local air authorities, the regulated community, environmental groups, and other interested individuals and organizations. The department and local authorities shall revise RACT requirements, as needed, based on the review conducted under this subsection.

(5) In determining RACT, ecology and local authorities shall utilize the factors set forth in RCW 70.94.030 and shall consider RACT determinations and guidance made by the federal environmental protection agency, other states and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, ecology and local authorities shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

(6) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance or renewal shall be considered RACT for purposes of permit issuance or renewal. RACT determinations under subsections (2) and (3) of this section shall be incorporated into operating permits as provided in RCW 70.94.161 and rules implementing that section.

(7) The department and local air authorities are authorized to assess and collect a fee to cover the costs of developing, establishing, or reviewing categorical or case-by-case RACT requirements. The fee shall apply to determinations of RACT requirements as defined under this section and RCW 70.94.331(9). The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for

the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category. The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of its RACT determinations and a methodology for tracking revenues and expenditures. All such RACT determination fees collected by the delegated local air authorities from sources shall be deposited in the dedicated accounts of their respective treasuries. All such RACT fees collected by the department from sources shall be deposited in the air pollution control account. [1996 c 29 § 2; 1993 c 252 § 8.]

70.94.155 Control of emissions—Bubble concept—Schedules of compliance. (1) As used in subsection (3) of this section, the term "bubble" means an air pollution control system which permits aggregate measurements of allowable emissions, for a single category of pollutant, for emissions points from a specified emissions-generating facility or facilities. Individual point source emissions levels from such specified facility or facilities may be modified provided that the aggregate limit for the specified sources is not exceeded.

(2) Whenever any regulation relating to emission standards or other requirements for the control of emissions is adopted which provides for compliance with such standards or requirements no later than a specified time after the date of adoption of the regulation, the appropriate activated air pollution control authority or, if there be none, the department of ecology shall, by permit or regulatory order, issue to air contaminant sources subject to the standards or requirements, schedules of compliance setting forth timetables for the achievement of compliance as expeditiously as practicable, but in no case later than the time specified in the regulation. Interim dates in such schedules for the completion of steps of progress toward compliance shall be as enforceable as the final date for full compliance therein.

(3) Wherever requirements necessary for the attainment of air quality standards or, where such standards are not exceeded, for the maintenance of air quality can be achieved through the use of a control program involving the bubble concept, such program may be authorized by a regulatory order or orders or permit issued to the air contaminant source or sources involved. Such order or permit shall only be authorized after the control program involving the bubble concept is accepted by [the] United States environmental protection agency as part of an approved state implementation plan. Any such order or permit provision shall restrict total emissions within the bubble to no more than would otherwise be allowed in the aggregate for all emitting processes covered. The orders or permits provided for by this subsection shall be issued by the department or the authority with jurisdiction. If the bubble involves interjurisdictional approval, concurrence in the total program must be secured from each regulatory entity concerned. [1991 c 199 § 305; 1981 c 224 § 1; 1973 1st ex.s. c 193 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

Use of emission credits to be consistent with bubble program: RCW 70.94.850.

70.94.157 Preemption of uniform building and fire codes. The department and local air pollution control authorities shall preempt the application of chapter 9 of the uniform building code and article 80 of the uniform fire code by other state agencies and local governments for the purposes of controlling outdoor air pollution from industrial and commercial sources, except where authorized by chapter 199, Laws of 1991. Actions by other state agencies and local governments under article 80 of the uniform fire code to take immediate action in response to an emission that presents a physical hazard or imminent health hazard are not preempted. [1991 c 199 § 315.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.161 Operating permits for air contaminant sources—Generally—Fees, report to legislature. The department of ecology, or board of an authority, shall require renewable permits for the operation of air contaminant sources subject to the following conditions and limitations:

(1) Permits shall be issued for a term of five years. A permit may be modified or amended during its term at the request of the permittee, or for any reason allowed by the federal clean air act. The rules adopted pursuant to subsection (2) of this section shall include rules for permit amendments and modifications. The terms and conditions of a permit shall remain in effect after the permit itself expires if the permittee submits a timely and complete application for permit renewal.

(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established by the department by January 1, 1993. The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. The permit program established by these rules shall be administered by the department and delegated local air authorities. Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent emission standards and operating restrictions.

(b) The board of any local air pollution control authority may apply to the department of ecology for a delegation order authorizing the local authority to administer the operating permit program for sources under that authority's jurisdiction. The department shall, by order, approve such delegation, if the department finds that the local authority has the technical and financial resources, to discharge the responsibilities of a permitting authority under the federal clean air act. A delegation request shall include adequate information about the local authority's resources to enable the department to make the findings required by this subsection. However, any delegation order issued under this subsection shall take effect ninety days after the environmental protection agency authorizes the local authority to issue operating permits under the federal clean air act.

(c) Except for the authority granted the energy facility site evaluation council to issue permits for the new construction, reconstruction, or enlargement or operation of new energy facilities under chapter 80.50 RCW, the department may exercise the authority, as delegated by the environmental

protection agency, to administer Title IV of the federal clean air act as amended and to delegate such administration to local authorities as applicable pursuant to (b) of this subsection.

(3) In establishing technical standards, defined in RCW 70.94.030, the permitting authority shall consider and, if found to be appropriate, give credit for waste reduction within the process.

(4) Operating permits shall apply to all sources (a) where required by the federal clean air act, and (b) for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare. Subsection (b) of this subsection is not intended to apply to small businesses except when both of the following limitations are satisfied: (i) The source is in an area exceeding or threatening to exceed federal or state air quality standards; and (ii) the department provides a reasonable justification that requiring a source to have a permit is necessary to meet a federal or state air quality standard, or to prevent exceeding a standard in an area threatening to exceed the standard. For purposes of this subsection "areas threatening to exceed air quality standards" shall mean areas projected by the department to exceed such standards within five years. Prior to identifying threatened areas the department shall hold a public hearing or hearings within the proposed areas.

(5) Sources operated by government agencies are not exempt under this section.

(6) Within one hundred eighty days after the United States environmental protection agency approves the state operating permit program, a person required to have a permit shall submit to the permitting authority a compliance plan and permit application, signed by a responsible official, certifying the accuracy of the information submitted. Until permits are issued, existing sources shall be allowed to operate under presently applicable standards and conditions provided that such sources submit complete and timely permit applications.

(7) All draft permits shall be subject to public notice and comment. The rules adopted pursuant to subsection (2) of this section shall specify procedures for public notice and comment. Such procedures shall provide the permitting agency with an opportunity to respond to comments received from interested parties prior to the time that the proposed permit is submitted to the environmental protection agency for review pursuant to section 505(a) of the federal clean air act. In the event that the environmental protection agency objects to a proposed permit pursuant to section 505(b) of the federal clean air act, the permitting authority shall not issue the permit, unless the permittee consents to the changes required by the environmental protection agency.

(8) The procedures contained in chapter 43.21B RCW shall apply to permit appeals. The pollution control hearings board may stay the effectiveness of any permit issued under this section during the pendency of an appeal filed by the permittee, if the permittee demonstrates that compliance with the permit during the pendency of the appeal would require significant expenditures that would not be necessary in the event that the permittee prevailed on the merits of the appeal.

(9) After the effective date of any permit program promulgated under this section, it shall be unlawful for any person to: (a) Operate a permitted source in violation of any

requirement of a permit issued under this section; or (b) fail to submit a permit application at the time required by rules adopted under subsection (2) of this section.

(10) Each air operating permit shall state the origin of and specific legal authority for each requirement included therein. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

(a) The federal clean air act and rules implementing that act, including provision of the approved state implementation plan;

(b) This chapter and rules adopted thereunder;

(c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;

(d) Chapter 70.98 RCW and rules adopted thereunder; and

(e) Chapter 80.50 RCW and rules adopted thereunder.

(11) Consistent with the provisions of the federal clean air act, the permitting authority may issue general permits covering categories of permitted sources, and temporary permits authorizing emissions from similar operations at multiple temporary locations.

(12) Permit program sources within the territorial jurisdiction of an authority delegated the operating permit program shall file their permit applications with that authority, except that permit applications for sources regulated on a statewide basis pursuant to RCW 70.94.395 shall be filed with the department. Permit program sources outside the territorial jurisdiction of a delegated authority shall file their applications with the department. Permit program sources subject to chapter 80.50 RCW shall, irrespective of their location, file their applications with the energy facility site evaluation council.

(13) When issuing operating permits to coal fired electric generating plants, the permitting authority shall establish requirements consistent with Title IV of the federal clean air act.

(14)(a) The department and the local air authorities are authorized to assess and to collect, and each source emitting one hundred tons or more per year of a regulated pollutant shall pay an interim assessment to fund the development of the operating permit program during fiscal year 1994.

(b) The department shall conduct a workload analysis and prepare an operating permit program development budget for fiscal year 1994. The department shall allocate among all sources emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 the costs identified in its program development budget according to a three-tiered model, with each of the three tiers being equally weighted, based upon:

(i) The number of sources;

(ii) The complexity of sources; and

(iii) The size of sources, as measured by the quantity of each regulated pollutant emitted by the source.

(c) Each local authority and the department shall collect from sources under their respective jurisdictions the interim fee determined by the department and shall remit the fee to the department.

(d) Each local authority may, in addition, allocate its fiscal year 1994 operating permit program development costs among the sources under its jurisdiction emitting one hun-

dred tons or more per year of a regulated pollutant during calendar year 1992 and may collect an interim fee from these sources. A fee assessed pursuant to this subsection (14)(d) shall be collected at the same time as the fee assessed pursuant to (c) of this subsection.

(e) The fees assessed to a source under this subsection shall be limited to the first seven thousand five hundred tons for each regulated pollutant per year.

(15)(a) The department shall determine the persons liable for the fee imposed by subsection (14) of this section, compute the fee, and provide by November 1, 1993, the identity of the fee payer with the computation of the fee to each local authority and to the department of revenue for collection. The department of revenue shall collect the fee computed by the department from the fee payers under the jurisdiction of the department. The administrative, collection, and penalty provisions of chapter 82.32 RCW shall apply to the collection of the fee by the department of revenue. The department shall provide technical assistance to the department of revenue for decisions made by the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All interim fees collected by the department of revenue on behalf of the department and all interim fees collected by local authorities on behalf of the department shall be deposited in the air operating permit account. The interim fees collected by the local air authorities to cover their permit program development costs under subsection (14)(d) of this section shall be deposited in the dedicated accounts of their respective treasuries.

(b) All fees identified in this section shall be due and payable on March 1, 1994, except that the local air pollution control authorities may adopt by rule an earlier date on which fees are to be due and payable. The section 5, chapter 252, Laws of 1993 amendments to RCW 70.94.161 do not have the effect of terminating, or in any way modifying, any liability, civil or criminal, incurred pursuant to the provisions of RCW 70.94.161 (15) and (17) as they existed prior to July 25, 1993.

(16) For sources or source categories not required to obtain permits under subsection (4) of this section, the department or local authority may establish by rule control technology requirements. If control technology rule revisions are made by the department or local authority under this subsection, the department or local authority shall consider the remaining useful life of control equipment previously installed on existing sources before requiring technology changes. The department or any local air authority may issue a general permit, as authorized under the federal clean air act, for such sources.

(17) Emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required by RCW 70.94.151. The reporting provisions of RCW 70.94.151 shall not apply to any other emissions from any permit program source after the effective date of United States environmental protection agency approval of the state operating permit program. [2008 c 14 § 6; 1993 c 252 § 5; 1991 c 199 § 301.]

Findings—Intent—Scope of chapter 14, Laws of 2008—Severability—2008 c 14: See RCW 70.235.005, 70.235.900, and 70.235.901.

Finding—1991 c 199: See note following RCW 70.94.011.

Air operating permit account: RCW 70.94.015.

70.94.162 Annual fees from operating permit program source to cover cost of program. (1) The department and delegated local air authorities are authorized to determine, assess, and collect, and each permit program source shall pay, annual fees sufficient to cover the direct and indirect costs of implementing a state operating permit program approved by the United States environmental protection agency under the federal clean air act. However, a source that receives its operating permit from the United States environmental protection agency shall not be considered a permit program source so long as the environmental protection agency continues to act as the permitting authority for that source. Each permitting authority shall develop by rule a fee schedule allocating among its permit program sources the costs of the operating permit program, and may, by rule, establish a payment schedule whereby periodic installments of the annual fee are due and payable more frequently. All operating permit program fees collected by the department shall be deposited in the air operating permit account. All operating permit program fees collected by the delegated local air authorities shall be deposited in their respective air operating permit accounts or other accounts dedicated exclusively to support of the operating permit program. The fees assessed under this subsection shall first be due not less than forty-five days after the United States environmental protection agency delegates to the department the authority to administer the operating permit program and then annually thereafter.

The department shall establish, by rule, procedures for administrative appeals to the department regarding the fee assessed pursuant to this subsection.

(2) The fee schedule developed by each permitting authority shall fully cover and not exceed both its permit administration costs and the permitting authority's share of statewide program development and oversight costs.

(a) Permit administration costs are those incurred by each permitting authority, including the department, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program and to the sources permitted by a permitting authority, including, where applicable, sources subject to a general permit:

(i) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(ii) Source inspections, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(iii) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(iv) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(v) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(vi) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(vii) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(viii) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(ix) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(x) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(xi) Training for permit administration and enforcement;

(xii) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(xiii) Required fiscal audits, periodic performance audits, and reporting activities;

(xiv) Tracking of time, revenues and expenditures, and accounting activities;

(xv) Administering the permit program including the costs of clerical support, supervision, and management;

(xvi) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the federal clean air act; and

(xvii) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(b) Development and oversight costs are those incurred by the department in developing and administering the state operating permit program, and in overseeing the administration of the program by the delegated local permitting authorities. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program:

(i) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW 70.94.161(2) and 70.94.860;

(ii) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(iii) Administrative enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW 70.94.785, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(iv) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(v) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

(vi) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(vii) State codification of federal rules or standards for inclusion in operating permits;

(viii) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States environmental protection agency for approval, including ongoing coordination activities;

(ix) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

(x) Required fiscal audits and periodic performance audits of the department, and reporting activities;

(xi) Tracking of time, revenues and expenditures, and accounting activities;

(xii) Public education and outreach related to the operating permit program, including the maintenance of a permit register;

(xiii) The share attributable to permitted sources of compiling and maintaining emissions inventories;

(xiv) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;

(xv) The share attributable to permitted sources of modeling activities;

(xvi) Provision of assistance to small business as required under section 507 of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule;

(xvii) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;

(xviii) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and

(xix) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(3) The responsibility for operating permit fee determination, assessment, and collection is to be shared by the department and delegated local air authorities as follows:

(a) Each permitting authority, including the department, acting in its capacity as a permitting authority, shall develop a fee schedule and mechanism for collecting fees from the permit program sources under its jurisdiction; the fees collected by each authority shall be sufficient to cover its costs of permit administration and its share of the department's costs of development and oversight. Each delegated local authority shall remit to the department its share of the department's development and oversight costs.

(b) Only those local air authorities to whom the department has delegated the authority to administer the program pursuant to RCW 70.94.161(2) (b) and (c) and 70.94.860 shall have the authority to administer and collect operating permit fees. The department shall retain the authority to administer and collect such fees with respect to the sources within the jurisdiction of a local air authority until the effective date of program delegation to that air authority.

(c) The department shall allocate its development and oversight costs among all permitting authorities, including the department, in proportion to the number of permit pro-

gram sources under the jurisdiction of each authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed that authority. For purposes of this subsection, all sources covered by a single general permit shall be treated as one source.

(4) The department and each delegated local air authority shall adopt by rule a general permit fee schedule for sources under their respective jurisdictions after such time as the department adopts provisions for general permit issuance. Within ninety days of the time that the department adopts a general permit fee schedule, the department shall report to the relevant standing committees of the legislature regarding the general permit fee schedules adopted by the department and by the delegated local air authorities. The permit administration costs of each general permit shall be allocated equitably among only those sources subject to that general permit. The share of development and oversight costs attributable to each general permit shall be determined pursuant to subsection (3)(c) of this section.

(5) The fee schedule developed by the department shall allocate among the sources for whom the department acts as a permitting authority, other than sources subject to a general permit, those portions of the department's permit administration costs and the department's share of the development and oversight costs which the department does not plan to recover under its general permit fee schedule or schedules as follows:

(a) The department shall allocate its permit administration costs and its share of the development and oversight costs not recovered through general permit fees according to a three-tiered model based upon:

(i) The number of permit program sources under its jurisdiction;

(ii) The complexity of permit program sources under its jurisdiction; and

(iii) The size of permit program sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted by the source.

(b) Each of the three tiers shall be equally weighted.

(c) The department may, in addition, allocate activities-based costs readily attributable to a specific source to that source under RCW 70.94.152(1) and 70.94.154(7).

The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions during the most recent calendar year for which data is available.

(6) The department shall, after opportunity for public review and comment, adopt rules that establish a process for development and review of its operating permit program fee schedule, a methodology for tracking program revenues and expenditures and, for both the department and the delegated local air authorities, a system of fiscal audits, reports, and periodic performance audits.

(a) The fee schedule development and review process shall include the following:

(i) The department shall conduct a biennial workload analysis. The department shall provide the opportunity for public review of and comment on the workload analysis. The department shall review and update its workload analysis during each biennial budget cycle, taking into account information gathered by tracking previous revenues, time, and

expenditures and other information obtained through fiscal audits and performance audits.

(ii) The department shall prepare a biennial budget based upon the resource requirements identified in the workload analysis for that biennium. In preparing the budget, the department shall take into account the projected operating permit account balance at the start of the biennium. The department shall provide the opportunity for public review of and comment on the proposed budget. The department shall review and update its budget each biennium.

(iii) The department shall develop a fee schedule allocating the department's permit administration costs and its share of the development and oversight costs among the department's permit program sources using the methodology described in subsection (5) of this section. The department shall provide the opportunity for public review of and comment on the allocation methodology and fee schedule. The department shall provide procedures for administrative resolution of disputes regarding the source data on which allocation determinations are based; these procedures shall be designed such that resolution occurs prior to the completion of the allocation process. The department shall review and update its fee schedule annually.

(b) The methodology for tracking revenues and expenditures shall include the following:

(i) The department shall develop a system for tracking revenues and expenditures that provides the maximum practicable information. At a minimum, revenues from fees collected under the operating permit program shall be tracked on a source-specific basis and time and expenditures required to administer the program shall be tracked on the basis of source categories and functional categories. Each general permit will be treated as a separate source category for tracking and accounting purposes.

(ii) The department shall use the information obtained from tracking revenues, time, and expenditures to modify the workload analysis required in subsection (6)(a) of this section.

(iii) The information obtained from tracking revenues, time, and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(c) The system of fiscal audits, reports, and periodic performance audits shall include the following:

(i) The department and the delegated local air authorities shall prepare annual reports and shall submit the reports to, respectively, the appropriate standing committees of the legislature and the board of directors of the local air authority.

(ii) The department shall arrange for fiscal audits and routine performance audits and for periodic intensive performance audits of each permitting authority and of the department.

(7) Each local air authority requesting delegation shall, after opportunity for public review and comment, publish regulations which establish a process for development and review of its operating permit program fee schedule, and a methodology for tracking its revenues and expenditures. These regulations shall be submitted to the department for review and approval as part of the local authority's delegation request.

(8) As used in this section and in RCW 70.94.161(14), "regulated pollutant" shall have the same meaning as defined

in section 502(b) of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule.

(9) Fee structures as authorized under this section shall remain in effect until such time as the legislature authorizes an alternative structure following receipt of the report required by this subsection. [1998 c 245 § 129; 1993 c 252 § 6.]

70.94.163 Source categories not required to have a permit—Recommendations. The department shall prepare recommendations to reduce air emissions for source categories not generally required to have a permit under RCW 70.94.161. Such recommendations shall not require any action by the owner or operator of a source and shall be consistent with rules adopted under chapter 70.95C RCW. The recommendations shall include but not be limited to: Process changes, product substitution, equipment modifications, hazardous substance use reduction, recycling, and energy efficiency. [1991 c 199 § 304.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.165 Gasoline recovery devices—Limitation on requiring. (1) A gasoline vapor recovery device that captures vapors during vehicle fueling may only be required at a service station, or any other gasoline dispensing facility supplying fuel to the general public, in any of the following circumstances:

(a) The facility sells in excess of six hundred thousand gallons of gasoline per year and is located in a county, any part of which is designated as nonattainment for ozone under the federal clean air act, 42 U.S.C. Sec. 7407; or

(b) The facility sells in excess of six hundred thousand gallons of gasoline per year and is located in a county where a maintenance plan has been adopted by a local air pollution control authority or the department of ecology that includes gasoline vapor recovery devices as a control strategy; or

(c) From March 30, 1996, until December 31, 1998, in any facility that sells in excess of one million two hundred thousand gallons of gasoline per year and is located in an ozone-contributing county. For purposes of this section, an ozone-contributing county means a county in which the emissions have contributed to the formation of ozone in any county where violations of federal ozone standards have been measured, and includes: Cowlitz, Island, Kitsap, Lewis, Skagit, Thurston, Wahkiakum, and Whatcom counties; or

(d) After December 31, 1998, in any facility that sells in excess of eight hundred forty thousand gallons of gasoline per year and is located in any county, no part of which is designated as nonattainment for ozone under the federal clean air act, 42 U.S.C. Sec. 7407, provided that the department of ecology determines by December 31, 1997, that the use of gasoline vapor control devices in the county is important to achieving or maintaining attainment status in any other county.

(2) This section does not preclude the department of ecology or any local air pollution authority from requiring a gasoline vapor recovery device that captures vapors during vehicle refueling as part of the regulation of sources as pro-

vided in RCW 70.94.152, 70.94.331, or 70.94.141 or where required under 42 U.S.C. Sec. 7412. [1996 c 294 § 1.]

Effective date—1996 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]." [1996 c 294 § 2.]

70.94.170 Air pollution control authority control officer. Any activated authority which has adopted an ordinance, resolution, or valid rules and regulations as provided herein for the control and prevention of air pollution shall appoint a full time control officer, whose sole responsibility shall be to observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution. [1991 c 199 § 707; 1969 ex.s. c 168 § 21; 1967 c 238 § 30; 1957 c 232 § 17.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.181 Variances—Application for—Considerations—Limitations—Renewals—Review. (1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment may apply to the department of ecology or appropriate local authority board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the department of ecology or board may require. The department of ecology or board may grant such variance, provided that variances to state rules shall require the department's approval prior to being issued by a local authority board. The total time period for a variance and renewal of such variance shall not exceed one year. Variances may be issued by either the department or a local board but only after public hearing or due notice, if the department or board finds that:

(a) The emissions occurring or proposed to occur do not endanger public health or safety or the environment; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the department of ecology or board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the department of ecology or board may prescribe.

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to

exceed such reasonable time as, in the view of the department of ecology or board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in (a) and (b) of this subsection, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the department of ecology or board on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the department or board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the department of ecology or board shall give public notice of such application in accordance with rules of the department of ecology or board.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the department of ecology or board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the department of ecology or board may obtain judicial review thereof under the provisions of chapter 34.05 RCW as now or hereafter amended.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.710 through 70.94.730 to any person or his or her property.

(7) An application for a variance, or for the renewal thereof, submitted to the department of ecology or board pursuant to this section shall be approved or disapproved by the department or board within sixty-five days of receipt unless the applicant and the department of ecology or board agree to a continuance.

(8) Variances approved under this section shall not be included in orders or permits provided for in RCW 70.94.161 or 70.94.152 until such time as the variance has been accepted by the United States environmental protection agency as part of an approved state implementation plan. [1991 c 199 § 306; 1983 c 3 § 176; 1974 ex.s. c 59 § 1; 1969 ex.s. c 168 § 22; 1967 c 238 § 31.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.200 Investigation of conditions by control officer or department—Entering private, public property. For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control

officer, the department, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. [1987 c 109 § 38; 1979 c 141 § 121; 1967 c 238 § 32; 1957 c 232 § 20.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.205 Confidentiality of records and information. Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the department of ecology or the board of any authority under this chapter, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the department of ecology or board. Nothing herein shall be construed to prevent the use of records or information by the department of ecology or board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section: PROVIDED FURTHER, That emission data furnished to or obtained by the department of ecology or board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the department of ecology or board. [1991 c 199 § 307; 1973 1st ex.s. c 193 § 4; 1969 ex.s. c 168 § 23; 1967 c 238 § 33.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.211 Enforcement actions by air authority—Notice to violators. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431 a local air authority shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the board or the control officer may require that the alleged violator or violators appear before the board for a hearing. Every notice of violation shall offer to the alleged violator an opportunity to meet with the local air authority prior to the commencement of enforcement action. [1991 c 199 § 309; 1974 ex.s. c 69 § 4; 1970 ex.s. c 62 § 57; 1969 ex.s. c 168 § 24; 1967 c 238 § 34.]

Finding—1991 c 199: See note following RCW 70.94.011.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

Appeal of orders under RCW 70.94.211: RCW 43.21B.310.

70.94.221 Order final unless appealed to pollution control hearings board. Any order issued by the board or by the control officer, shall become final unless such order is appealed to the hearings board as provided in chapter 43.21B

RCW. [1970 ex.s. c 62 § 58; 1969 ex.s. c 168 § 25; 1967 c 238 § 35.]

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.230 Rules of authority supersede local rules, regulations, etc.—Exceptions. The rules and regulations hereafter adopted by an authority under the provisions of this chapter shall supersede the existing rules, regulations, resolutions and ordinances of any of the component bodies included within said authority in all matters relating to the control and enforcement of air pollution as contemplated by this chapter: PROVIDED, HOWEVER, That existing rules, regulations, resolutions and ordinances shall remain in effect until such rules, regulations, resolutions and ordinances are superseded as provided in this section: PROVIDED FURTHER, That nothing herein shall be construed to supersede any local county, or city ordinance or resolution, or any provision of the statutory or common law pertaining to nuisance; nor to affect any aspect of employer-employee relationship relating to conditions in a place of work, including without limitation, statutes, rules or regulations governing industrial health and safety standards or performance standards incorporated in zoning ordinances or resolutions of the component bodies where such standards relating to air pollution control or air quality containing requirements not less stringent than those of the authority. [1969 ex.s. c 168 § 28; 1967 c 238 § 38; 1957 c 232 § 23.]

70.94.231 Air pollution control authority—Dissolution of prior districts—Continuation of rules and regulations until superseded. Upon the date that an authority begins to exercise its powers and functions, all rules and regulations in force on such date shall remain in effect until superseded by the rules and regulations of the authority as provided in RCW 70.94.230. [1991 c 199 § 708; 1969 ex.s. c 168 § 29; 1967 c 238 § 39.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.240 Air pollution control advisory council. The board of any authority may appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of this chapter. The council shall consist of at least five appointed members who are residents of the authority and who are preferably skilled and experienced in the field of air pollution control, chemistry, meteorology, public health, or a related field, at least one of whom shall serve as a representative of industry and one of whom shall serve as a representative of the environmental community. The chair of the board of any such authority shall serve as ex officio member of the council and be its chair. Each member of the council shall receive from the authority per diem and travel expenses in an amount not to exceed that provided for the state board in this chapter (but not to exceed one thousand dollars per year) for each full day spent in the performance of his or her duties under this chapter. [1991 c 199 § 709; 1969 ex.s. c 168 § 30; 1967 c 238 § 41; 1957 c 232 § 24.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.260 Dissolution of authority—Deactivation of authority. An air pollution control authority may be deactivated prior to the term provided in the original or subsequent agreement by the county or counties comprising such authority upon the adoption by the board, following a hearing held upon ten days notice, to said counties, of a resolution for dissolution or deactivation and upon the approval by the legislative authority of each county comprising the authority. In such event, the board shall proceed to wind up the affairs of the authority and pay all indebtedness thereof. Any surplus of funds shall be paid over to the counties comprising the authority in proportion to their last contribution. Upon the completion of the process of closing the affairs of the authority, the board shall by resolution entered in its minutes declare the authority deactivated and a certified copy of such resolution shall be filed with the secretary of state and the authority shall be deemed inactive. [1979 ex.s. c 30 § 12; 1969 ex.s. c 168 § 31; 1967 c 238 § 43; 1957 c 232 § 26.]

70.94.262 Withdrawal from multicounty authority.

(1) Any county that is part of a multicounty authority, pursuant to RCW 70.94.053, may withdraw from the multicounty authority after January 1, 1992, if the county wishes to provide for air quality protection and regulation by an alternate air quality authority. A withdrawing county shall:

- (a) Create its own single county authority;
 - (b) Join another existing multicounty authority with which its boundaries are contiguous;
 - (c) Join with one or more contiguous inactive authorities to operate as a new multicounty authority; or
 - (d) Become an inactive authority and subject to regulation by the department of ecology.
- (2) In order to withdraw from an existing multicounty authority, a county shall make arrangements, by interlocal agreement, for division of assets and liabilities and the appropriate release of any and all interest in assets of the multicounty authority.

(3) In order to effectuate any of the alternate arrangements in subsection (1) of this section, the procedures of this chapter to create an air pollution control authority shall be met and the actions must be taken at least six months prior to the effective date of withdrawal. The rules of the original multicounty authority shall continue in force for the withdrawing county until such time as all conditions to create an air pollution control authority have been met.

(4) At the effective date of a county's withdrawal, the remaining counties shall reorganize and reconstitute the legislative authority pursuant to this chapter. The air pollution control regulations of the existing multicounty authority shall remain in force and effect after the reorganization.

(5) If a county elects to withdraw from an existing multicounty authority, the air pollution control regulations shall remain in effect for the withdrawing county until suspended by the adoption of rules, regulations, or ordinances adopted under one of the alternatives of subsection (1) of this section. A county shall initiate proceedings to adopt such rules, regulations, or ordinances on or before the effective date of the county's withdrawal. [1991 c 125 § 2.]

(2008 Ed.)

70.94.331 Powers and duties of department. (1) The department shall have all the powers as provided in RCW 70.94.141.

(2) The department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapters 42.30 and 34.05 RCW shall:

(a) Adopt rules establishing air quality objectives and air quality standards;

(b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, except for emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices which shall be statewide, but in no event may less stringent standards be enacted by an authority without the prior approval of the department after public hearing and due notice to interested parties;

(c) Adopt by rule air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter. However, an industry, or the air pollution control authority having jurisdiction, can choose, subject to the submittal of appropriate data that the industry has quantified, to have any limit on the opacity of emissions from a source whose emission standard is stated in terms of a weight of particulate per unit volume of air (e.g., grains per dry standard cubic foot) be based on the applicable particulate emission standard for that source, such that any violation of the opacity limit accurately indicates a violation of the applicable particulate emission standard. Any alternative opacity limit provided by this section that would result in increasing air contaminants emissions in any nonattainment area shall only be granted if equal or greater emission reductions are provided for by the same source obtaining the revised opacity limit. A reasonable fee may be assessed to the industry to which the alternate opacity standard would apply. The fee shall cover only those costs to the air pollution control authority which are directly related to the determination on the acceptability of the alternate opacity standard, including testing, oversight and review of data.

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area or source to source, except that emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices shall be statewide, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonably foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.

(4) The department is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(5) The department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants and conduct or cause to be conducted a program to determine the quantity of emissions to the atmosphere.

(6) The department shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The department shall encourage local units of government to handle air pollution problems within their respective jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The department shall have the power to require the addition to or deletion of a county or counties from an existing authority in order to carry out the purposes of this chapter. No such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter 34.05 RCW.

(9) The department shall establish rules requiring sources or source categories to apply reasonable and available control methods. Such rules shall apply to those sources or source categories that individually or collectively contribute the majority of statewide air emissions of each regulated pollutant. The department shall review, and if necessary, update its rules every five years to ensure consistency with current reasonable and available control methods. The department shall have adopted rules required under this subsection for all sources by July 1, 1996.

For the purposes of this section, "reasonable and available control methods" shall include but not be limited to, changes in technology, processes, or other control strategies. [1991 c 199 § 710; 1988 c 106 § 1. Prior: 1987 c 405 § 13; 1987 c 109 § 39; 1985 c 372 § 4; 1969 ex.s. c 168 § 34; 1967 c 238 § 46.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1985 c 372: See note following RCW 70.98.050.

70.94.332 Enforcement actions by department—Notice to violators. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before it for the purpose of providing the department information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with the department prior to the commencement of enforcement action. [1991 c 199 § 711; 1987 c 109 § 18; 1967 c 238 § 47.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Appeal of orders under RCW 70.94.332: RCW 43.21B.310.

70.94.335 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 15.]

Severability—1994 c 257: See note following RCW 36.70A.270.

70.94.350 Contracts, agreements for use of personnel by department—Reimbursement—Merit system regulations waived. The department is authorized to contract for or otherwise agree to the use of personnel of municipal corporations or other agencies or private persons; and the department is further authorized to reimburse such municipal corporations or agencies for the employment of such personnel. Merit system regulations or standards for the employment of personnel may be waived for personnel hired under contract as provided for in this section. The department shall provide, within available appropriations, for the scientific, technical, legal, administrative, and other necessary services and facilities for performing the functions under this chapter. [1987 c 109 § 40; 1979 c 141 § 122; 1967 c 238 § 45; 1961 c 188 § 6.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.370 Powers and rights of governmental units and persons are not limited by act or recommendations. No provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation:

(1) On the power of any city, town or county to declare, prohibit and abate nuisances.

(2) On the power of the secretary of social and health services to provide for the protection of the public health under any authority presently vested in that office or which may be hereafter prescribed by law.

(3) On the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(4) On the right of any person to maintain at any time any appropriate action for relief against any air pollution. [1979 c 141 § 123; 1967 c 238 § 59; 1961 c 188 § 8.]

70.94.380 Emission control requirements. (1) Every activated authority operating an air pollution control program shall have requirements for the control of emissions which are no less stringent than those adopted by the department of ecology for the geographic area in which such air pollution control program is located. Less stringent requirements than

compelled by this section may be included in a local or regional air pollution control program only after approval by the department of ecology following demonstration to the satisfaction of the department of ecology that the proposed requirements are consistent with the purposes of this chapter: PROVIDED, That such approval shall be preceded by public hearing, of which notice has been given in accordance with chapter 42.30 RCW. The department of ecology, upon receiving evidence that conditions have changed or that additional information is relevant to a decision with respect to the requirements for emission control, may, after public hearing on due notice, withdraw any approval previously given to a less stringent local or regional requirement.

[(2)] Nothing in this chapter shall be construed to prevent a local or regional air pollution control authority from adopting and enforcing more stringent emission control requirements than those adopted by the department of ecology and applicable within the jurisdiction of the local or regional air pollution control authority, except that the emission performance standards for new wood stoves and the opacity levels for residential solid fuel burning devices shall be statewide. [1987 c 405 § 14; 1979 ex.s. c 30 § 13; 1969 ex.s. c 168 § 36; 1967 c 238 § 50.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.385 State financial aid—Application for—Requirements. (1) Any authority may apply to the department for state financial aid. The department shall annually establish the amount of state funds available for the local authorities taking into consideration available federal and state funds. The establishment of funding amounts shall be consistent with federal requirements and local maintenance of effort necessary to carry out the provisions of this chapter. Any such aid shall be expended from the general fund or from other appropriations as the legislature may provide for this purpose: PROVIDED, That federal funds shall be utilized to the maximum unless otherwise approved by the department: PROVIDED FURTHER, That the amount of state funds provided to local authorities during the previous year shall not be reduced without a public notice or public hearing held by the department if requested by the affected local authority, unless such changes are the direct result of a reduction in the available federal funds for air pollution control programs.

(2) Before any such application is approved and financial aid is given or approved by the department, the authority shall demonstrate to the satisfaction of the department that it is fulfilling the requirements of this chapter. If the department has not adopted ambient air quality standards and objectives as permitted by RCW 70.94.331, the authority shall demonstrate to the satisfaction of the department that it is acting in good faith and doing all that is possible and reasonable to control and prevent air pollution within its jurisdictional boundaries and to carry out the purposes of this chapter.

(3) The department shall adopt rules requiring the submission of such information by each authority including the submission of its proposed budget and a description of its program in support of the application for state financial aid as necessary to enable the department to determine the need for

state aid. [1991 c 199 § 712; 1987 c 109 § 41; 1969 ex.s. c 168 § 37; 1967 c 238 § 51.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.390 Hearing upon activation of authority—Finding—Assumption of jurisdiction by department—Expenses. The department may, at any time and on its own motion, hold a hearing to determine if the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist in any area of the state. Notice of such hearing shall be conducted in accordance with chapter 42.30 RCW and chapter 34.05 RCW. If at such hearing the department finds that air pollution exists or is likely to occur in a particular area, and that the purposes of this chapter and the public interest will be best served by the activation of an authority it shall designate the boundaries of such area and set forth in a report to the appropriate county or counties recommendations for the activation of an authority: PROVIDED, That if at such hearing the department determines that the activation of an authority is not practical or feasible for the reason that a local or regional air pollution control program cannot be successfully established or operated due to unusual circumstances and conditions, but that the control and/or prevention of air pollution is necessary for the purposes of this chapter and the public interest, it may assume jurisdiction and so declare by order. Such order shall designate the geographic area in which, and the effective date upon which, the department will exercise jurisdiction for the control and/or prevention of air pollution. The department shall exercise its powers and duties in the same manner as if it had assumed authority under RCW 70.94.410.

All expenses incurred by the department in the control and prevention of air pollution in any county pursuant to the provisions of RCW 70.94.390 and 70.94.410 shall constitute a claim against such county. The department shall certify the expenses to the auditor of the county, who promptly shall issue his warrant on the county treasurer payable out of the current expense fund of the county. In the event that the amount in the current expense fund of the county is not adequate to meet the expenses incurred by the department, the department shall certify to the state treasurer that they have a prior claim on any money in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer as provided in RCW 82.08.170. In the event that the amount in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer is not adequate to meet the expenses incurred by the department, the department shall certify to the state treasurer that they have a prior claim on any excess funds from the liquor revolving fund that are to be distributed to that county as provided in RCW 66.08.190 through 66.08.220. All moneys that are collected as provided in this section shall be placed in the general fund in the account of the office of air programs of the department. [1987 c 109 § 42; 1969 ex.s. c 168 § 38; 1967 c 238 § 52.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.395 Air contaminant sources—Regulation by department; authorities may be more stringent—Hearing—Standards. If the department finds, after public hearing upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a statewide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules to control and/or prevent the emission of air contaminants from such source. An authority may, after public hearing and a finding by the board of a need for more stringent rules than those adopted by the department under this section, propose the adoption of such rules by the department for the control of emissions from the particular type or class of air contaminant source within the geographical area of the authority. The department shall hold a public hearing and shall adopt the proposed rules within the area of the requesting authority, unless it finds that the proposed rules are inconsistent with the rules adopted by the department under this section. When such standards are adopted by the department it shall delegate solely to the requesting authority all powers necessary for their enforcement at the request of the authority. If after public hearing the department finds that the regulation on a statewide basis of a particular type or class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of the state, the department may relinquish exclusive jurisdiction over such source. [1991 c 199 § 713; 1987 c 109 § 43; 1969 ex.s. c 168 § 39; 1967 c 238 § 53.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.400 Order activating authority—Filing—Hearing—Amendment of order. If, at the end of ninety days after the department issues a report as provided for in RCW 70.94.390, to appropriate county or counties recommending the activation of an authority such county or counties have not performed those actions recommended by the department, and the department is still of the opinion that the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist, then the department may, at its discretion, issue an order activating an authority. Such order, a certified copy of which shall be filed with the secretary of state, shall specify the participating county or counties and the effective date by which the authority shall begin to function and exercise its powers. Any authority activated by order of the department shall choose the members of its board as provided in RCW 70.94.100 and begin to function in the same manner as if it had been activated by resolutions of the county or counties included within its boundaries. The department may, upon due notice to all interested parties, conduct a hearing in accordance with chapter 42.30 RCW and chapter 34.05 RCW within six months after the order was issued to review such order and to ascertain if such order is being carried out in good faith. At such time the department may amend any such order issued if it is determined by the department that such order is being carried out in bad faith or the department may take the appropriate action as is provided in RCW 70.94.410. [1987 c 109 § 44; 1969 ex.s. c 168 § 40; 1967 c 238 § 54.]

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Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.405 Air pollution control authority—Review by department of program. At any time after an authority has been activated for no less than one year, the department may, on its own motion, conduct a hearing held in accordance with chapters 42.30 and 34.05 RCW, to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible. If at such hearing the department finds that such authority is not carrying out its air pollution control or prevention program in good faith, is not doing all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, or is not carrying out the provisions of this chapter, it shall set forth in a report or order to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and (2) guidelines which will assist the authority in carrying out the recommendations of the department. [1991 c 199 § 714; 1987 c 109 § 45; 1969 ex.s. c 168 § 41; 1967 c 238 § 55.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.410 Air pollution control authority—Assumption of control by department. (1) If, after thirty days from the time that the department issues a report or order to an authority under RCW 70.94.400 and 70.94.405, such authority has not taken action which indicates that it is attempting in good faith to implement the recommendations or actions of the department as set forth in the report or order, the department may, by order, declare as null and void any or all ordinances, resolutions, rules or regulations of such authority relating to the control and/or prevention of air pollution, and at such time the department shall become the sole body with authority to make and enforce rules and regulations for the control and/or prevention of air pollution within the geographical area of such authority. If this occurs, the department may assume all those powers which are given to it by law to effectuate the purposes of this chapter. The department may, by order, continue in effect and enforce provisions of the ordinances, resolutions, or rules of such authority which are not less stringent than those requirements which the department may have found applicable to the area under RCW 70.94.331, until such time as the department adopts its own rules. Any rules promulgated by the department shall be subject to the provisions of chapter 34.05 RCW. Any enforcement actions shall be subject to RCW 43.21B.300 or 43.21B.310.

(2) No provision of this chapter is intended to prohibit any authority from reestablishing its air pollution control program which meets with the approval of the department and which complies with the purposes of this chapter and with applicable rules and orders of the department.

(3) Nothing in this chapter shall prevent the department from withdrawing the exercise of its jurisdiction over an authority upon its own motion if the department has found at a hearing held in accordance with chapters 42.30 and 34.05 RCW, that the air pollution prevention and control program

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of such authority will be carried out in good faith, that such program will do all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, and that the program complies with the provisions of this chapter. Upon the withdrawal of the department, the department shall prescribe certain recommendations as to how air pollution prevention and/or control is to be effectively accomplished and guidelines which will assist the authority in carrying out the recommendations of the department. [1991 c 199 § 715; 1987 c 109 § 46; 1969 ex.s. c 168 § 42; 1967 c 238 § 56.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.420 State departments and agencies to cooperate with department and authorities. It is declared to be the intent of the legislature of the state of Washington that any state department or agency having jurisdiction over any building, installation, other property, or other activity creating or likely to create significant air pollution shall cooperate with the department and with air pollution control agencies in preventing and/or controlling the pollution of the air in any area insofar as the discharge of air contaminants from or by such building, installation, other property, or activity may cause or contribute to pollution of the air in such area. Such state department or agency shall comply with the provisions of this chapter and with any ordinance, resolution, rule or regulation issued hereunder in the same manner as any other person subject to such laws or rules. [1991 c 199 § 716; 1987 c 109 § 47; 1969 ex.s. c 168 § 44; 1967 c 238 § 58.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.422 Department of health powers regarding radionuclides—Energy facility site evaluation council authority over permit program sources. (1) The department of health shall have all the enforcement powers as provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to emissions of radionuclides. This section does not preclude the department of ecology from exercising its authority under this chapter.

(2) Permits for energy facilities subject to chapter 80.50 RCW shall be issued by the energy facility site evaluation council. However, the permits become effective only if the governor approves an application for certification and executes a certification agreement under chapter 80.50 RCW. The council shall have all powers necessary to administer an operating permits program pertaining to such facilities, consistent with applicable air quality standards established by the department or local air pollution control authorities, or both, and to obtain the approval of the United States environmental protection agency. The council's powers include, but are not limited to, all of the enforcement powers provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. To the extent not covered under RCW 80.50.071, the council may collect fees as granted to delegated local air authorities under RCW 70.94.152, 70.94.161

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(14) and (15), 70.94.162, and 70.94.154(7) with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. The council and the department shall each establish procedures that provide maximum coordination and avoid duplication between the two agencies in carrying out the requirements of this chapter. [1993 c 252 § 7.]

70.94.425 Restraining orders—Injunctions. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, the governing body or board or the department, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order. [1987 c 109 § 48; 1967 c 238 § 60.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.430 Penalties. (1) Any person who knowingly violates any of the provisions of chapter 70.94 or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars. [2003 c 53 § 355; 1991 c 199 § 310; 1984 c 255 § 1; 1973 1st ex.s. c 176 § 1; 1967 c 238 § 61.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.431 Civil penalties—Excusable excess emissions. (1) Except as provided in RCW 43.05.060 through

43.05.080 and 43.05.150, and in addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW, chapter 70.120 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount not to exceed ten thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4) All penalties recovered under this section by the department shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan. [1995 c 403 § 630; 1991 c 199 § 311; 1990 c

157 § 1; 1987 c 109 § 19; 1984 c 255 § 2; 1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.435 Additional means for enforcement of chapter. As an additional means of enforcing this chapter, the governing body or board may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter or of any ordinance, resolution, rule or regulation adopted pursuant hereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the ordinances, resolutions, rules or regulations, or order issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court as provided in RCW 70.94.425. [1967 c 238 § 62.]

70.94.440 Short title. This chapter may be known and cited as the "Washington Clean Air Act". [1967 c 238 § 63.]

Short title—1991 c 199: "This chapter shall be known and may be cited as the clean air Washington act." [1991 c 199 § 721.]

70.94.445 Air pollution control facilities—Tax exemptions and credits. See chapter 82.34 RCW.

70.94.450 Wood stoves—Policy. In the interest of the public health and welfare and in keeping with the objectives of RCW 70.94.011, the legislature declares it to be the public policy of the state to control, reduce, and prevent air pollution caused by wood stove emissions. It is the state's policy to reduce wood stove emissions by encouraging the department of ecology to continue efforts to educate the public about the effects of wood stove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from wood stoves. The legislature further declares that: (1) The purchase of certified wood stoves will not solve the problem of pollution caused by wood stove emissions; and (2) the reduction of air pollution caused by wood stove emissions will only occur when wood stove users adopt proper methods of wood burning. [1987 c 405 § 1.]

Severability—1987 c 405: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 405 § 18.]

70.94.453 Wood stoves—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.94.453 through *70.94.487:

(1) "Department" means the department of ecology.

(2) "Wood stove" means a solid fuel burning device other than a fireplace not meeting the requirements of RCW 70.94.457, including any fireplace insert, wood stove, wood

burning heater, wood stick boiler, coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one million British thermal units per hour. The term "wood stove" does not include wood cook stoves.

(3) "Fireplace" means: (a) Any permanently installed masonry fireplace; or (b) any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

(4) "New wood stove" means: (a) A wood stove that is sold at retail, bargained, exchanged, or given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer; and (b) has not been so used to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(5) "Solid fuel burning device" means any device for burning wood, coal, or any other nongaseous and nonliquid fuel, including a wood stove and fireplace.

(6) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(7) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage. The methods approved by the department in accordance with RCW 70.94.331 shall be used to establish opacity for the purposes of this chapter. [1987 c 405 § 2.]

*Reviser's note: RCW 70.94.487 was repealed by 1988 c 186 § 16, effective June 30, 1988.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.455 Residential and commercial construction—Burning and heating device standards. After January 1, 1992, no used solid fuel burning device shall be installed in new or existing buildings unless such device is either Oregon department of environmental quality phase II or United States environmental protection agency certified or a pellet stove either certified or exempt from certification by the United States environmental protection agency.

(1) By July 1, 1992, the state building code council shall adopt rules requiring an adequate source of heat other than wood stoves in all new and substantially remodeled residential and commercial construction. This rule shall apply (a) to areas designated by a county to be an urban growth area under chapter 36.70A RCW; and (b) to areas designated by the environmental protection agency as being in nonattainment for particulate matter.

(2) For purposes of this section, "substantially remodeled" means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period. [1991 c 199 § 503.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.457 Solid fuel burning devices—Emission performance standards. The department of ecology shall establish by rule under chapter 34.05 RCW:

(1) Statewide emission performance standards for new solid fuel burning devices. Notwithstanding any other provision of this chapter which allows an authority to adopt more stringent emission standards, no authority shall adopt any

emission standard for new solid fuel burning devices other than the statewide standard adopted by the department under this section.

(a) After January 1, 1995, no solid fuel burning device shall be offered for sale in this state to residents of this state that does not meet the following particulate air contaminant emission standards under the test methodology of the United States environmental protection agency in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by the United States environmental protection agency subsequent to such date: (i) Two and one-half grams per hour for catalytic wood stoves; and (ii) four and one-half grams per hour for all other solid fuel burning devices. For purposes of this subsection, "equivalent" shall mean the emissions limits specified in this subsection multiplied by a statistically reliable conversion factor determined by the department that compares the difference between the emission test methodology established by the United States environmental protection agency prior to May 15, 1991, with the test methodology adopted subsequently by the agency. Subsection (a) of this subsection does not apply to fireplaces.

(b) After January 1, 1997, no fireplace, except masonry fireplaces, shall be offered for sale unless such fireplace meets the 1990 United States environmental protection agency standards for wood stoves or equivalent standard that may be established by the state building code council by rule. Prior to January 1, 1997, the state building code council shall establish by rule a methodology for the testing of factory-built fireplaces. The methodology shall be designed to achieve a particulate air emission standard equivalent to the 1990 United States environmental protection agency standard for wood stoves. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers.

(c) Prior to January 1, 1997, the state building code council shall establish by rule design standards for the construction of new masonry fireplaces in Washington state. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers. It shall be the goal of the council to develop design standards that generally achieve reductions in particulate air contaminant emissions commensurate with the reductions being achieved by factory-built fireplaces at the time the standard is established.

(d) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991.

(e) Subsection (1)(a) of this section shall not apply to fireplaces.

(f) Notwithstanding (a) of this subsection, the department is authorized to adopt, by rule, emission standards adopted by the United States environmental protection agency for new wood stoves sold at retail. For solid fuel burning devices for which the United States environmental protection agency has not established emission standards, the department may exempt or establish, by rule, statewide stan-

dards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new wood stoves and fireplaces regulated under this subsection.

(2) A program to:

(a) Determine whether a new solid fuel burning device complies with the statewide emission performance standards established in subsection (1) of this section; and

(b) Approve the sale of devices that comply with the statewide emission performance standards. [1995 c 205 § 3; 1991 c 199 § 501; 1987 c 405 § 4.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.460 Sale of unapproved wood stoves—Prohibited. After July 1, 1988, no person shall sell, offer to sell, or knowingly advertise to sell a new wood stove in this state to a resident of this state unless the wood stove has been approved by the department under the program established under RCW 70.94.457. [1995 c 205 § 4; 1987 c 405 § 7.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.463 Sale of unapproved wood stoves—Penalty. After July 1, 1988, any person who sells, offers to sell, or knowingly advertises to sell a new wood stove in this state in violation of RCW 70.94.460 shall be subject to the penalties and enforcement actions under this chapter. [1987 c 405 § 8.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.467 Sale of unapproved wood stoves—Application of law to advertising media. Nothing in RCW 70.94.460 or 70.94.463 shall apply to a radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium that accepts advertising in good faith and without knowledge of its violation of RCW 70.94.453 through *70.94.487. [1987 c 405 § 12.]

***Reviser's note:** RCW 70.94.487 was repealed by 1988 c 186 § 16, effective June 30, 1988.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.470 Residential solid fuel burning devices—Opacity levels—Enforcement and public education. (1) The department shall establish, by rule under chapter 34.05 RCW, (a) a statewide opacity level of twenty percent for residential solid fuel burning devices for the purpose of enforcement on a complaint basis and (b) a statewide opacity of ten percent for purposes of public education.

(2) Notwithstanding any other provision of this chapter which may allow an authority to adopt a more stringent opacity level, no authority shall adopt or enforce an opacity level for solid fuel burning devices other than established in this section.

(3) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991. [1991 c 199 § 502; 1987 c 405 § 5.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.473 Limitations on burning wood for heat—First and second stage burn bans—Report on second stage burn ban—Report to the legislature. (1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area. A first stage of impaired air quality is reached when forecasted meteorological conditions are predicted to cause fine particulate levels to exceed thirty-five micrograms per cubic meter, measured on a twenty-four hour average, within forty-eight hours; and

(c)(i) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when a first stage of impaired air quality has been in force and has not been sufficient to reduce the increasing fine particulate pollution trend, fine particulates are at an ambient level of twenty-five micrograms per cubic meter measured on a twenty-four hour average, and forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below twenty-five micrograms per cubic meter for a period of twenty-four hours or more from the time that the fine particulates are measured at the trigger level.

(ii) A second stage burn ban may be called without calling a first stage burn ban only when all of the following occur and shall require the department or the local air pollution control authority calling a second stage burn ban under this subsection to comply with the requirements of subsection (4) of this section:

(A) Fine particulate levels have reached or exceeded twenty-five micrograms per cubic meter, measured on a twenty-four hour average;

(B) Meteorological conditions have caused fine particulate levels to rise rapidly;

(C) Meteorological conditions are predicted to cause fine particulate levels to exceed the thirty-five micrograms per cubic meter, measured on a twenty-four hour average, within twenty-four hours; and

(D) Meteorological conditions are highly likely to prevent sufficient dispersion of fine particulate.

(2) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes

of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991.

(3) The department or any local air pollution control authority that has called a second stage burn ban under the authority of subsection (1)(c)(ii) of this section shall, within ninety days, prepare a written report describing:

(a) The meteorological conditions that resulted in their calling the second stage burn ban;

(b) Whether the agency could have taken actions to avoid calling a second stage burn ban without calling a first stage burn ban; and

(c) Any changes the department or authority is making to its procedures of calling first stage and second stage burn bans to avoid calling a second stage burn ban without first calling a first stage burn ban.

After consulting with affected parties, the department shall prescribe the format of such a report and may also require additional information be included in the report. All reports shall be sent to the department and the department shall keep the reports on file for not less than five years and available for public inspection and copying in accordance with RCW 42.56.090.

(4) The department and local air pollution control authorities shall evaluate the effectiveness of the burn ban programs contained in this section in avoiding fine particulate levels to exceed thirty-five micrograms per cubic meter, measured on a twenty-four hour average, and provide a joint report of the results to the legislature by September 1, 2011. [2008 c 40 § 1; 2007 c 339 § 1; 2005 c 197 § 1; 1998 c 342 § 8; 1995 c 205 § 1; 1991 c 199 § 504; 1990 c 128 § 2; 1987 c 405 § 6.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.475 Liability of condominium owners' association or resident association. A condominium owners' association or an association formed by residents of a multiple-family dwelling are not liable for violations of RCW 70.94.473 by a resident of a condominium or multiple-family dwelling. The associations shall cooperate with local air pollution control authorities to acquaint residents with the provisions of this section. [1990 c 157 § 2.]

70.94.477 Limitations on use of solid fuel burning devices. (1) Unless allowed by rule, under chapter 34.05 RCW, a person shall not cause or allow any of the following materials to be burned in any residential solid fuel burning device:

- (a) Garbage;
- (b) Treated wood;
- (c) Plastics;
- (d) Rubber products;
- (e) Animals;
- (f) Asphaltic products;
- (g) Waste petroleum products;
- (h) Paints; or

(i) Any substance, other than properly seasoned fuel wood, which normally emits dense smoke or obnoxious odors.

(2008 Ed.)

(2) For the sole purpose of a contingency measure to meet the requirements of section 172(c)(9) of the federal clean air act, a local authority or the department may prohibit the use of solid fuel burning devices, except fireplaces as defined in RCW 70.94.453(3), wood stoves meeting the standards set forth in RCW 70.94.457 or pellet stoves either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, if the United States environmental protection agency, in consultation with the department and the local authority makes written findings that:

(a) The area has failed to make reasonable further progress or attain or maintain a national ambient air quality standard; and

(b) Emissions from solid fuel burning devices from a particular geographic area are a contributing factor to such failure to make reasonable further progress or attain or maintain a national ambient air quality standard.

A prohibition issued by a local authority or the department under this subsection shall not apply to a person in a residence or commercial establishment that does not have an adequate source of heat without burning wood. [1995 c 205 § 2; 1990 c 128 § 3; 1987 c 405 § 9.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.480 Wood stove education program. (1) The department of ecology shall establish a program to educate wood stove dealers and the public about:

(a) The effects of wood stove emissions on health and air quality;

(b) Methods of achieving better efficiency and emission performance from wood stoves;

(c) Wood stoves that have been approved by the department;

(d) The benefits of replacing inefficient wood stoves with stoves approved under RCW 70.94.457.

(2) Persons selling new wood stoves shall distribute and verbally explain educational materials describing when a stove can and cannot be legally used to customers purchasing new wood stoves. [1990 c 128 § 6; 1987 c 405 § 3.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.483 Wood stove education and enforcement account created—Fee imposed on solid fuel burning device sales. (1) The wood stove education and enforcement account is hereby created in the state treasury. Money placed in the account shall include all money received under subsection (2) of this section and any other money appropriated by the legislature. Money in the account shall be spent for the purposes of the wood stove education program established under RCW 70.94.480 and for enforcement of the wood stove program, and shall be subject to legislative appropriation. However, during the 2003-05 fiscal biennium, the legislature may transfer from the wood stove education and enforcement account to the air pollution control account such amounts as specified in the omnibus operating budget bill.

(2) The department of ecology, with the advice of the advisory committee, shall set a flat fee of thirty dollars, on the retail sale, as defined in RCW 82.04.050, of each solid fuel burning device after January 1, 1992. The fee shall be

imposed upon the consumer and shall not be subject to the retail sales tax provisions of chapters 82.08 and 82.12 RCW. The fee may be adjusted annually above thirty dollars to account for inflation as determined by the state office of the economic and revenue forecast council. The fee shall be collected by the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW. If the seller fails to collect the fee herein imposed or fails to remit the fee to the department of revenue in the manner prescribed in chapter 82.08 RCW, the seller shall be personally liable to the state for the amount of the fee. The collection provisions of chapter 82.32 RCW shall apply. The department of revenue shall deposit fees collected under this section in the wood stove education and enforcement account. [2003 1st sp.s. c 25 § 932; 1991 sp.s. c 13 §§ 64, 65; 1991 c 199 § 505; 1990 c 128 § 5; 1987 c 405 § 10.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.488 Woodsmoke emissions—Findings. The legislature finds that there are some communities in the state in which the national ambient air quality standards for PM 2.5 are exceeded, primarily due to woodsmoke emissions, and that current strategies are not sufficient to reduce woodsmoke emissions to levels that comply with the federal standards or adequately protect public health. The legislature finds that it is in the state's interest and to the benefit of the people of the state to evaluate additional measures to reduce woodsmoke emissions and update the state woodsmoke control program. [2007 c 339 § 2.]

70.94.505 Woodsmoke emissions—Work group. (1) The department shall convene and chair a work group to study the impacts of woodsmoke from solid fuel burning devices on communities in Washington and make recommendations to the legislature on practical and cost-effective opportunities to reduce exposure to woodsmoke from solid fuel burning devices and meet the new national air quality standards for fine particulates in Washington state. The work group shall be established by the director and include representatives from the department, the state department of health, regional air quality agencies, local health departments, related industry representatives, and nongovernmental health organizations. Recommendations may include statutory or regulatory changes, incentives, and other strategies that will reduce ambient PM 2.5 pollution. Recommendations should be presented to the governor and to the legislature by December 1, 2007.

(2) In carrying out its assignment the work group shall include, but not be limited to, the following considerations:

(a) Communities in the state that have elevated levels of PM 2.5 pollution;

(b) The contribution of pollution from solid fuel burning devices to potential violations of federal air quality standards;

(c) Strategies used in other states, regions, or cities to reduce woodsmoke pollution levels and effectiveness of these strategies;

(d) State laws, rules, fees, utility regulations, and other policies that may affect the ability to reduce emissions from solid fuel burning devices or encourage the use of cleaner burning devices; and

(e) Potential financial incentives and sources of funding to change out older solid fuel burning devices to cleaner burning devices. [2007 c 339 § 3.]

70.94.510 Policy to cooperate with federal government. It is declared to be the policy of the state of Washington through the department of ecology to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts, and the department is authorized and directed to implement and enforce the provisions of this chapter in carrying out this policy as follows:

(1) To accept and administer grants from the federal government for carrying out the provisions of this chapter.

(2) To take all action necessary to secure to the state the benefits of the federal clean air act. [1987 c 109 § 49; 1969 ex.s. c 168 § 45.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.521 Transportation demand management—Findings. The legislature finds that automotive traffic in Washington's metropolitan areas is the major source of emissions of air contaminants. This air pollution causes significant harm to public health, causes damage to trees, plants, structures, and materials and degrades the quality of the environment.

Increasing automotive traffic is also aggravating traffic congestion in Washington's metropolitan areas. This traffic congestion imposes significant costs on Washington's businesses, governmental agencies, and individuals in terms of lost working hours and delays in the delivery of goods and services. Traffic congestion worsens automobile-related air pollution, increases the consumption of fuel, and degrades the habitability of many of Washington's cities and suburban areas. The capital and environmental costs of fully accommodating the existing and projected automobile traffic on roads and highways are prohibitive. Decreasing the demand for vehicle trips is significantly less costly and at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities such as roads and bridges, to accommodate increased traffic volumes.

The legislature also finds that increasing automotive transportation is a major factor in increasing consumption of gasoline and, thereby, increasing reliance on imported sources of petroleum. Moderating the growth in automotive travel is essential to stabilizing and reducing dependence on imported petroleum and improving the nation's energy security.

The legislature further finds that reducing the number of commute trips to work made via single-occupant cars and light trucks is an effective way of reducing automobile-related air pollution, traffic congestion, and energy use. Major employers have significant opportunities to encourage and facilitate reducing single-occupant vehicle commuting by employees. In addition, the legislature also recognizes the importance of increasing individual citizens' awareness of air

quality, energy consumption, and traffic congestion, and the contribution individual actions can make towards addressing these issues.

The intent of this chapter is to require local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to reduce single-occupant vehicle commute trips. Such plans shall require major employers and employers at major worksites to implement programs to reduce single-occupant vehicle commuting by employees at major worksites. Local governments in counties experiencing significant but less severe automobile-related air pollution and traffic congestion may implement such plans. State agencies shall implement programs to reduce single-occupant vehicle commuting at all major worksites throughout the state. [1997 c 250 § 1; 1991 c 202 § 10.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.524 Transportation demand management—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "A major employer" means a private or public employer, including state agencies, that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous months during the year.

(2) "Major worksite" means a building or group of buildings that are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way, and at which there are one hundred or more full-time employees, who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays, for at least twelve continuous months.

(3) "Major employment installation" means a military base or federal reservation, excluding tribal reservations, at which there are one hundred or more full-time employees, who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays, for at least twelve continuous months during the year.

(4) "Person hours of delay" means the daily person hours of delay per mile in the peak period of 6:00 a.m. to 9:00 a.m., as calculated using the best available methodology by the department of transportation.

(5) "Commute trip" means trips made from a worker's home to a worksite during the peak period of 6:00 a.m. to 9:00 a.m. on weekdays.

(6) "Proportion of single-occupant vehicle commute trips" means the number of commute trips made by single-occupant automobiles divided by the number of full-time employees.

(7) "Commute trip vehicle miles traveled per employee" means the sum of the individual vehicle commute trip lengths in miles over a set period divided by the number of full-time employees during that period.

(8) "Base year" means the twelve-month period commencing when a major employer is determined to be participating by the local jurisdiction, on which commute trip reduction goals shall be based.

(9) "Growth and transportation efficiency center" means a defined, compact, mixed-use urban area that contains jobs or housing and supports multiple modes of transportation. For the purpose of funding, a growth and transportation efficiency center must meet minimum criteria established by the commute trip reduction board under RCW 70.94.537, and must be certified by a regional transportation planning organization as established in RCW 47.80.020.

(10)(a) "Affected urban growth area" means:

(i) An urban growth area, designated pursuant to RCW 36.70A.110, whose boundaries contain a state highway segment exceeding the one hundred person hours of delay threshold calculated by the department of transportation, and any contiguous urban growth areas; and

(ii) An urban growth area, designated pursuant to RCW 36.70A.110, containing a jurisdiction with a population over seventy thousand that adopted a commute trip reduction ordinance before the year 2000, and any contiguous urban growth areas.

(b) Affected urban growth areas will be listed by the department of transportation in the rules for chapter 329, Laws of 2006 using the criteria identified in (a) of this subsection.

(11) "Certification" means a determination by a regional transportation planning organization that a locally designated growth and transportation efficiency center program meets the minimum criteria developed in a collaborative regional process and the rules established by the department of transportation. [2006 c 329 § 1; 1991 c 202 § 11.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.527 Transportation demand management—Requirements for counties and cities. (1) Each county containing an urban growth area, designated pursuant to RCW 36.70A.110, and each city within an urban growth area with a state highway segment exceeding the one hundred person hours of delay threshold calculated by the department of transportation, as well as those counties and cities located in any contiguous urban growth areas, shall adopt a commute trip reduction plan and ordinance for major employers in the affected urban growth area by a date specified by the commute trip reduction board. Jurisdictions located within an urban growth area with a population greater than seventy thousand that adopted a commute trip reduction ordinance before the year 2000, as well as any jurisdiction within contiguous urban growth areas, shall also adopt a commute trip reduction plan and ordinance for major employers in the affected urban growth area by a date specified by the commute trip reduction board. Jurisdictions containing a major employment installation in a county with an affected growth area, designated pursuant to RCW 36.70A.110, shall adopt a commute trip reduction plan and ordinance for major employers in the major employment installation by a date specified by the commute trip reduction board. The ordinance shall establish the requirements for major employers and provide an appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of the ordinance, may obtain waiver or modification of those requirements. The plan shall be designed to achieve reduc-

tions in the proportion of single-occupant vehicle commute trips and be consistent with the rules established by the department of transportation. The county, city, or town shall submit its adopted plan to the regional transportation planning organization. The county, city, or town plan shall be included in the regional commute trip reduction plan for regional transportation planning purposes, consistent with the rules established by the department of transportation in RCW 70.94.537.

(2) All other counties, cities, and towns may adopt and implement a commute trip reduction plan consistent with department of transportation rules established under RCW 70.94.537. Tribal governments are encouraged to adopt a commute trip reduction plan for their lands. State investment in voluntary commute trip reduction plans shall be limited to those areas that meet criteria developed by the commute trip reduction board.

(3) The department of ecology may, after consultation with the department of transportation, as part of the state implementation plan for areas that do not attain the national ambient air quality standards for carbon monoxide or ozone, require municipalities other than those identified in subsection (1) of this section to adopt and implement commute trip reduction plans if the department determines that such plans are necessary for attainment of said standards.

(4) A commute trip reduction plan shall be consistent with the rules established under RCW 70.94.537 and shall include but is not limited to (a) goals for reductions in the proportion of single-occupant vehicle commute trips consistent with the state goals established by the commute trip reduction board under RCW 70.94.537 and the regional commute trip reduction plan goals established in the regional commute trip reduction plan; (b) a description of the requirements for major public and private sector employers to implement commute trip reduction programs; (c) a commute trip reduction program for employees of the county, city, or town; and (d) means, consistent with rules established by the department of transportation, for determining base year values and progress toward meeting commute trip reduction plan goals. The plan shall be developed in consultation with local transit agencies, the applicable regional transportation planning organization, major employers, and other interested parties.

(5) The commute trip reduction plans adopted by counties, cities, and towns under this chapter shall be consistent with and may be incorporated in applicable state or regional transportation plans and local comprehensive plans and shall be coordinated, and consistent with, the commute trip reduction plans of counties, cities, or towns with which the county, city, or town has, in part, common borders or related regional issues. Such regional issues shall include assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction. Counties, cities, and towns adopting commute trip reduction plans may enter into agreements through the inter-local cooperation act or by resolution or ordinance as appropriate with other jurisdictions, local transit agencies, transportation management associations or other private or non-profit providers of transportation services, or regional transportation planning organizations to coordinate the development and implementation of such plans. Transit

agencies shall work with counties, cities, and towns as a part of their six-year transit development plan established in RCW 35.58.2795 to take into account the location of major employer worksites when planning and prioritizing transit service changes or the expansion of public transportation services, including rideshare services. Counties, cities, or towns adopting a commute trip reduction plan shall review it annually and revise it as necessary to be consistent with applicable plans developed under RCW 36.70A.070. Regional transportation planning organizations shall review the local commute trip reduction plans during the development and update of the regional commute trip reduction plan.

(6) Each affected regional transportation planning organization shall adopt a commute trip reduction plan for its region consistent with the rules and deadline established by the department of transportation under RCW 70.94.537. The plan shall include, but is not limited to: (a) Regional program goals for commute trip reduction in urban growth areas and all designated growth and transportation efficiency centers; (b) a description of strategies for achieving the goals; (c) a sustainable financial plan describing projected revenues and expenditures to meet the goals; (d) a description of the way in which progress toward meeting the goals will be measured; and (e) minimum criteria for growth and transportation efficiency centers. (i) Regional transportation planning organizations shall review proposals from local jurisdictions to designate growth and transportation efficiency centers and shall determine whether the proposed growth and transportation efficiency center is consistent with the criteria defined in the regional commute trip reduction plan. (ii) Growth and transportation efficiency centers certified as consistent with the minimum requirements by the regional transportation planning organization shall be identified in subsequent updates of the regional commute trip reduction plan. These plans shall be developed in collaboration with all affected local jurisdictions, transit agencies, and other interested parties within the region. The plan will be reviewed and approved by [the] commute trip reduction board as established under RCW 70.94.537. Regions without an approved regional commute trip reduction plan shall not be eligible for state commute trip reduction program funds.

The regional commute trip reduction plan shall be consistent with and incorporated into transportation demand management components in the regional transportation plan as required by RCW 47.80.030.

(7) Each regional transportation planning organization implementing a regional commute trip reduction program shall, consistent with the rules and deadline established by the department of transportation, submit its plan as well as any related local commute trip reduction plans and certified growth and transportation efficiency center programs, to the commute trip reduction board established under RCW 70.94.537. The commute trip reduction board shall review the regional commute trip reduction plan and the local commute trip reduction plans. The regional transportation planning organization shall collaborate with the commute trip reduction board to evaluate the consistency of local commute trip reduction plans with the regional commute trip reduction plan. Local and regional plans must be approved by the commute trip reduction board in order to be eligible for state funding provided for the purposes of this chapter.

(8) Each regional transportation planning organization implementing a regional commute trip reduction program shall submit an annual progress report to the commute trip reduction board established under RCW 70.94.537. The report shall be due at the end of each state fiscal year for which the program has been implemented. The report shall describe progress in attaining the applicable commute trip reduction goals and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction board.

(9) Any waivers or modifications of the requirements of a commute trip reduction plan granted by a jurisdiction shall be submitted for review to the commute trip reduction board established under RCW 70.94.537. The commute trip reduction board may not deny the granting of a waiver or modification of the requirements of a commute trip reduction plan by a jurisdiction but they may notify the jurisdiction of any comments or objections.

(10) Plans implemented under this section shall not apply to commute trips for seasonal agricultural employees.

(11) Plans implemented under this section shall not apply to construction worksites when the expected duration of the construction project is less than two years.

(12) If an affected urban growth area has not previously implemented a commute trip reduction program and the state has funded solutions to state highway deficiencies to address the area's exceeding the person hours of delay threshold, the affected urban growth area shall be exempt from the duties of this section for a period not exceeding two years. [2006 c 329 § 2; 1997 c 250 § 2; 1996 c 186 § 513; 1991 c 202 § 12.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.528 Transportation demand management—Growth and transportation efficiency centers. (1) A county, city, or town may, as part of its commute trip reduction plan, designate existing activity centers listed in its comprehensive plan or new activity centers as growth and transportation efficiency centers and establish a transportation demand management program in the designated area.

(a) The transportation demand management program for the growth and transportation efficiency center shall be developed in consultation with local transit agencies, the applicable regional transportation planning organization, major employers, and other interested parties.

(b) In order to be eligible for state funding provided for the purposes of this section, designated growth and transportation efficiency centers shall be certified by the applicable regional transportation organization to: (i) Meet the minimum land use and transportation criteria established in collaboration among local jurisdictions, transit agencies, the regional transportation planning organization, and other interested parties as part of the regional commute trip reduction plan; and (ii) have established a transportation demand management program that includes the elements identified in (c) of this subsection and is consistent with the rules established by the department of transportation in RCW 70.94.537(2). If a designated growth and transportation effi-

ciency center is denied certification, the local jurisdiction may appeal the decision to the commute trip reduction board.

(c) Transportation demand management programs for growth and transportation efficiency centers shall include, but are not limited to: (i) Goals for reductions in the proportion of single-occupant vehicle trips that are more aggressive than the state program goal established by the commute trip reduction board; (ii) a sustainable financial plan demonstrating how the program can be implemented to meet state and regional trip reduction goals, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques consistent with chapter 47.29 RCW, including public/private partnerships, to finance needed facilities, services, and programs; (iii) a proposed organizational structure for implementing the program; (iv) a proposal to measure performance toward the goal and implementation progress; and (v) an evaluation to which local land use and transportation policies apply, including parking policies and ordinances, to determine the extent that they complement and support the trip reduction investments of major employers. Each of these program elements shall be consistent with the rules established under RCW 70.94.537.

(d) A designated growth and transportation efficiency center shall be consistent with the land use and transportation elements of the local comprehensive plan.

(e) Transit agencies, local governments, and regional transportation planning organizations shall identify certified growth and transportation efficiency centers as priority areas for new service and facility investments in their respective investment plans.

(2) A county, city, or town that has established a growth and transportation efficiency center program shall support vehicle trip reduction activities in the designated area. The implementing jurisdiction shall adopt policies, ordinances, and funding strategies that will lead to attainment of program goals in those areas. [2006 c 329 § 4.]

70.94.531 Transportation demand management—Requirements for employers. (1) State agency worksites are subject to the same requirements under this section and RCW 70.94.534 as private employers.

(2) Not more than ninety days after the adoption of a jurisdiction's commute trip reduction plan, each major employer in that jurisdiction shall perform a baseline measurement consistent with the rules established by the department of transportation under RCW 70.94.537. Not more than ninety days after receiving the results of the baseline measurement, each major employer shall develop a commute trip reduction program and shall submit a description of that program to the jurisdiction for review. The program shall be implemented not more than ninety days after approval by the jurisdiction.

(3) A commute trip reduction program of a major employer shall consist of, at a minimum (a) designation of a transportation coordinator and the display of the name, location, and telephone number of the coordinator in a prominent manner at each affected worksite; (b) regular distribution of information to employees regarding alternatives to single-occupant vehicle commuting; (c) a regular review of employee commuting and reporting of progress toward meet-

ing the single-occupant vehicle reduction goals to the county, city, or town consistent with the method established in the commute trip reduction plan and the rules established by the department of transportation under RCW 70.94.537; and (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures may include but are not limited to:

- (i) Provision of preferential parking or reduced parking charges, or both, for high occupancy vehicles;
- (ii) Instituting or increasing parking charges for single-occupant vehicles;
- (iii) Provision of commuter ride matching services to facilitate employee ridesharing for commute trips;
- (iv) Provision of subsidies for transit fares;
- (v) Provision of vans for van pools;
- (vi) Provision of subsidies for car pooling or van pooling;
- (vii) Permitting the use of the employer's vehicles for car pooling or van pooling;
- (viii) Permitting flexible work schedules to facilitate employees' use of transit, car pools, or van pools;
- (ix) Cooperation with transportation providers to provide additional regular or express service to the worksite;
- (x) Construction of special loading and unloading facilities for transit, car pool, and van pool users;
- (xi) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
- (xii) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facility;
- (xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes;
- (xiv) Establishment of a program of alternative work schedules such as compressed work week schedules which reduce commuting; and
- (xv) Implementation of other measures designed to facilitate the use of high occupancy vehicles such as on-site day care facilities and emergency taxi services.

(4) Employers or owners of worksites may form or utilize existing transportation management associations or other transportation-related associations authorized by RCW 35.87A.010 to assist members in developing and implementing commute trip reduction programs.

(5) Employers shall make a good faith effort towards achievement of the goals identified in RCW 70.94.527(4)(d). [2006 c 329 § 5; 1997 c 250 § 3; (1995 2nd sp.s. c 14 § 530 expired June 30, 1997); 1991 c 202 § 13.]

Expiration date—1995 2nd sp.s. c 14 §§ 511-523, 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.534 Transportation demand management—Jurisdictions' review and penalties. (1) Each jurisdiction implementing a commute trip reduction plan under this chapter or as part of a plan or ordinance developed under RCW

36.70A.070 shall review each employer's initial commute trip reduction program to determine if the program is likely to meet the applicable commute trip reduction goals. The employer shall be notified by the jurisdiction of its findings. If the jurisdiction finds that the program is not likely to meet the applicable commute trip reduction goals, the jurisdiction will work with the employer to modify the program as necessary. The jurisdiction shall complete review of each employer's initial commute trip reduction program within ninety days of receipt.

(2) Employers implementing commute trip reduction programs are expected to undertake good faith efforts to achieve the goals outlined in RCW 70.94.527(4). Employers are considered to be making a good faith effort if the following conditions have been met:

(a) The employer has met the minimum requirements identified in RCW 70.94.531;

(b) The employer has notified the jurisdiction of its intent to substantially change or modify its program and has either received the approval of the jurisdiction to do so or has acknowledged that its program may not be approved without additional modifications;

(c) The employer has provided adequate information and documentation of implementation when requested by the jurisdiction; and

(d) The employer is working collaboratively with its jurisdiction to continue its existing program or is developing and implementing program modifications likely to result in improvements to the program over an agreed upon length of time.

(3) Each jurisdiction shall review at least once every two years each employer's progress and good faith efforts toward meeting the applicable commute trip reduction goals. If an employer makes a good faith effort, as defined in this section, but is not likely to meet the applicable commute trip reduction goals, the jurisdiction shall work collaboratively with the employer to make modifications to the commute trip reduction program. Failure of an employer to reach the applicable commute trip reduction goals is not a violation of this chapter.

(4) If an employer fails to make a good faith effort and fails to meet the applicable commute trip reduction goals, the jurisdiction shall work collaboratively with the employer to propose modifications to the program and shall direct the employer to revise its program within thirty days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.

(5) Each jurisdiction implementing a commute trip reduction plan pursuant to this chapter may impose civil penalties, in the manner provided in chapter 7.80 RCW, for failure by an employer to implement a commute trip reduction program or to modify its commute trip reduction program as required in subsection (4) of this section. No major employer may be held liable for civil penalties for failure to reach the applicable commute trip reduction goals. No major employer shall be liable for civil penalties under this chapter if failure to achieve a commute trip reduction program goal was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith.

(6) Jurisdictions shall notify major employers of the procedures for applying for goal modification or exemption from the commute trip reduction requirements based on the guidelines established by the commute trip reduction board authorized under RCW 70.94.537. [2006 c 329 § 6; 1997 c 250 § 4; 1991 c 202 § 14.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.537 Transportation demand management—Commute trip reduction board. (1) A sixteen member state commute trip reduction board is established as follows:

(a) The secretary of the department of transportation or the secretary's designee who shall serve as chair;

(b) One representative from the office of the governor or the governor's designee;

(c) The director or the director's designee of one of the following agencies, to be determined by the governor:

(i) Department of general administration;

(ii) Department of ecology;

(iii) Department of community, trade, and economic development;

(d) Three representatives from cities and towns or counties appointed by the governor for staggered four-year terms from a list recommended by the association of Washington cities or the Washington state association of counties;

(e) Two representatives from transit agencies appointed by the governor for staggered four-year terms from a list recommended by the Washington state transit association;

(f) Two representatives from participating regional transportation planning organizations appointed by the governor for staggered four-year terms;

(g) Four representatives of employers at or owners of major worksites in Washington, or transportation management associations, business improvement areas, or other transportation organizations representing employers, appointed by the governor for staggered four-year terms; and

(h) Two citizens appointed by the governor for staggered four-year terms.

Members of the commute trip reduction board shall serve without compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members appointed by the governor shall be compensated in accordance with RCW 43.03.220. The board has all powers necessary to carry out its duties as prescribed by this chapter.

(2) By March 1, 2007, the department of transportation shall establish rules for commute trip reduction plans and implementation procedures. The commute trip reduction board shall advise the department on the content of the rules. The rules are intended to ensure consistency in commute trip reduction plans and goals among jurisdictions while fairly taking into account differences in employment and housing density, employer size, existing and anticipated levels of transit service, special employer circumstances, and other factors the board determines to be relevant. The rules shall include:

(a) Guidance criteria for growth and transportation efficiency centers;

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(b) Data measurement methods and procedures for determining the efficacy of commute trip reduction activities and progress toward meeting commute trip reduction plan goals;

(c) Model commute trip reduction ordinances;

(d) Methods for assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction;

(e) An appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification;

(f) Establishment of a process for determining the state's affected areas, including criteria and procedures for regional transportation planning organizations in consultation with local jurisdictions to propose to add or exempt urban growth areas;

(g) Listing of the affected areas of the program to be done every four years as identified in subsection (5) of this section;

(h) Establishment of a criteria and application process to determine whether jurisdictions that voluntarily implement commute trip reduction are eligible for state funding;

(i) Guidelines and deadlines for creating and updating local commute trip reduction plans, including guidance to ensure consistency between the local commute trip reduction plan and the transportation demand management strategies identified in the transportation element in the local comprehensive plan, as required by RCW 36.70A.070;

(j) Guidelines for creating and updating regional commute trip reduction plans, including guidance to ensure the regional commute trip reduction plan is consistent with and incorporated into transportation demand management components in the regional transportation plan;

(k) Methods for regional transportation planning organizations to evaluate and certify that designated growth and transportation efficiency center programs meet the minimum requirements and are eligible for funding;

(l) Guidelines for creating and updating growth and transportation efficiency center programs; and

(m) Establishment of statewide program goals. The goals shall be designed to achieve substantial reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee, at a level that is projected to improve the mobility of people and goods by increasing the efficiency of the state highway system.

(3) The board shall create a state commute trip reduction plan that shall be updated every four years as discussed in subsection (5) of this section. The state commute trip reduction plan shall include, but is not limited to: (a) Statewide commute trip reduction program goals that are designed to substantially improve the mobility of people and goods; (b) identification of strategies at the state and regional levels to achieve the goals and recommendations for how transportation demand management strategies can be targeted most effectively to support commute trip reduction program goals; (c) performance measures for assessing the cost-effectiveness of commute trip reduction strategies and the benefits for the state transportation system; and (d) a sustainable financial

plan. The board shall review and approve regional commute trip reduction plans, and work collaboratively with regional transportation planning organizations in the establishment of the state commute trip reduction plan.

(4) The board shall work with affected jurisdictions, major employers, and other parties to develop and implement a public awareness campaign designed to increase the effectiveness of local commute trip reduction programs and support achievement of the objectives identified in this chapter.

(5) The board shall evaluate and update the commute trip reduction program plan and recommend changes to the rules every four years, with the first assessment report due July 1, 2011, to ensure that the latest data methodology used by the department of transportation is incorporated into the program and to determine which areas of the state should be affected by the program. The board shall review the definition of a major employer no later than December 1, 2009. The board shall regularly identify urban growth areas that are projected to be affected by chapter 329, Laws of 2006 in the next four-year period and may provide advance planning support to the potentially affected jurisdictions.

(6) The board shall review progress toward implementing commute trip reduction plans and programs and the costs and benefits of commute trip reduction plans and programs and shall make recommendations to the legislature and the governor by December 1, 2009, and every two years thereafter. In assessing the costs and benefits, the board shall consider the costs of not having implemented commute trip reduction plans and programs with the assistance of the transportation performance audit board authorized under *chapter 44.75 RCW. The board shall examine other transportation demand management programs nationally and incorporate its findings into its recommendations to the legislature. The recommendations shall address the need for continuation, modification, or termination or any or all requirements of this chapter.

(7) The board shall invite personnel with appropriate expertise from state, regional, and local government, private, public, and nonprofit providers of transportation services, and employers or owners of major worksites in Washington to act as a technical advisory group. The technical advisory group shall advise the board on the implementation of local and regional commute trip reduction plans and programs, program evaluation, program funding allocations, and state rules and guidelines. [2006 c 329 § 7; 1997 c 250 § 5; 1996 c 186 § 514; 1995 c 399 § 188; 1991 c 202 § 15.]

*Reviser's note: Chapter 44.75 RCW was repealed by 2006 c 334 § 51.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.541 Transportation demand management—Technical assistance. (1) The department of transportation shall provide staff support to the commute trip reduction board in carrying out the requirements of RCW 70.94.537.

(2) The department of transportation shall provide technical assistance to regional transportation planning organizations, counties, cities, and towns, the department of general administration, other state agencies, and other employers in developing and implementing commute trip reduction plans

and programs. The technical assistance shall include: (a) Guidance in single measurement methodology and practice to be used in determining progress in attaining plan goals; (b) developing model plans and programs appropriate to different situations; and (c) providing consistent training and informational materials for the implementation of commute trip reduction programs. Model plans and programs, training, and informational materials shall be developed in cooperation with representatives of regional transportation planning organizations, local governments, transit agencies, and employers.

(3) In carrying out this section the department of transportation may contract with statewide associations representing cities, towns, and counties to assist cities, towns, and counties in implementing commute trip reduction plans and programs. [2006 c 329 § 8; 1996 c 186 § 515; 1991 c 202 § 16.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.544 Transportation demand management—Use of funds. A portion of the funds made available for the purposes of this chapter shall be used to fund the commute trip reduction board in carrying out the responsibilities of RCW 70.94.537, and the department of transportation, including the activities authorized under RCW 70.94.541(2), and to assist regional transportation planning organizations, counties, cities, and towns implementing commute trip reduction plans. The commute trip reduction board shall determine the allocation of program funds made available for the purposes of this chapter to regional transportation planning organizations, counties, cities, and towns implementing commute trip reduction plans. If state funds for the purposes of this chapter are provided to those jurisdictions implementing voluntary commute trip reduction plans, the funds shall be disbursed based on criteria established by the commute trip reduction board under RCW 70.94.537. [2006 c 329 § 9; 2001 c 74 § 1; 1991 c 202 § 17.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.547 Transportation demand management—Intent—State leadership. The legislature hereby recognizes the state's crucial leadership role in establishing and implementing effective commute trip reduction programs. Therefore, it is the policy of the state that the department of general administration and other state agencies, including institutions of higher education, shall aggressively develop substantive programs to reduce commute trips by state employees. Implementation of these programs will reduce energy consumption, congestion in urban areas, and air and water pollution associated with automobile travel. [2006 c 329 § 10; 1991 c 202 § 18.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.551 Transportation demand management—State agencies—Reports. (1) The director of the department of general administration may coordinate an interagency

board for the purpose of developing policies or guidelines that promote consistency among state agency commute trip reduction programs required by RCW 70.94.527 and 70.94.531. The board shall include representatives of the departments of transportation, ecology, and community, trade, and economic development and such other departments and interested groups as the director of the department of general administration determines to be necessary. Policies and guidelines shall be applicable to all state agencies including but not limited to policies and guidelines regarding parking and parking charges, employee incentives for commuting by other than single-occupant automobiles, flexible and alternative work schedules, alternative worksites, and the use of state-owned vehicles for car and van pools and guaranteed rides home. The policies and guidelines shall also consider the costs and benefits to state agencies of achieving commute trip reductions and consider mechanisms for funding state agency commute trip reduction programs.

(2) State agencies sharing a common location in affected urban growth areas where the total number of state employees is one hundred or more shall, with assistance from the department of general administration, develop and implement a joint commute trip reduction program. The worksite shall be treated as specified in RCW 70.94.531 and 70.94.534.

(3) The department of general administration shall review the initial commute trip reduction program of each state agency subject to the commute trip reduction plan for state agencies to determine if the program is likely to meet the applicable commute trip reduction goals and notify the agency of any deficiencies. If it is found that the program is not likely to meet the applicable commute trip reduction goals, the department of general administration will work with the agency to modify the program as necessary.

(4) Each state agency implementing a commute trip reduction plan shall report at least once per year to its agency director on the performance of the agency's commute trip reduction program as part of the agency's quality management, accountability, and performance system as defined by RCW 43.17.385. The reports shall assess the performance of the program, progress toward state goals established under RCW 70.94.537, and recommendations for improving the program.

(5) The department of general administration shall review the agency performance reports defined in subsection (4) of this section and submit a biennial report for state agencies subject to this chapter to the governor and incorporate the report in the commute trip reduction board report to the legislature as directed in RCW 70.94.537(6). The report shall include, but is not limited to, an evaluation of the most recent measurement results, progress toward state goals established under RCW 70.94.537, and recommendations for improving the performance of state agency commute trip reduction programs. The information shall be reported in a form established by the commute trip reduction board. [2006 c 329 § 11; 1997 c 250 § 6; 1996 c 186 § 516; 1991 c 202 § 19.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

State vehicle parking account: RCW 43.01.225.

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70.94.555 Transportation demand management—Collective bargaining powers unaffected. Nothing in chapter 329, Laws of 2006 preempts the ability of state employees to collectively bargain over commute trip reduction issues, including parking fees under chapter 41.80 RCW, or the ability of private sector employees to collectively bargain over commute trip reduction issues if previously such issues were mandatory subjects of collective bargaining. [2006 c 329 § 3.]

70.94.600 Reports of authorities to department of ecology—Contents. All authorities in the state shall submit quarterly reports to the department of ecology detailing the current status of air pollution control regulations in the authority and, by county, the progress made toward bringing all sources in the authority into compliance with authority standards. [1979 ex.s. c 30 § 14; 1969 ex.s. c 168 § 52.]

70.94.610 Burning used oil fuel in land-based facilities. (1) Except as provided in subsection (2) of this section, a person may not burn used oil as fuel in a land-based facility or in state waters unless the used oil meets the following standards:

- (a) Cadmium: 2 ppm maximum
- (b) Chromium: 10 ppm maximum
- (c) Lead: 100 ppm maximum
- (d) Arsenic: 5 ppm maximum
- (e) Total halogens: 1000 ppm maximum
- (f) Polychlorinated biphenyls: 2 ppm maximum
- (g) Ash: .1 percent maximum
- (h) Sulfur: 1.0 percent maximum
- (i) Flash point: 100 degrees Fahrenheit minimum.

(2) This section shall not apply to: (a) Used oil burned in space heaters if the space heater has a maximum heat output of not greater than 0.5 million btu's per hour or used oil burned in facilities permitted by the department or a local air pollution control authority; or (b) ocean-going vessels.

(3) This section shall not apply to persons in the business of collecting used oil from residences when under authorization by a city, county, or the utilities and transportation commission. [1991 c 319 § 311.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.94.620 Metals mining and milling operations permits—Inspections by department of ecology. If a metals mining and milling operation is issued a permit pursuant to this chapter, then it will be subject to special inspection requirements. The department of ecology shall inspect these mining operations at least quarterly in order to ensure that the operation is in compliance with the conditions of any permit issued to it pursuant to this chapter. The department shall conduct additional inspections during the construction phase of the mining and milling operation in order to ensure compliance with this chapter. [1994 c 232 § 18.]

Severability—1994 c 232: See RCW 78.56.900.

Effective date—1994 c 232 §§ 6-8 and 18-22: See RCW 78.56.902.

70.94.630 Sulfur dioxide abatement account—Coal-fired thermal electric generation facilities—Application—Determination and assessment of progress—Certification of pollution level—Reimbursement—Time limit for and extension of account. (1) The sulfur dioxide abatement account is created. All receipts from subsection (2) of this section must be deposited in the account. Expenditures in the account may be used only for the purposes of subsection (3) of this section. Only the director of revenue or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Upon application by the owners of a generation facility, the department of ecology shall make a determination of whether the owners are making initial progress in the construction of air pollution control facilities. Evidence of initial progress may include, but is not limited to, engineering work, agreements to proceed with construction, contracts to purchase, or contracts for construction of air pollution control facilities. However, if the owners' progress is impeded due to actions caused by regulatory delays or by defensive litigation, certification of initial progress may not be withheld.

Upon certification of initial progress by the department of ecology and after January 1, 1999, an amount equal to all sales and use taxes paid under chapters 82.08, 82.12, and 82.14 RCW, that were obtained from the sales of coal to, or use of coal by, a business for use at a generation facility shall be deposited in the account under RCW 82.32.392.

By June 1st of each year during construction of the air pollution control facilities and during the verification period required in RCW 82.08.811(2)(d) and 82.12.811(2)(d), the department of ecology shall make an assessment regarding the continued progress of the pollution control facilities. Evidence of continued progress may include, but is not limited to, acquisition of construction material, visible progress on construction, or other actions that have occurred that would verify progress under general construction time tables. The treasurer shall continue to deposit an amount equal to the tax revenues to the sulfur dioxide abatement account unless the department of ecology fails to certify that reasonable progress has been made during the previous year. The operator of a generation facility shall file documentation accompanying its combined monthly excise tax return that identifies all sales and use tax payments made by the owners for coal used at the generation facility during the reporting period.

(3) When a generation facility emits no more than ten thousand tons of sulfur dioxide during a consecutive twelve-month period, the department of ecology shall certify this to the department of revenue and the state treasurer by the end of the following month. Within thirty days of receipt of certification under this subsection, the department of revenue shall approve the tax exemption application and the director or the director's designee shall authorize the release of any moneys in the sulfur dioxide abatement account to the operator of the generation facility. The operator shall disburse the payment among the owners of record according to the terms of their contractual agreement.

(4)(a) If the department of revenue has not approved a tax exemption under RCW 82.08.811 and 82.12.811 by March 1, 2005, any moneys in the sulfur dioxide abatement

account shall be transferred to the general fund and the appropriate local governments in accordance with chapter 82.14 RCW, and the sulfur dioxide abatement account shall cease to exist after March 1, 2005.

(b) The dates in (a) of this subsection must be extended if the owners of a generation facility have experienced difficulties in complying with this section, or RCW 82.08.811, *82.08.812, 82.12.811, *82.12.812, and 82.32.392, due to actions caused by regulatory delays or by defensive litigation.

(5) For the purposes of this section:

(a) "Air pollution control facilities" means any treatment works, control devices and disposal systems, machinery, equipment, structure, property, property improvements and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation; and

(b) "Generation facility" means a coal-fired thermal electric generation facility placed in operation after December 3, 1969, and before July 1, 1975. [1997 c 368 § 10.]

***Reviser's note:** RCW 82.08.812 and 82.12.812 were repealed by 2000 c 4 § 1.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

70.94.640 Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter.

(1) Odors or fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

(2) Any notice of violation issued under this chapter pertaining to odors or fugitive dust caused by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors or fugitive dust have substantial adverse effect on public health.

(3) In any appeal to the pollution control hearings board or any judicial appeal, the agency issuing a final order pertaining to odors or fugitive dust caused by agricultural activity shall prove the activity is inconsistent with good agricultural practices or that the odors or fugitive dust have a substantial adverse impact on public health.

(4) If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.

(5) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, shellfish, grain, mint, hay, and dairy products.

(b) "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

(c) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock, agricultural commodities, or cultured aquatic products.

(d) "Fugitive dust" means a particulate emission made airborne by human activity, forces of wind, or both, and which do not pass through a stack, chimney, vent, or other functionally equivalent opening.

(6) The exemption for fugitive dust provided in subsection (1) of this section does not apply to facilities subject to RCW 70.94.151 as specified in WAC 173-400-100 as of July 24, 2005, 70.94.152, or 70.94.161. [2005 c 511 § 4; 1981 c 297 § 30.]

Legislative finding, intent—1981 c 297: "The legislature finds that agricultural land is essential to providing citizens with food and fiber and to insuring aesthetic values through the preservation of open spaces in our state. The legislature further finds that government regulations can cause agricultural land to be converted to nonagricultural uses. The legislature intends that agricultural activity consistent with good practices be protected from government over-regulation." [1981 c 297 § 29.]

Reviser's note: The above legislative finding and intent section apparently applies to sections 30 and 31 of chapter 297, Laws of 1981, which sections have been codified pursuant to legislative direction as RCW 70.94.640 and 90.48.450, respectively.

Severability—1981 c 297: See note following RCW 15.36.201.

70.94.645 Ammonia emissions from use as agricultural or silvicultural fertilizer—Regulation prohibited. The department shall not regulate ammonia emissions resulting from the storage, distribution, transport, or application of ammonia for use as an agricultural or silvicultural fertilizer. [1996 c 204 § 2.]

70.94.650 Burning permits for weed abatement, fire fighting instruction, or agriculture activities—Issuance—Agricultural burning practices and research task force—Exemption for aircraft crash fire rescue training activities. (1) Any person who proposes to set fires in the course of:

(a) Weed abatement;

(b) Instruction in methods of fire fighting, except training to fight structural fires as provided in RCW 52.12.150 or training to fight aircraft crash rescue fires as provided in subsection (5) of this section, and except forest fire training; or

(c) Agricultural activities,

shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.654. General permit criteria of statewide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both. All permits shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this

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section shall relieve the applicant from obtaining permits, licenses, or other approvals required by any other law. An application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement or development of physiological conditions conducive to increased crop yield, shall be acted upon within seven days from the date such application is filed. The department of ecology and local air authorities shall provide convenient methods for issuance and oversight of agricultural burning permits. The department and local air authorities shall, through agreement, work with counties and cities to provide convenient methods for granting permission for agricultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods. A local air authority administering the permit program under this subsection (1)(c) shall not limit the number of days of allowable agricultural burning, but may consider the time of year, meteorological conditions, and other criteria specified in rules adopted by the department to implement this subsection (1)(c).

(2) Permit fees shall be assessed for burning under this section and shall be collected by the department of ecology, the appropriate local air authority, or a local entity delegated permitting authority pursuant to RCW 70.94.654 at the time the permit is issued. All fees collected shall be deposited in the air pollution control account created in RCW 70.94.015, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (4) of this section, but shall not exceed two dollars and fifty cents per acre to be burned. After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.

(3) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(4) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities. The task force shall determine the level of fees to be assessed by the permitting agency pursuant to subsection (2) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions

from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions. The task force shall identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning. Further, the task force shall make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

(5) A permit is not required under this section, or under RCW 70.94.743 through 70.94.780, from an air pollution control authority, the department, or any local entity with delegated permit authority, for aircraft crash rescue fire training activities meeting the following conditions:

(a) Firefighters participating in the training fires must be limited to those who provide fire fighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities;

(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715 for the area where training is to be conducted;

(c) The number of training fires allowed per year without a permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements;

(d) The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during operation; and

(e) Prior to the commencement of the aircraft fire training, the organization conducting training shall notify both the: (i) Local fire district or fire department; and (ii) air pollution control authority, department of ecology, or local entity delegated permitting authority under RCW 70.94.654, having jurisdiction within the area where training is to be conducted.

Written approval from the department or a local air pollution control authority shall be obtained prior to the initial operation of aircraft crash rescue fire training. Such approval will be granted to fire training activities meeting the conditions in this subsection.

(6) Aircraft crash rescue fire training activities conducted in compliance with *this subsection are not subject to the prohibition, in RCW 70.94.775(1), of outdoor fires containing petroleum products and are not considered outdoor burning under RCW 70.94.743 through 70.94.780.

(7) To provide for fire fighting instruction in instances not governed by subsection (6) of this section, or other actions to protect public health and safety, the department or a local air pollution control authority may issue permits that allow limited burning of prohibited materials listed in RCW 70.94.775(1). [1998 c 43 § 1. Prior: 1995 c 362 § 1; 1995 c 58 § 1; 1994 c 28 § 2; 1993 c 353 § 1; 1991 c 199 § 408; 1971 ex.s. c 232 § 1.]

***Reviser's note:** The reference to "this subsection" appears to be erroneous, and should instead refer to subsection (5) of this section.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.651 Burning permits for regeneration of rare and endangered plants; Indian ceremonies. Nothing contained in this chapter shall prohibit fires necessary: (1) To promote the regeneration of rare and endangered plants found within natural area preserves as identified under chapter 79.70 RCW; and (2) for Indian ceremonies or for the sending of smoke signals if part of a religious ritual. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions. [1991 c 199 § 407.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.654 Delegation of permit issuance and enforcement to political subdivisions. Whenever an air pollution control authority, or the department of ecology for areas outside the jurisdictional boundaries of an activated air pollution control authority, shall find that any fire protection agency, county, or conservation district is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70.94.650 and desirous of doing so, the authority or the department of ecology, as appropriate, may delegate powers necessary for the issuance or enforcement, or both, of permits for any or all of the kinds of burning to the fire protection agency, county, or conservation district. Such delegation may be withdrawn by the authority or the department of ecology upon finding that the fire protection agency, county, or conservation district is not effectively administering the permit program. [1993 c 353 § 2; 1991 c 199 § 409; 1973 1st ex.s. c 193 § 6.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.656 Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in special grass seed burning account—Procedures—Limitations—Report. It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Any study conducted pursuant to this section shall be conducted by Washington State University. The university may not charge more than eight percent for administrative overhead. Prior to the issuance of any permit for such burning under RCW 70.94.650, there shall be collected a fee not to exceed one dollar per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the state treasury.

(2) The department shall allocate moneys annually from this account for the support of any approved study or studies

as provided for in subsection (1) of this section. Whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund. The fee collected under subsection (1) of this section shall constitute the research portion of fees required under RCW 70.94.650 for open burning of grass grown for seed.

(3) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(4) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(5) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions.

(6) By November 1, 1996, and every two years thereafter until grass seed burning is prohibited, Washington State University may prepare a brief report assessing the potential of the university's research to result in economical and practical alternatives to grass seed burning. [1998 c 245 § 130; 1995 c 261 § 1; 1991 sp.s. c 13 § 28; 1991 c 199 § 413; 1990 c 113 § 1; 1985 c 57 § 69; 1973 1st ex.s. c 193 § 7.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective date—1985 c 57: See note following RCW 18.04.105.

Grass burning research advisory committee: Chapter 43.21E RCW.

70.94.660 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Issuance. (1) The department of natural resources shall have the responsibility for issuing and regulating burning permits required by it relating to the following activities for the protection of life or property and/or for the public health, safety, and welfare:

- (a) Abating a forest fire hazard;
- (b) Prevention of a fire hazard;
- (c) Instruction of public officials in methods of forest fire fighting;
- (d) Any silvicultural operation to improve the forest lands of the state; and
- (e) Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

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(2) The department of natural resources shall not retain such authority, but it shall be the responsibility of the appropriate fire protection agency for permitting and regulating outdoor burning on lands where the department of natural resources does not have fire protection responsibility.

(3) Permit fees shall be assessed for silvicultural burning under the jurisdiction of the department of natural resources and collected by the department of natural resources as provided for in this section. All fees shall be deposited in the air pollution control account, created in RCW 70.94.015. The legislature shall appropriate to the department of natural resources funds from the air pollution control account to enforce and administer the program under RCW 70.94.665 and 70.94.660, 70.94.670, and 70.94.690. Fees shall be set by rule by the department of natural resources at the level necessary to cover the costs of the program after receiving recommendations on such fees from the public and the forest fire advisory board established by RCW 76.04.145. [1991 c 199 § 404; 1971 ex.s. c 232 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

Burning permits, issuance, air pollution a factor: RCW 76.04.205.

Disposal of forest debris: RCW 76.04.650.

70.94.665 Silvicultural forest burning—Reduce statewide emissions—Exemption—Monitoring program. (1) The department of natural resources shall administer a program to reduce statewide emissions from silvicultural forest burning so as to achieve the following minimum objectives:

- (a) Twenty percent reduction by December 31, 1994 providing a ceiling for emissions until December 31, 2000; and
- (b) Fifty percent reduction by December 31, 2000 providing a ceiling for emissions thereafter.

Reductions shall be calculated from the average annual emissions level from calendar years 1985 to 1989, using the same methodology for both reduction and base year calculations.

(2) The department of natural resources, within twelve months after May 15, 1991, shall develop a plan, based upon the existing smoke management agreement to carry out the programs as described in this section in the most efficient, cost-effective manner possible. The plan shall be developed in consultation with the department of ecology, public and private landowners engaged in silvicultural forest burning, and representatives of the public.

The plan shall recognize the variations in silvicultural forest burning including, but not limited to, a landowner's responsibility to abate an extreme fire hazard under chapter 76.04 RCW and other objectives of burning, including abating and preventing a fire hazard, geographic region, climate, elevation and slope, proximity to populated areas, and diversity of land ownership. The plan shall establish priorities that the department of natural resources shall use to allocate allowable emissions, including but not limited to, silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. The plan shall also recognize the real costs of the emissions program and recommend equitable fees to cover the costs of the program.

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The emission reductions in this section are to apply to all forest lands including those owned and managed by the United States. If the United States does not participate in implementing the plan, the departments of natural resources and ecology shall use all appropriate and available methods or enforcement powers to ensure participation.

The plan shall include a tracking system designed to measure the degree of progress toward the emission reductions goals set in this section. The department of natural resources shall report annually to the department of ecology and the legislature on the status of the plan, emission reductions and progress toward meeting the objectives specified in this section, and the goals of this chapter and chapter 76.04 RCW.

(3) If the December 31, 1994, emission reductions targets in this section are not met, the department of natural resources, in consultation with the department of ecology, shall use its authority granted in this chapter and chapter 76.04 RCW to immediately limit emissions from such burning to the 1994 target levels and limit silvicultural forest burning in subsequent years to achieve equal annual incremental reductions so as to achieve the December 31, 2000, target level. If, as a result of the program established in this section, the emission reductions are met in 1994, but are not met by December 31, 2000, the department of natural resources in consultation with the department of ecology shall immediately limit silvicultural forest burning to reduce emissions from such burning to the December 31, 2000, target level in all subsequent years.

(4) Emissions from silvicultural burning in eastern Washington that is conducted for the purpose of restoring forest health or preventing the additional deterioration of forest health are exempt from the reduction targets and calculations in this section if the following conditions are met:

(a) The landowner submits a written request to the department identifying the location of the proposed burning and the nature of the forest health problem to be corrected. The request shall include a brief description of alternatives to silvicultural burning and reasons why the landowner believes the alternatives not to be appropriate.

(b) The department determines that the proposed silvicultural burning operation is being conducted to restore forest health or prevent additional deterioration to forest health; meets the requirements of the state smoke management plan to protect public health, visibility, and the environment; and will not be conducted during an air pollution episode or during periods of impaired air quality in the vicinity of the proposed burn.

(c) Upon approval of the request by the department and before burning, the landowner is encouraged to notify the public in the vicinity of the burn of the general location and approximate time of ignition.

(5) The department of ecology may conduct a limited, seasonal ambient air quality monitoring program to measure the effects of forest health burning conducted under subsection (4) of this section. The monitoring program may be developed in consultation with the department of natural resources, private and public forest landowners, academic experts in forest health issues, and the general public. [1995 c 143 § 1; 1991 c 199 § 403.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.670 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris. The department of natural resources in granting burning permits for fires for the purposes set forth in RCW 70.94.660 shall condition the issuance and use of such permits to comply with air quality standards established by the department of ecology after full consultation with the department of natural resources. Such burning shall not cause the state air quality standards to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution from other sources. Air quality standards shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when and where air contaminant levels exceed or threaten to exceed the ambient air standards over such critical areas. The air quality shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established monitoring stations over such designated areas. Further, such permitted burning shall not cause damage to public health or the environment. All permits issued under this section shall be subject to all applicable fees, permitting, penalty, and enforcement provisions of this chapter. The department of natural resources shall set forth smoke dispersal objectives designed consistent with this section to minimize any air pollution from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging and alternative silviculture practices to reduce the need for burning. The department of natural resources shall, whenever practical, encourage landowners to develop and use alternative acceptable disposal methods subject to the following priorities: (1) Slash production minimization, (2) slash utilization, (3) nonburning disposal, (4) silvicultural burning. Such alternative methods shall be evaluated as to the relative impact on air, water, and land pollution, public health, and their financial feasibility.

The department of natural resources shall not issue burning permits and shall revoke previously issued permits at any time in any area where the department of ecology or local board has declared a stage of impaired air quality as defined in RCW 70.94.473. [1991 c 199 § 405; 1971 ex.s. c 232 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.690 Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits. In the regulation of outdoor burning not included in RCW 70.94.660 requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while still accomplishing the objectives and responsibilities of the respective agencies. The department of natural resources shall include any local authority's burning regulations with permits issued where applicable pursuant to RCW *70.94.740 through 70.94.775. The department shall

develop agreements with all local authorities to coordinate regulations.

Permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning, or emergency condition exists as defined in the episode criteria of the department of ecology. [1991 c 199 § 406; 1971 ex.s. c 232 § 5.]

***Reviser's note:** RCW 70.94.740 was repealed by 1991 c 199 § 718.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.700 Rules and regulations. The department of natural resources and the department of ecology may adopt rules and regulations necessary to implement their respective responsibilities under the provisions of RCW 70.94.650 through 70.94.700. [1971 ex.s. c 232 § 6.]

70.94.710 Air pollution episodes—Legislative finding—Declaration of policy. The legislature finds that whenever meteorological conditions occur which reduce the effective volume of air into which air contaminants are introduced, there is a high danger that normal operations at air contaminant sources in the area affected will be detrimental to public health or safety. Whenever such conditions, herein denominated as air pollution episodes, are forecast, there is a need for rapid short-term emission reduction in order to avoid adverse health or safety consequences.

Therefore, it is declared to be the policy of this state that an episode avoidance plan should be developed and implemented for the temporary reduction of emissions during air pollution episodes.

It is further declared that power should be vested in the governor to issue emergency orders for the reduction or discontinuance of emissions when such emissions and weather combine to create conditions imminently dangerous to public health and safety. [1971 ex.s. c 194 § 1.]

70.94.715 Air pollution episodes—Episode avoidance plan—Contents—Source emission reduction plans—Authority—Considered orders. The department of ecology is hereby authorized to develop an episode avoidance plan providing for the phased reduction of emissions wherever and whenever an air pollution episode is forecast. Such an episode avoidance plan shall conform with any applicable federal standards and shall be effective statewide. The episode avoidance plan may be implemented on an area basis in accordance with the occurrence of air pollution episodes in any given area.

The department of ecology may delegate authority to adopt source emission reduction plans and authority to implement all stages of occurrence up to and including the warning stage, and all intermediate stages up to the warning stage, in any area of the state, to the air pollution control authority with jurisdiction therein.

The episode avoidance plan, which shall be established by regulation in accordance with chapter 34.05 RCW, shall include, but not be limited to the following:

(1) The designation of episode criteria and stages, the occurrence of which will require the carrying out of pre-planned episode avoidance procedures. The stages of occurrence shall be (a) forecast, (b) alert, (c) warning, (d) emer-

gency, and such intermediate stages as the department shall designate. "Forecast" means the presence of meteorological conditions that are conducive to accumulation of air contaminants and is the first stage of an episode. The department shall not call a forecast episode prior to the department or an authority calling a first stage impaired air quality condition as provided by RCW 70.94.473(1)(b) or calling a single-stage impaired air quality condition as provided by *RCW 70.94.473(2). "Alert" means concentration of air contaminants at levels at which short-term health effects may occur, and is the second stage of an episode. "Warning" means concentrations are continuing to degrade, contaminant concentrations have reached a level which, if maintained, can result in damage to health, and additional control actions are needed and is the third level of an episode. "Emergency" means the air quality is posing an imminent and substantial endangerment to public health and is the fourth level of an episode;

(2) The requirement that persons responsible for the operation of air contaminant sources prepare and obtain approval from the director of source emission reduction plans, consistent with good operating practice and safe operating procedures, for reducing emissions during designated episode stages;

(3) Provision for the director of the department of ecology or his authorized representative, or the air pollution control officer if implementation has been delegated, on the satisfaction of applicable criteria, to declare and terminate the forecast, alert, warning and all intermediate stages, up to the warning episode stage, such declarations constituting orders for action in accordance with applicable source emission reduction plans;

(4) Provision for the governor to declare and terminate the emergency stage and all intermediate stages above the warning episode stage, such declarations constituting orders in accordance with applicable source emission reduction plans;

(5) Provisions for enforcement by state and local police, personnel of the departments of ecology and social and health services, and personnel of local air pollution control agencies; and

(6) Provisions for reduction or discontinuance of emissions immediately, consistent with good operating practice and safe operating procedures, under an air pollution emergency as provided in RCW 70.94.720.

Source emission reduction plans shall be considered orders of the department and shall be subject to appeal to the pollution control hearings board according to the procedure in chapter 43.21B RCW. [1990 c 128 § 4; 1971 ex.s. c 194 § 2.]

***Reviser's note:** RCW 70.94.473 was amended by 1995 c 205 § 1, which deleted subsection (2).

70.94.720 Air pollution episodes—Declaration of air pollution emergency by governor. Whenever the governor finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to public health or safety, he may declare an air pollution emergency and may order the person or persons responsible for the operation of such air contaminant source or sources to reduce or discontinue emissions consistent with good operating practice, safe operating procedures and source emission reduction

plans, if any, adopted by the department of ecology or any local air pollution control authority to which the department of ecology has delegated authority to adopt emission reduction plans. Orders authorized by this section shall be in writing and may be issued without prior notice or hearing. In the absence of the governor, any findings, declarations and orders authorized by this section may be made and issued by his authorized representative. [1971 ex.s. c 194 § 3.]

70.94.725 Air pollution episodes—Restraining orders, temporary injunctions to enforce orders—Procedure. Whenever any order has been issued pursuant to RCW 70.94.710 through 70.94.730, the attorney general, upon request from the governor, the director of the department of ecology, an authorized representative of either, or the attorney for a local air pollution control authority upon request of the control officer, shall petition the superior court of the county in which is located the air contaminant source for which such order was issued for a temporary restraining order requiring the immediate reduction or discontinuance of emissions from such source.

Upon request of the party to whom a temporary restraining order is directed, the court shall schedule a hearing thereon at its earliest convenience, at which time the court may withdraw the restraining order or grant such temporary injunction as is reasonably necessary to prevent injury to the public health or safety. [1971 ex.s. c 194 § 4.]

70.94.730 Air pollution episodes—Orders to be effective immediately. Orders issued to declare any stage of an air pollution episode avoidance plan under RCW 70.94.715, and to declare an air pollution emergency, under RCW 70.94.720, and orders to persons responsible for the operation of an air contaminant source to reduce or discontinue emissions, according to RCW 70.94.715 and 70.94.720 shall be effective immediately and shall not be stayed pending completion of review. [1971 ex.s. c 194 § 5.]

70.94.743 Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning. (1) Consistent with the policy of the state to reduce outdoor burning to the greatest extent practical:

(a) Outdoor burning shall not be allowed in any area of the state where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning.

(b) Outdoor burning shall not be allowed in any urban growth area as defined by RCW 36.70A.030, or any city of the state having a population greater than ten thousand people if such cities are threatened to exceed state or federal air quality standards, and alternative disposal practices consistent with good solid waste management are reasonably available or practices eliminating production of organic refuse are reasonably available. In no event shall such burning be allowed after December 31, 2000, except that within the urban growth areas for cities having a population of less than five thousand people, that are neither within nor contiguous with any non-attainment or maintenance area designated under the federal clean air act, in no event shall such burning be allowed after December 31, 2006.

(c) Notwithstanding any other provision of this section, outdoor burning may be allowed for the exclusive purpose of managing storm or flood-related debris. The decision to allow burning shall be made by the entity with permitting jurisdiction as determined under RCW 70.94.660 or 70.94.755. If outdoor burning is allowed in areas subject to (a) or (b) of this subsection, a permit shall be required, and a fee may be collected to cover the expenses of administering and enforcing the permit. All conditions and restrictions pursuant to RCW 70.94.750(1) and 70.94.775 apply to outdoor burning allowed under this section.

(d)(i) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under RCW 70.94.650 and 70.94.656, is allowed within the urban growth area as defined in (b) of this subsection if the burning is not conducted during air quality episodes, or where a determination of impaired air quality has been made as provided in RCW 70.94.473, and the agricultural activities preceded the designation as an urban growth area.

(ii) Outdoor burning of cultivated orchard trees, whether or not agricultural crops will be replanted on the land, shall be allowed as an ongoing agricultural activity under this section if a local horticultural pest and disease board formed under chapter 15.09 RCW, an extension office agent with Washington State University that has horticultural experience, or an entomologist employed by the department of agriculture, has determined in writing that burning is an appropriate method to prevent or control the spread of horticultural pests or diseases.

(2) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

(3) This section shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. [2004 c 213 § 1; 2001 1st sp.s. c 12 § 1; 1998 c 68 § 1; 1997 c 225 § 1; 1991 c 199 § 402.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.745 Limited outdoor burning—Program—Exceptions. (1) It shall be the responsibility and duty of the department of natural resources, department of ecology, department of agriculture, fire districts, and local air pollution control authorities to establish, through regulations, ordinances, or policy, a limited burning permit program.

(2) The permit program shall apply to residential and land clearing burning in the following areas:

(a) In the nonurban areas of any county with an unincorporated population of greater than fifty thousand; and

(b) In any city and urban growth area that is not otherwise prohibited from burning pursuant to RCW 70.94.743.

(3) The permit program shall apply only to land clearing burning in the nonurban areas of any county with an unincorporated population of less than fifty thousand.

(4) The permit program may be limited to a general permit by rule, or by verbal, written, or electronic approval by the permitting entity.

(5) Notwithstanding any other provision of this section, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under *RCW 70.94.714. This subsection (5) shall only apply within counties with a population less than two hundred fifty thousand.

(6) Burning shall be prohibited in an area when an alternate technology or method of disposing of the organic refuse is available, reasonably economical, and less harmful to the environment. It is the policy of this state to foster and encourage development of alternate methods or technology for disposing of or reducing the amount of organic refuse.

(7) Incidental agricultural burning must be allowed without applying for any permit and without the payment of any fee if:

(a) The burning is incidental to commercial agricultural activities;

(b) The operator notifies the local fire department within the area where the burning is to be conducted;

(c) The burning does not occur during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715; and

(d) Only the following items are burned:

(i) Orchard prunings;

(ii) Organic debris along fence lines or irrigation or drainage ditches; or

(iii) Organic debris blown by wind.

(8) As used in this section, "nonurban areas" are unincorporated areas within a county that is not designated as an urban growth area under chapter 36.70A RCW.

(9) Nothing in this section shall require fire districts to enforce air quality requirements related to outdoor burning, unless the fire district enters into an agreement with the department of ecology, department of natural resources, a local air pollution control authority, or other appropriate entity to provide such enforcement. [1995 c 206 § 1; 1991 c 199 § 401; 1972 ex.s. c 136 § 2.]

***Reviser's note:** The reference to RCW 70.94.714 appears erroneous. Reference to RCW 70.94.715 was apparently intended.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.750 Limited outdoor burning—Permits issued by political subdivisions—Types of fires permitted. The following outdoor fires described in this section may be burned subject to the provisions of this chapter and also subject to city ordinances, county resolutions, rules of fire districts and laws, and rules enforced by the department of natural resources if a permit has been issued by a fire protection agency, county, or conservation district:

(1) Fires consisting of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee.

(2) Fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects or agricultural pursuits for pest or disease control; provided the fires described in this subsection may be prohibited in those areas having a general popu-

lation density of one thousand or more persons per square mile. [1991 c 199 § 412; 1972 ex.s. c 136 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.755 Limited outdoor burning—Establishment of program. Each activated air pollution control authority, and the department of ecology in those areas outside the jurisdictional boundaries of an activated air pollution control authority, shall establish, through regulations, ordinances, or policy, a program implementing the limited burning policy authorized by RCW 70.94.743 through 70.94.765. [1997 c 225 § 2; 1972 ex.s. c 136 § 4.]

70.94.760 Limited outdoor burning—Construction. Nothing contained in RCW *70.94.740 through 70.94.765 is intended to alter or change the provisions of RCW 70.94.660, 70.94.710 through 70.94.730, and 76.04.205. [1986 c 100 § 55; 1972 ex.s. c 136 § 5.]

***Reviser's note:** RCW 70.94.740 was repealed by 1991 c 199 § 718.

70.94.765 Limited outdoor burning—Authority of local air pollution control authority or department of ecology to allow outdoor fires not restricted. Nothing in RCW *70.94.740 through 70.94.765 shall be construed as prohibiting a local air pollution control authority or the department of ecology in those areas outside the jurisdictional boundaries of an activated pollution control authority from allowing the burning of outdoor fires. [1972 ex.s. c 136 § 6.]

***Reviser's note:** RCW 70.94.740 was repealed by 1991 c 199 § 718.

70.94.775 Outdoor burning—Fires prohibited—Exceptions. Except as provided in RCW 70.94.650(5), no person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation that normally emits dense smoke or obnoxious odors. Agricultural heating devices that otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715 or impaired air quality condition as defined in RCW 70.94.473. [1995 c 362 § 2; 1991 c 199 § 410; 1974 ex.s. c 164 § 1; 1973 2nd ex.s. c 11 § 1; 1973 1st ex.s. c 193 § 9.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.780 Outdoor burning—Permits issued by political subdivisions. In addition to any other powers granted to them by law, the fire protection agency, county, or conservation district issuing burning permits shall regulate or prohibit outdoor burning as necessary to prevent or abate the nuisances caused by such burning. No fire protection agency, county, or conservation district may issue a burning permit in an area where the department or local board has declared any stage of impaired air quality per RCW 70.94.473 or any stage of an air pollution episode. All burning permits issued shall be subject to all applicable fee, permitting, penalty, and enforcement provisions of this chapter. The permitted burn-

ing shall not cause damage to public health or the environment.

Any entity issuing a permit under this section may charge a fee at the level necessary to recover the costs of administering and enforcing the permit program. [1991 c 199 § 411; 1973 1st ex.s. c 193 § 10.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.785 Plans approved pursuant to federal clean air act—Enforcement authority. Notwithstanding any provision of the law to the contrary, except RCW 70.94.660 through 70.94.690, the department of ecology, upon its approval of any plan (or part thereof) required or permitted under the federal clean air act, shall have the authority to enforce all regulatory provisions within such plan (or part thereof): PROVIDED, That departmental enforcement of any such provision which is within the power of an activated authority to enforce shall be initiated only, when with respect to any source, the authority is not enforcing the provisions and then only after written notice is given the authority. [1973 1st ex.s. c 193 § 11.]

70.94.800 Legislative declaration—Intent. The legislature recognizes that:

(1) Acid deposition resulting from commercial, industrial or other emissions of sulphur dioxide and nitrogen oxides pose a threat to the delicate balance of the state's ecological systems, particularly in alpine lakes that are known to be highly sensitive to acidification;

(2) Failure to act promptly and decisively to mitigate or eliminate this danger may soon result in untold and irreparable damage to the fish, forest, wildlife, agricultural, water, and recreational resources of this state;

(3) There is a direct correlation between emissions of sulphur dioxides and nitrogen oxides and increases in acid deposition;

(4) Acidification is cumulative; and

(5) Once an environment is acidified, it is difficult, if not impossible, to restore the natural balance.

It is therefore the intent of the legislature to provide for early detection of acidification and the resulting environmental degradation through continued monitoring of acid deposition levels and trends, and major source changes, so that the legislature can take any necessary action to prevent environmental degradation resulting from acid deposition. [1985 c 456 § 1; 1984 c 277 § 1.]

70.94.805 Definitions. As used in RCW 70.94.800 through *70.94.825, the following terms have the following meanings.

(1) "Acid deposition" means wet or dry deposition from the atmosphere of chemical compounds with a pH of less than 5.6.

(2) "Critical level of acid deposition and lake, stream, and soil acidification" means the level at which irreparable damage may occur unless corrective action is taken. [1985 c 456 § 2; 1984 c 277 § 2.]

***Reviser's note:** RCW 70.94.810, 70.94.815, and 70.94.825 were repealed by 1991 c 199 § 718.

70.94.820 Monitoring by department of ecology. The department of ecology shall maintain a program of periodic monitoring of acid rain deposition and lake, stream, and soil acidification to ensure early detection of acidification and environmental degradation. [1987 c 505 § 61; 1985 c 456 § 5; 1984 c 277 § 6.]

70.94.850 Emission credits banking program—Amount of credit. The department of ecology and the local boards may implement an emission credits banking program. For the purposes of this section, an emission credits banking program means a program whereby an air contaminant source which reduces emissions of a given air contaminant by an amount greater than that required by applicable law, regulation, or order is granted credit for a given amount, which credit shall be administered by a credit bank operated by the appropriate agency. The amount of the credit shall be determined by the department or local board with jurisdiction, but it shall be less than the amount of the emissions reduction. The credit may be used, traded, sold, or otherwise expended for purposes established by regulation of state or local agencies consistent with the provisions of the prevention of significant deterioration program under RCW 70.94.860, the bubble program under RCW 70.94.155, and the new source review program under RCW 70.94.152, if there will be no net adverse impact on air quality. [1984 c 164 § 1.]

70.94.860 Department of ecology may accept delegation of programs. The department of ecology may accept delegation of programs as provided for in the federal clean air act. Subject to federal approval, the department may, in turn, delegate such programs to the local authority with jurisdiction in a given area. [1991 c 199 § 312; 1984 c 164 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.875 Evaluation of information on acid deposition in Pacific Northwest—Establishment of critical levels—Notification of legislature. The department of ecology, in consultation with the appropriate committees of the house of representatives and of the senate, shall:

(1) Continue evaluation of information and research on acid deposition in the Pacific Northwest region;

(2) Establish critical levels of acid deposition and lake, stream, and soil acidification; and

(3) Notify the legislature if acid deposition or lake, stream, and soil acidification reaches the levels established under subsection (2) of this section. [1991 c 199 § 313; 1985 c 456 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.880 Establishment of critical deposition and acidification levels—Considerations. In establishing critical levels of acid deposition and lake, stream, and soil acidification, the department of ecology shall consider:

(1) Current acid deposition and lake, stream, and soil acidification levels;

(2) Changes in acid deposition and lake, stream, and soil acidification levels;

(3) Effects of acid deposition and lake, stream, and soil acidification on the environment; and

(4) The need to prevent environmental degradation. [1985 c 456 § 4.]

70.94.892 Carbon dioxide mitigation—Fees. (1) For fossil-fueled electric generation facilities having more than twenty-five thousand kilowatts station generating capability but less than three hundred fifty thousand kilowatts station generating capability, except for fossil-fueled floating thermal electric generation facilities under the jurisdiction of the energy facility site evaluation council pursuant to RCW 80.50.010, the department or authority shall implement a carbon dioxide mitigation program consistent with the requirements of chapter 80.70 RCW.

(2) For mitigation projects conducted directly by or under the control of the applicant, the department or local air authority shall approve or deny the mitigation plans, as part of its action to approve or deny an application submitted under RCW 70.94.152 based upon whether or not the mitigation plan is consistent with the requirements of chapter 80.70 RCW.

(3) The department or authority may determine, assess, and collect fees sufficient to cover the costs to review and approve or deny the carbon dioxide mitigation plan components of an order of approval issued under RCW 70.94.152. The department or authority may also collect fees sufficient to cover its additional costs to monitor conformance with the carbon dioxide mitigation plan components of the registration and air operating permit programs authorized in RCW 70.94.151 and 70.94.161. The department or authority shall track its costs related to review, approval, and monitoring conformance with carbon dioxide mitigation plans. [2004 c 224 § 8.]

70.94.901 Construction—1967 c 238. This 1967 amendatory act shall not be construed to create in any way nor to enlarge, diminish or otherwise affect in any way any private rights in any civil action for damages. Any determination that there has been a violation of the provisions of this 1967 amendatory act or of any ordinance, rule, regulation or order issued pursuant thereto, shall not create by reason thereof any presumption or finding of fact or of law for use in any lawsuit brought by a private citizen. [1967 c 238 § 65.]

70.94.902 Construction, repeal of RCW 70.94.061 through 70.94.066—Saving. The following acts or parts of acts are each repealed:

(1) Section 7, chapter 238, Laws of 1967, and RCW 70.94.061;

(2) Section 8, chapter 238, Laws of 1967, and RCW 70.94.062;

(3) Section 9, chapter 238, Laws of 1967, and RCW 70.94.064; and

(4) Section 10, chapter 238, Laws of 1967, and RCW 70.94.066.

Such repeals shall not be construed as affecting any authority in existence on April 24, 1969, nor as affecting any action, activities or proceedings initiated by such authority prior hereto, nor as affecting any civil or criminal proceed-

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ings instituted by such authority, nor any rule, regulation, resolution, ordinance, or order promulgated by such authority, nor any administrative action taken by such authority, nor the term of office, or appointment or employment of any person appointed or employed by such authority. [1969 ex.s. c 168 § 46.]

70.94.904 Effective dates—1991 c 199. Sections 602 and 603 of this act shall take effect July 1, 1992. Sections 202 through 209 of this act shall take effect January 1, 1993. Sections 210 and 505 of this act shall take effect January 1, 1992.

The remainder of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately. [1991 c 199 § 717.]

70.94.905 Severability—1991 c 199. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 199 § 719.]

70.94.906 Captions not law. Captions and headings as used in this act constitute no part of the law. [1991 c 199 § 720.]

70.94.911 Severability—1967 c 238. If any phrase, clause, subsection or section of this 1967 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1967 c 238 § 64.]

70.94.950 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

70.94.960 Clean fuel matching grants for public transit, vehicle mechanics, and refueling infrastructure. The department may disburse matching grants from funds provided by the legislature from the air pollution control account, created in RCW 70.94.015, to units of local government to partially offset the additional cost of purchasing "clean fuel" and/or operating "clean-fuel vehicles" provided that such vehicles are used for public transit. Publicly owned school buses are considered public transit for the purposes of this section. The department may also disburse grants to vocational-technical institutes for the purpose of establishing programs to certify clean-fuel vehicle mechanics. The department may also distribute grants to Washington State University for the purpose of furthering the establishment of clean fuel refueling infrastructure. [1996 c 186 § 517; 1991 c 199 § 218.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Finding—1991 c 199: See note following RCW 70.94.011.
Clean fuel: RCW 70.120.210.

Refueling: RCW 80.28.280.

State vehicles: RCW 43.19.637.

70.94.970 Chlorofluorocarbons—Ozone—Refrigerants regulated. (1) Regulated refrigerant means a class I or class II substance as listed in Title VI of section 602 of the federal clean air act amendments of November 15, 1990.

(2) A person who services or repairs or disposes of a motor vehicle air conditioning system; commercial or industrial air conditioning, heating, or refrigeration system; or consumer appliance shall use refrigerant extraction equipment to recover regulated refrigerant that would otherwise be released into the atmosphere. This subsection does not apply to off-road commercial equipment.

(3) Upon request, the department shall provide information and assistance to persons interested in collecting, transporting, or recycling regulated refrigerants.

(4) The willful release of regulated refrigerant from a source listed in subsection (2) of this section is prohibited. [1991 c 199 § 602.]

Finding—1991 c 199: "The legislature finds that:

(1) The release of chlorofluorocarbons and other ozone-depleting chemicals into the atmosphere contributes to the destruction of stratospheric ozone and threatens plant and animal life with harmful overexposure to ultraviolet radiation;

(2) The technology and equipment to extract and recover chlorofluorocarbons and other ozone-depleting chemicals from air conditioners, refrigerators, and other appliances are available;

(3) A number of nonessential consumer products contain ozone-depleting chemicals; and

(4) Unnecessary releases of chlorofluorocarbons and other ozone-depleting chemicals from these sources should be eliminated." [1991 c 199 § 601.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.980 Refrigerants—Unlawful acts. No person may sell, offer for sale, or purchase any of the following:

(1) A regulated refrigerant in a container designed for consumer recharge of a motor vehicle air conditioning system or consumer appliance during repair or service. This subsection does not apply to a regulated refrigerant purchased for the recharge of the air conditioning system of off-road commercial or agricultural equipment and sold or offered for sale at an establishment which specializes in the sale of off-road commercial or agricultural equipment or parts or service for such equipment;

(2) Nonessential consumer products that contain chlorofluorocarbons or other ozone-depleting chemicals, and for which substitutes are readily available. Products affected under this subsection shall include, but are not limited to, party streamers, tire inflators, air horns, noise makers, and chlorofluorocarbon-containing cleaning sprays designed for noncommercial or nonindustrial cleaning of electronic or photographic equipment. [1991 c 199 § 603.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.990 Refrigerants—Rules—Enforcement provisions, limitations. The department shall adopt rules to implement RCW 70.94.970 and 70.94.980. Rules shall include but not be limited to minimum performance specifications for refrigerant extraction equipment, as well as procedures for enforcing RCW 70.94.970 and 70.94.980.

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Enforcement provisions adopted by the department shall not include penalties or fines in areas where equipment to collect or recycle regulated refrigerants is not readily available. [1991 c 199 § 604.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.996 Grant program for ride sharing. (Expires January 1, 2014.) (1) To the extent that funds are appropriated, the department of transportation shall administer a performance-based grant program for private employers, public agencies, nonprofit organizations, developers, and property managers who provide financial incentives for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, including telework, before July 1, 2013, to their own or other employees.

(2) The amount of the grant will be determined based on the value to the transportation system of the vehicle trips reduced. The *commute trip reduction task force shall develop an award rate giving priority to applications achieving the greatest reduction in trips and commute miles per public dollar requested and considering the following criteria: The local cost of providing new highway capacity, congestion levels, and geographic distribution.

(3) No private employer, public agency, nonprofit organization, developer, or property manager is eligible for grants under this section in excess of one hundred thousand dollars in any fiscal year.

(4) The total of grants provided under this section may not exceed seven hundred fifty thousand dollars in any fiscal year. However, this subsection does not apply during the 2003-2005 fiscal biennium.

(5) The department of transportation shall report to the department of revenue by the 15th day of each month the aggregate monetary amount of grants provided under this section in the prior month and the identity of the recipients of those grants.

(6) The source of funds for this grant program is the multimodal transportation account.

(7) This section expires January 1, 2014. [2004 c 229 § 501; 2003 c 364 § 9.]

***Reviser's note:** The "commute trip reduction task force" was renamed the "commute trip reduction board" by 2006 c 329 § 7.

Severability—2004 c 229: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 229 § 507.]

Effective date—2004 c 229: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 229 § 508.]

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

Chapter 70.95 RCW

SOLID WASTE MANAGEMENT—REDUCTION AND RECYCLING

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70.95.010 Legislative finding—Priorities—Goals.

The legislature finds:

- (1) Continuing technological changes in methods of manufacture, packaging, and marketing of consumer prod-

ucts, together with the economic and population growth of this state, the rising affluence of its citizens, and its expanding industrial activity have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.

(2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.

(4) Waste reduction must become a fundamental strategy of solid waste management. It is therefore necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility.

(5) Source separation of waste must become a fundamental strategy of solid waste management. Collection and handling strategies should have, as an ultimate goal, the source separation of all materials with resource value or environmental hazard.

(6)(a) It should be the goal of every person and business to minimize their production of wastes and to separate recyclable or hazardous materials from mixed waste.

(b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed municipal solid waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.

(d) It is the responsibility of state government to ensure that local governments are providing adequate source reduction and separation opportunities and incentives to all, including persons in both rural and urban areas, and nonresidential waste generators such as commercial, industrial, and institutional entities, recognizing the need to provide flexibility to accommodate differing population densities, distances to and availability of recycling markets, and collection and disposal costs in each community; and to provide county and city governments with adequate technical resources to accomplish this responsibility.

(7) Environmental and economic considerations in solving the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation.

(8) The following priorities for the collection, handling, and management of solid waste are necessary and should be followed in descending order as applicable:

(a) Waste reduction;

(b) Recycling, with source separation of recyclable materials as the preferred method;

(c) Energy recovery, incineration, or landfill of separated waste;

(d) Energy recovery, incineration, or landfill of mixed municipal solid wastes.

(9) It is the state's goal to achieve a fifty percent recycling rate by 2007.

(10) It is the state's goal that programs be established to eliminate residential or commercial yard debris in landfills by 2012 in those areas where alternatives to disposal are readily available and effective.

(11) Steps should be taken to make recycling at least as affordable and convenient to the ratepayer as mixed waste disposal.

(12) It is necessary to compile and maintain adequate data on the types and quantities of solid waste that are being generated and to monitor how the various types of solid waste are being managed.

(13) Vehicle batteries should be recycled and the disposal of vehicle batteries into landfills or incinerators should be discontinued.

(14) Excessive and nonrecyclable packaging of products should be avoided.

(15) Comprehensive education should be conducted throughout the state so that people are informed of the need to reduce, source separate, and recycle solid waste.

(16) All governmental entities in the state should set an example by implementing aggressive waste reduction and recycling programs at their workplaces and by purchasing products that are made from recycled materials and are recyclable.

(17) To ensure the safe and efficient operations of solid waste disposal facilities, it is necessary for operators and regulators of landfills and incinerators to receive training and certification.

(18) It is necessary to provide adequate funding to all levels of government so that successful waste reduction and recycling programs can be implemented.

(19) The development of stable and expanding markets for recyclable materials is critical to the long-term success of the state's recycling goals. Market development must be encouraged on a state, regional, and national basis to maximize its effectiveness. The state shall assume primary responsibility for the development of a multifaceted market development program to carry out the purposes of this act.

(20) There is an imperative need to anticipate, plan for, and accomplish effective storage, control, recovery, and recycling of discarded tires and other problem wastes with the subsequent conservation of resources and energy. [2002 c 299 § 3; 1989 c 431 § 1; 1985 c 345 § 1; 1984 c 123 § 1; 1975-'76 2nd ex.s. c 41 § 1; 1969 ex.s. c 134 § 1.]

70.95.020 Purpose. The purpose of this chapter is to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state,

however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling, including that all sites where recyclable materials are generated and transported from shall provide a separate container for solid waste;

(4) To encourage the development and operation of waste recycling facilities needed to accomplish the management priority of waste recycling, to promote consistency in the requirements for such facilities throughout the state, and to ensure that recyclable materials diverted from the waste stream for recycling are routed to facilities in which recycling occurs;

(5) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(6) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state; and

(7) To encourage the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling and to promote consistency in the permitting requirements for such facilities and activities throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs. [2005 c 394 § 2. Prior: 1998 c 156 § 1; 1998 c 90 § 1; 1985 c 345 § 2; 1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2.]

Intent—Severability—2005 c 394: See notes following RCW 70.95.400.

70.95.030 Definitions. As used in this chapter, unless the context indicates otherwise:

(1) "City" means every incorporated city and town.

(2) "Commission" means the utilities and transportation commission.

(3) "Committee" means the state solid waste advisory committee.

(4) "Composted material" means organic solid waste that has been subjected to controlled aerobic degradation at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.

(8) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.

(9) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.

(10) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.

(11) "Inert waste landfill" means a landfill that receives only inert waste, as determined under RCW 70.95.065, and includes facilities that use inert wastes as a component of fill.

(12) "Jurisdictional health department" means city, county, city-county, or district public health department.

(13) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.

(14) "Local government" means a city, town, or county.

(15) "Modify" means to substantially change the design or operational plans including, but not limited to, removal of a design element previously set forth in a permit application or the addition of a disposal or processing activity that is not approved in the permit.

(16) "Multiple family residence" means any structure housing two or more dwelling units.

(17) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(18) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

(19) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(20) "Residence" means the regular dwelling place of an individual or individuals.

(21) "Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW.

(22) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70.95J RCW and wastewater as regulated in chapter 90.48 RCW.

(23) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

(24) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the

recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

(25) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

(26) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(27) "Waste-derived soil amendment" means any soil amendment as defined in this chapter that is derived from solid waste as defined in RCW 70.95.030, but does not include biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

(28) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(29) "Yard debris" means plant material commonly created in the course of maintaining yards and gardens, and through horticulture, gardening, landscaping, or similar activities. Yard debris includes but is not limited to grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, vegetable garden debris, holiday trees, and tree prunings four inches or less in diameter. [2004 c 101 § 1; 2002 c 299 § 4; 1998 c 36 § 17; 1997 c 213 § 1; 1992 c 174 § 16; 1991 c 298 § 2; 1989 c 431 § 2; 1985 c 345 § 3; 1984 c 123 § 2; 1975-'76 2nd ex.s. c 41 § 3; 1970 ex.s. c 62 § 60; 1969 ex.s. c 134 § 3.]

Intent—1998 c 36: See RCW 15.54.265.

Short title—1998 c 36: See note following RCW 15.54.265.

Finding—1991 c 298: "The legislature finds that curbside recycling services should be provided in multiple family residences. The county and city comprehensive solid waste management plans should include provisions for such service." [1991 c 298 § 1.]

Solid waste disposal—Powers and duties of state board of health as to environmental contaminants: RCW 43.20.050.

70.95.040 Solid waste advisory committee—Members—Meetings—Travel expenses—"Governor's award of excellence." (1) There is created a solid waste advisory committee to provide consultation to the department of ecology concerning matters covered by this chapter. The committee shall advise on the development of programs and regulations for solid and dangerous waste handling, resource recovery, and recycling, and shall supply recommendations concerning methods by which existing solid and dangerous waste handling, resource recovery, and recycling practices and the laws authorizing them may be supplemented and improved.

(2) The committee shall consist of at least eleven members, including the assistant director for waste management programs within the department. The director shall appoint members with due regard to the interests of the public, local government, tribes, agriculture, industry, public health, recycling industries, solid waste collection industries, and resource recovery industries. The term of appointment shall

be determined by the director. The committee shall elect its own chair and meet at least four times a year, in accordance with such rules of procedure as it shall establish. Members shall receive no compensation for their services but shall be reimbursed their travel expenses while engaged in business of the committee in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(3) The committee shall each year recommend to the governor a recipient for a "governor's award of excellence" which the governor shall award for outstanding achievement by an industry, company, or individual in the area of hazardous waste or solid waste management. [1991 c 319 § 401; 1987 c 115 § 1; 1982 c 108 § 1; 1977 c 10 § 1. Prior: 1975-'76 2nd ex.s. c 41 § 9; 1975-'76 2nd ex.s. c 34 § 160; 1969 ex.s. c 134 § 4.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Toxic metals—Report—1991 c 319: See note following RCW 70.95G.005.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.95.050 Solid waste advisory committee—Staff services and facilities. The department shall furnish necessary staff services and facilities required by the solid waste advisory committee. [1969 ex.s. c 134 § 5.]

70.95.055 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 22.]

Purpose—1997 c 381: See RCW 43.21K.005.

70.95.060 Standards for solid waste handling—Areas—Landfill location. (1) The department shall adopt rules establishing minimum functional standards for solid waste handling, consistent with the standards specified in this section. The department may classify areas of the state with respect to population density, climate, geology, and other relevant factors bearing on solid waste disposal standards.

(2) In addition to the minimum functional standards adopted by the department under subsection (1) of this section, each landfill facility whose area at its design capacity will exceed one hundred acres and whose horizontal height at design capacity will average one hundred feet or more above existing site elevations shall comply with the standards of this subsection. This subsection applies only to wholly new solid waste landfill facilities, no part or unit of which has had construction commence before April 27, 1999.

(a) No landfill specified in this subsection may be located:

(i) So that the active area is closer than five miles to any national park or a public or private nonprofit zoological park displaying native animals in their native habitats; or

(ii) Over a sole source aquifer designated under the federal safe drinking water act, if such designation was effective before January 1, 1999.

(b) Each landfill specified in this subsection (2) shall be constructed with an impermeable berm around the entire perimeter of the active area of the landfill of such height, thickness, and design as will be sufficient to contain all material disposed in the event of a complete failure of the structural integrity of the landfill. [1999 c 116 § 1; 1969 ex.s. c 134 § 6.]

Effective date—1999 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 1999]." [1999 c 116 § 2.]

70.95.065 Inert waste landfills. (1) The department shall, as part of the minimum functional standards for solid waste handling required under RCW 70.95.060, develop specific criteria for the types of solid wastes that are allowed to be received by inert waste landfills that seek to continue operation after February 10, 2003.

(2) The criteria for inert waste developed under this section must, at a minimum, contain a list of substances that an inert waste landfill located in a county with fewer than forty-five thousand residents is permitted to receive if it was operational before February 10, 2003, and is located at a site with a five-year annual rainfall of twenty-five inches or less. The substances permitted for the inert waste landfills satisfying the criteria listed in this subsection must include the following types of solid waste if the waste has not been tainted, through exposure from chemical, physical, biological, or radiological substances, such that it presents a threat to human health or the environment greater than that inherent to the material:

- (a) Cured concrete, including any embedded steel reinforcing and wood;
- (b) Asphaltic materials, including road construction asphalt;
- (c) Brick and masonry;
- (d) Ceramic materials produced from fired clay or porcelain;
- (e) Glass;
- (f) Stainless steel and aluminum; and
- (g) Other materials as defined in chapter 173-350 WAC.

(3) The department shall work with the owner or operators of landfills that do not meet the minimum functional standards for inert waste landfills to explore and implement appropriate means of transition into a limited purpose landfill that is able to accept additional materials as specified in WAC 173-350-400. [2004 c 101 § 2.]

70.95.070 Review of standards prior to adoption—Revisions, additions and modifications—Factors. The solid waste advisory committee shall review prior to adoption and shall recommend revisions, additions, and modifications to the minimum functional standards governing solid waste handling relating, but not limited to, the following:

- (1) Vector production and sustenance.
- (2) Air pollution (coordinated with regulations of the department of ecology).
- (3) Pollution of surface and ground waters (coordinated with the regulations of the department of ecology).
- (4) Hazards to service or disposal workers or to the public.

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- (5) Prevention of littering.
- (6) Adequacy and adaptability of disposal sites to population served.
- (7) Design and operation of disposal sites.
- (8) Recovery and/or recycling of solid waste. [1975-'76 2nd ex.s. c 41 § 4; 1969 ex.s. c 134 § 7.]

70.95.075 Implementation of standards—Assessment—Analyses—Proposals. In order to implement the minimum functional standards for solid waste handling, evaluate the effectiveness of the minimum functional standards, evaluate the cost of implementation, and develop a mechanism to finance the implementation, the department shall prepare:

- (1) An assessment of local health agencies' information on all existing permitted landfill sites, including (a) measures taken and facilities installed at each landfill to mitigate surface water and groundwater contamination, (b) proposed measures taken and facilities to be constructed at each landfill to mitigate surface water and groundwater contamination, and (c) the costs of such measures and facilities;
- (2) An analysis of the effectiveness of the minimum functional standards for new landfills in lessening surface water and groundwater contamination, and a comparison with the effectiveness of the prior standards;
- (3) An analysis of the costs of conforming with the new functional standards for new landfills compared with the costs of conforming to the prior standards; and
- (4) Proposals for methods of financing the costs of conforming with the new functional standards. [1986 c 81 § 1.]

70.95.080 County comprehensive solid waste management plan—Joint plans—Duties of cities. Each county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties.

Each city shall:

- (1) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan; or
- (2) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or
- (3) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department

shall take into account the probable cost of such plans to the cities and counties.

Local governments shall not be required to include a hazardous waste element in their solid waste management plans. [1985 c 448 § 17; 1969 ex.s. c 134 § 8.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.95.090 County and city comprehensive solid waste management plans—Contents. Each county and city comprehensive solid waste management plan shall include the following:

(1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.

(2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.

(3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:

(a) Meet the minimum functional standards for solid waste handling adopted by the department and all laws and regulations relating to air and water pollution, fire prevention, flood control, and protection of public health;

(b) Take into account the comprehensive land use plan of each jurisdiction;

(c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and

(d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.

(4) A program for surveillance and control.

(5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:

(a) Any franchise for solid waste collection granted by the utilities and transportation commission in the respective jurisdictions including the name of the holder of the franchise and the address of his or her place of business and the area covered by the franchise;

(b) Any city solid waste operation within the county and the boundaries of such operation;

(c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;

(d) The projected solid waste collection needs for the respective jurisdictions for the next six years.

(6) A comprehensive waste reduction and recycling element that, in accordance with the priorities established in RCW 70.95.010, provides programs that (a) reduce the amount of waste generated, (b) provide incentives and mechanisms for source separation, and (c) establish recycling opportunities for the source separated waste.

(7) The waste reduction and recycling element shall include the following:

(a) Waste reduction strategies;

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences in urban and rural areas. In urban areas, these programs shall include collection of source separated recyclable materials from single and multiple family resi-

dences, unless the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. In rural areas, these programs shall include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons;

(ii) Programs to monitor the collection of source separated waste at nonresidential sites where there is sufficient density to sustain a program;

(iii) Programs to collect yard waste, if the county or city submitting the plan finds that there are adequate markets or capacity for composted yard waste within or near the service area to consume the majority of the material collected; and

(iv) Programs to educate and promote the concepts of waste reduction and recycling;

(c) Recycling strategies, including a description of markets for recyclables, a review of waste generation trends, a description of waste composition, a discussion and description of existing programs and any additional programs needed to assist public and private sector recycling, and an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection services;

(d) Other information the county or city submitting the plan determines is necessary.

(8) An assessment of the plan's impact on the costs of solid waste collection. The assessment shall be prepared in conformance with guidelines established by the utilities and transportation commission. The commission shall cooperate with the Washington state association of counties and the association of Washington cities in establishing such guidelines.

(9) A review of potential areas that meet the criteria as outlined in RCW 70.95.165. [1991 c 298 § 3; 1989 c 431 § 3; 1984 c 123 § 5; 1971 ex.s. c 293 § 1; 1969 ex.s. c 134 § 9.]

Finding—1991 c 298: See note following RCW 70.95.030.

Certain provisions not to detract from utilities and transportation commission powers, duties, and functions: RCW 80.01.300.

70.95.092 County and city comprehensive solid waste management plans—Levels of service, reduction and recycling. Levels of service shall be defined in the waste reduction and recycling element of each local comprehensive solid waste management plan and shall include the services set forth in RCW 70.95.090. In determining which service level is provided to residential and nonresidential waste generators in each community, counties and cities shall develop clear criteria for designating areas as urban or rural. In designating urban areas, local governments shall consider the planning guidelines adopted by the department, total population, population density, and any applicable land use or utility service plans. [1989 c 431 § 4.]

70.95.094 County and city comprehensive solid waste management plans—Review and approval process. (1) The department and local governments preparing plans are encouraged to work cooperatively during plan development. Each county and city preparing a comprehensive solid waste management plan shall submit a preliminary draft plan to the department for technical review. The department shall review and comment on the draft plan within one hundred twenty days of receipt. The department's comments shall state specific actions or revisions that must be completed for plan approval.

(2) Each final draft solid waste management plan shall be submitted to the department for approval. The department will limit its comments on the final draft plans to those issues identified during its review of the draft plan and any other changes made between submittal of the preliminary draft and final draft plans. Disapproval of the local comprehensive solid waste management plan shall be supported by specific findings. A final draft plan shall be deemed approved if the department does not disapprove it within forty-five days of receipt.

(3) If the department disapproves a plan or any plan amendments, the submitting entity may appeal the decision under the procedures of Part IV of chapter 34.05 RCW. An administrative law judge shall preside over the appeal. The appeal shall be limited to review of the specific findings which supported the disapproval under subsection (2) of this section. [1989 c 431 § 8.]

70.95.096 Utilities and transportation commission to review local plan's assessment of cost impacts on rates. Upon receipt, the department shall immediately provide the utilities and transportation commission with a copy of each preliminary draft local comprehensive solid waste management plan. Within forty-five days after receiving a plan, the commission shall have reviewed the plan's assessment of solid waste collection cost impacts on rates charged by solid waste collection companies regulated under chapter 81.77 RCW and shall advise the county or city submitting the plan and the department of the probable effect of the plan's recommendations on those rates. [1989 c 431 § 12.]

70.95.100 Technical assistance for plan preparation—Guidelines—Informational materials and programs. (1) The department or the commission, as appropriate, shall provide to counties and cities technical assistance including, but not limited to, planning guidelines, in the preparation, review, and revision of solid waste management plans required by this chapter. Guidelines prepared under this section shall be consistent with the provisions of this chapter. Guidelines for the preparation of the waste reduction and recycling element of the comprehensive solid waste management plan shall be completed by the department by March 15, 1990. These guidelines shall provide recommendations to local government on materials to be considered for designation as recyclable materials. The state solid waste management plan prepared pursuant to RCW 70.95.260 shall be consistent with these guidelines.

(2) The department shall be responsible for development and implementation of a comprehensive statewide public information program designed to encourage waste reduction,

source separation, and recycling by the public. The department shall operate a toll free hot line to provide the public information on waste reduction and recycling.

(3) The department shall provide technical assistance to local governments in the development and dissemination of informational materials and related activities to assure recognition of unique local waste reduction and recycling programs.

(4) Local governments shall make all materials and information developed with the assistance grants provided under RCW 70.95.130 available to the department for potential use in other areas of the state. [1989 c 431 § 6; 1984 c 123 § 6; 1969 ex.s. c 134 § 10.]

70.95.110 Maintenance of plans—Review, revisions—Implementation of source separation programs.

(1) The comprehensive county solid waste management plans and any comprehensive city solid waste management plans prepared in accordance with RCW 70.95.080 shall be maintained in a current condition and reviewed and revised periodically by counties and cities as may be required by the department. Upon each review such plans shall be extended to show long-range needs for solid waste handling facilities for twenty years in the future, and a revised construction and capital acquisition program for six years in the future. Each revised solid waste management plan shall be submitted to the department.

Each plan shall be reviewed and revised within five years of July 1, 1984, and thereafter shall be reviewed, and revised if necessary according to the schedule provided in subsection (2) of this section.

(2) Cities and counties preparing solid waste management plans shall submit the waste reduction and recycling element required in RCW 70.95.090 and any revisions to other elements of its comprehensive solid waste management plan to the department no later than:

(a) July 1, 1991, for class one areas: PROVIDED, That portions relating to multiple family residences shall be submitted no later than July 1, 1992;

(b) July 1, 1992, for class two areas; and

(c) July 1, 1994, for class three areas.

Thereafter, each plan shall be reviewed and revised, if necessary, at least every five years. Nothing in chapter 431, Laws of 1989 shall prohibit local governments from submitting a plan prior to the dates listed in this subsection.

(3) The classes of areas are defined as follows:

(a) Class one areas are the counties of Spokane, Snohomish, King, Pierce, and Kitsap and all the cities therein.

(b) Class two areas are all other counties located west of the crest of the Cascade mountains and all the cities therein.

(c) Class three areas are the counties east of the crest of the Cascade mountains and all the cities therein, except for Spokane county.

(4) Cities and counties shall begin implementing the programs to collect source separated materials no later than one year following the adoption and approval of the waste reduction and recycling element and these programs shall be fully implemented within two years of approval. [1991 c 298 § 4; 1989 c 431 § 5; 1984 c 123 § 7; 1969 ex.s. c 134 § 11.]

Finding—1991 c 298: See note following RCW 70.95.030.

70.95.130 Financial aid to counties and cities. Any county may apply to the department on a form prescribed thereby for financial aid for the preparation of the comprehensive county plan for solid waste management required by RCW 70.95.080. Any city electing to prepare an independent city plan, a joint city plan, or a joint county-city plan for solid waste management for inclusion in the county comprehensive plan may apply for financial aid for such purpose through the county. Every city application for financial aid for planning shall be filed with the county auditor and shall be included as a part of the county's application for financial aid. Any city preparing an independent plan shall provide for disposal sites wholly within its jurisdiction.

The department shall allocate to the counties and cities applying for financial aid for planning, such funds as may be available pursuant to legislative appropriations or from any federal grants for such purpose.

The department shall determine priorities and allocate available funds among the counties and cities applying for aid according to criteria established by regulations of the department considering population, urban development, environmental effects of waste disposal, existing waste handling practices, and the local justification of their proposed expenditures. [1969 ex.s. c 134 § 13.]

70.95.140 Matching requirements. Counties and cities shall match their planning aid allocated by the director by an amount not less than twenty-five percent of the estimated cost of such planning. Any federal planning aid made directly to a county or city shall not be considered either a state or local contribution in determining local matching requirements. Counties and cities may meet their share of planning costs by cash and contributed services. [1969 ex.s. c 134 § 14.]

70.95.150 Contracts with counties to assure proper expenditures. Upon the allocation of planning funds as provided in RCW 70.95.130, the department shall enter into a contract with each county receiving a planning grant. The contract shall include such provisions as the director may deem necessary to assure the proper expenditure of such funds including allocations made to cities. The sum allocated to a county shall be paid to the treasurer of such county. [1969 ex.s. c 134 § 15.]

70.95.160 Local board of health regulations to implement the comprehensive plan—Section not to be construed to authorize counties to operate system. Each county, or any city, or jurisdictional board of health shall adopt regulations or ordinances governing solid waste handling implementing the comprehensive solid waste management plan covering storage, collection, transportation, treatment, utilization, processing and final disposal including but not limited to the issuance of permits and the establishment of minimum levels and types of service for any aspect of solid waste handling. County regulations or ordinances adopted regarding levels and types of service shall not apply within the limits of any city where the city has by local ordinance determined that the county shall not exercise such powers within the corporate limits of the city. Such regulations or ordinances shall assure that solid waste storage and disposal

facilities are located, maintained, and operated in a manner so as properly to protect the public health, prevent air and water pollution, are consistent with the priorities established in RCW 70.95.010, and avoid the creation of nuisances. Such regulations or ordinances may be more stringent than the minimum functional standards adopted by the department. Regulations or ordinances adopted by counties, cities, or jurisdictional boards of health shall be filed with the department.

Nothing in this section shall be construed to authorize the operation of a solid waste collection system by counties. [1989 c 431 § 10; 1988 c 127 § 29; 1969 ex.s. c 134 § 16.]

70.95.163 Local health departments may contract with the department of ecology. Any jurisdictional health department and the department of ecology may enter into an agreement providing for the exercise by the department of ecology of any power that is specified in the contract and that is granted to the jurisdictional health department under this chapter. However, the jurisdictional health department shall have the approval of the legislative authority or authorities it serves before entering into any such agreement with the department of ecology. [1989 c 431 § 16.]

70.95.165 Solid waste disposal facility siting—Site review—Local solid waste advisory committees—Membership. (1) Each county or city siting a solid waste disposal facility shall review each potential site for conformance with the standards as set by the department for:

- (a) Geology;
- (b) Groundwater;
- (c) Soil;
- (d) Flooding;
- (e) Surface water;
- (f) Slope;
- (g) Cover material;
- (h) Capacity;
- (i) Climatic factors;
- (j) Land use;
- (k) Toxic air emissions; and
- (l) Other factors as determined by the department.

(2) The standards in subsection (1) of this section shall be designed to use the best available technology to protect the environment and human health, and shall be revised periodically to reflect new technology and information.

(3) Each county shall establish a local solid waste advisory committee to assist in the development of programs and policies concerning solid waste handling and disposal and to review and comment upon proposed rules, policies, or ordinances prior to their adoption. Such committees shall consist of a minimum of nine members and shall represent a balance of interests including, but not limited to, citizens, public interest groups, business, the waste management industry, and local elected public officials. The members shall be appointed by the county legislative authority. A county or city shall not apply for funds from the state and local improvements revolving account, Waste Disposal Facilities, 1980, under chapter 43.99F RCW, for the preparation, update, or major amendment of a comprehensive solid waste management plan unless the plan or revision has been pre-

pared with the active assistance and participation of a local solid waste advisory committee. [1989 c 431 § 11; 1984 c 123 § 4.]

70.95.167 Private businesses involvement in source separated materials—Local solid waste advisory committee to examine. (1) Each local solid waste advisory committee shall conduct one or more meetings for the purpose of determining how local private recycling and solid waste collection businesses may participate in the development and implementation of programs to collect source separated materials from residences, and to process and market materials collected for recycling. The meetings shall include local private recycling businesses, private solid waste collection companies operating within the jurisdiction, and the local solid waste planning agencies. The meetings shall be held during the development of the waste reduction and recycling element or no later than one year prior to the date that a jurisdiction is required [to] submit the element under RCW 70.95.110(2).

(2) The meeting requirement under subsection (1) of this section shall apply whenever a city or county develops or amends the waste reduction and recycling element required under this chapter. Jurisdictions having approved waste reduction and recycling elements or having initiated a process for the selection of a service provider as of May 21, 1991, do not have to comply with the requirements of subsection (1) of this section until the next revisions to the waste reduction and recycling element are made or required.

(3) After the waste reduction and recycling element is approved by the local legislative authority but before it is submitted to the department for approval, the local solid waste advisory committee shall hold at least one additional meeting to review the element.

(4) For the purpose of this section, "private recycling business" means any private for-profit or private not-for-profit business that engages in the processing and marketing of recyclable materials. [1991 c 319 § 402.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.95.170 Permit for solid waste handling facility—Required. Except as provided otherwise in RCW 70.95.305 or 70.95.310, after approval of the comprehensive solid waste plan by the department no solid waste handling facility or facilities shall be maintained, established, or modified until the county, city, or other person operating such site has obtained a permit pursuant to RCW 70.95.180 or 70.95.190. [1998 c 156 § 3; 1997 c 213 § 2; 1969 ex.s. c 134 § 17.]

70.95.180 Permit for solid waste handling facility—Applications, fee. (1) Applications for permits to operate a new or modified solid waste handling facility shall be on forms prescribed by the department and shall contain a description of the proposed facilities and operations at the site, plans and specifications for any new or additional facilities to be constructed, and such other information as the jurisdictional health department may deem necessary in order to determine whether the site and solid waste disposal facilities located thereon will comply with local and state regulations.

(2) Upon receipt of an application for a permit to establish or modify a solid waste handling facility, the jurisdictional health department shall refer one copy of the application to the department which shall report its findings to the jurisdictional health department.

(3) The jurisdictional health department shall investigate every application as may be necessary to determine whether a proposed or modified site and facilities meet all solid waste, air, and other applicable laws and regulations, and conforms with the approved comprehensive solid waste handling plan, and complies with all zoning requirements.

(4) When the jurisdictional health department finds that the permit should be issued, it shall issue such permit. Every application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department.

(5) The jurisdictional board of health may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid. [1997 c 213 § 3; 1988 c 127 § 30; 1969 ex.s. c 134 § 18.]

70.95.185 Permit for solid waste disposal site or facilities—Review by department—Appeal of issuance—Validity of permits issued after June 7, 1984. Every permit issued by a jurisdictional health department under RCW 70.95.180 shall be reviewed by the department to ensure that the proposed site or facility conforms with:

(1) All applicable laws and regulations including the minimal functional standards for solid waste handling; and

(2) The approved comprehensive solid waste management plan.

The department shall review the permit within thirty days after the issuance of the permit by the jurisdictional health department. The department may appeal the issuance of the permit by the jurisdictional health department to the pollution control hearings board, as described in chapter 43.21B RCW, for noncompliance with subsection (1) or (2) of this section.

No permit issued pursuant to RCW 70.95.180 after June 7, 1984, shall be considered valid unless it has been reviewed by the department. [1984 c 123 § 8.]

70.95.190 Permit for solid waste handling facility—Renewal—Appeal—Validity of renewal—Review fees. (1) Every permit for an existing solid waste handling facility issued pursuant to RCW 70.95.180 shall be renewed at least every five years on a date established by the jurisdictional health department having jurisdiction of the site and as specified in the permit. If a permit is to be renewed for longer than one year, the local jurisdictional health department may hold a public hearing before making such a decision. Prior to renewing a permit, the health department shall conduct a review as it deems necessary to assure that the solid waste handling facility or facilities located on the site continues to meet minimum functional standards of the department, applicable local regulations, and are not in conflict with the approved solid waste management plan. A jurisdictional health department shall approve or disapprove a permit renewal within forty-five days of conducting its review. The

department shall review and may appeal the renewal as set forth for the approval of permits in RCW 70.95.185.

(2) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid. [1998 c 156 § 4; 1997 c 213 § 4; 1984 c 123 § 9; 1969 ex.s. c 134 § 19.]

70.95.200 Permit for solid waste disposal site or facilities—Suspension. Any permit for a solid waste disposal site issued as provided herein shall be subject to suspension at any time the jurisdictional health department determines that the site or the solid waste disposal facilities located on the site are being operated in violation of this chapter, or the regulations of the department or local laws and regulations. [1969 ex.s. c 134 § 20.]

70.95.205 Exemption from solid waste permit requirements—Waste-derived soil amendments—Application—Revocation of exemption—Appeal. (1) Waste-derived soil amendments that meet the standards and criteria in this section may apply for exemption from solid waste permitting as required under RCW 70.95.170. The application shall be submitted to the department in a format determined by the department or an equivalent format. The application shall include:

(a) Analytical data showing that the waste-derived soil amendments meet standards established under RCW 15.54.800; and

(b) Other information deemed appropriate by the department to protect human health and the environment.

(2) After receipt of an application, the department shall review it to determine whether the application is complete, and forward a copy of the complete application to all interested jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward their comments and any other information they deem relevant to the department, which shall then give final approval or disapproval of the application. Every complete application shall be approved or disapproved by the department within ninety days after receipt.

(3) The department, after providing opportunity for comments from the jurisdictional health departments, may at any time revoke an exemption granted under this section if the quality or use of the waste-derived soil amendment changes or the management, storage, or end use of the waste-derived soil amendment constitutes a threat to human health or the environment.

(4) Any aggrieved party may appeal the determination by the department in subsection (2) or (3) of this section to the pollution control hearings board. [1998 c 36 § 18.]

Intent—1998 c 36: See RCW 15.54.265.

Short title—1998 c 36: See note following RCW 15.54.265.

70.95.210 Hearing—Appeal—Denial, suspension—When effective. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension

within thirty days after the request therefor is made. Notice of the hearing shall be given [to] all interested parties including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in writing of his determination and the reasons therefor. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW. If the jurisdictional health department denies a permit renewal or suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the permit denial or suspension shall not be effective until the completion of the appeal process under this section, unless the jurisdictional health department declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment. [1998 c 90 § 3; 1987 c 109 § 21; 1969 ex.s. c 134 § 21.]

Purpose—Short title—Construction—Rules—Severability—Cap-tions—1987 c 109: See notes following RCW 43.21B.001.

70.95.212 Solid waste collection companies—Notice of changes in tipping fees and disposal rate schedules. To provide solid waste collection companies with sufficient time to prepare and submit tariffs and rate filings for public comment and commission approval, the owner or operator of a transfer station, landfill, or facility used to burn solid waste shall provide seventy-five days' notice to solid waste collection companies of any change in tipping fees and disposal rate schedules. The notice period shall begin on the date individual notice to a collection company is delivered to the company or is postmarked.

A collection company may agree to a shorter notice period: PROVIDED, That such agreement by a company shall not affect the notice requirements for rate filings under RCW 81.28.050.

The owner of a transfer station, landfill or facility used to burn solid waste may agree to provide companies with a longer notice period.

"Solid waste collection companies" as used in this section means the companies regulated by the commission pursuant to chapter 81.77 RCW. [1993 c 300 § 3.]

70.95.215 Landfill disposal facilities—Reserve accounts required by July 1, 1987—Exception—Rules.

(1) By July 1, 1987, each holder or applicant of a permit for a landfill disposal facility issued under this chapter shall establish a reserve account to cover the costs of closing the facility in accordance with state and federal regulations. The account shall be designed to ensure that there will be adequate revenue available by the projected date of closure. A landfill disposal facility maintained on private property for the sole use of the entity owning the site and a landfill disposal facility operated and maintained by a government shall not be required to establish a reserve account if, to the satisfaction of the department, the entity or government provides another

form of financial assurance adequate to comply with the requirements of this section.

(2) By July 1, 1986, the department shall adopt rules under chapter 34.05 RCW to implement subsection (1) of this section. The department is not required to adopt rules pertaining to other approved forms of financial assurance to cover the costs of closing a landfill disposal facility. The rules shall include but not be limited to:

(a) Methods to estimate closure costs, including postclosure monitoring, pollution prevention measures, and any other procedures required under state and federal regulations;

(b) Methods to ensure that reserve accounts receive adequate funds, including:

(i) Requirements that the reserve account be generated by user fees. However, the department may waive this requirement for existing landfills if user fees would be prohibitively high;

(ii) Requirements that moneys be placed in the reserve account on a regular basis and that the reserve account be kept separate from all other accounts; and

(iii) Procedures for the department to verify that adequate sums are deposited in the reserve account; and

(c) Methods to ensure that other types of financial assurance provided in accordance with subsection (1) of this section are adequate to cover the costs of closing the facility. [2000 c 114 § 1; 1985 c 436 § 1.]

70.95.217 Waste generated outside the state—Findings. The legislature finds that:

(1) The state of Washington has responded to the increasing challenges of safe, affordable disposal of solid waste by an ambitious program of waste reduction, recycling and reuse, as well as strict standards to ensure the safe handling, transportation, and disposal of solid waste;

(2) All communities in Washington participate in these programs through locally available recycling services, increased source separation and material recovery requirements, programs for waste reduction and product reuse, and performance standards that apply to all solid waste disposal facilities in the state;

(3) New requirements for the siting and performance of disposal facilities have greatly decreased the number of such facilities in Washington, and the state has a significant interest in ensuring adequate disposal capacity within the state;

(4) The landfilling, incineration, and other disposal of solid waste may adversely impact public health and environmental quality, and the state has a significant interest in decreasing volumes of the waste stream destined for disposal;

(5) Because of the decreasing number of disposal facilities and other reasons, solid waste is being transported greater distances, often beyond the community where generated and is increasingly being transported between states;

(6) Washington's waste management priorities and programs are a balanced approach of increased reuse, recycling and waste reduction, the strengthening of markets for recycled content products, and the safe disposal of the remaining waste stream, with the costs of these programs shared equitably by all persons generating waste in the state;

(7) Those residing in other states who generate waste destined for disposal within Washington should also share the costs of waste diversion and management of Washing-

ton's disposal facilities, so that the risks of waste disposal and the costs of mitigating those risks are shared equitably by all waste generators, regardless of their location;

(8) Because Washington state may not directly regulate waste handling, reduction, and recycling activities beyond its state boundaries, the only reasonable alternative to ensure this equitable treatment of waste being disposed within Washington is to implement a program of reviewing such activities as to waste originating outside of Washington, and to assign the additional costs, when necessary, to ensure that the waste meets standards substantially equivalent to those applicable to waste generated within the state, and, in some cases, to prohibit disposal of waste where its generation and management is not subject to standards substantially equivalent to those applicable to waste generated within the state. [1993 c 286 § 1.]

Severability—1993 c 286: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 286 § 3.]

Effective date—1993 c 286: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 286 § 4.]

70.95.218 Waste generated outside the state—Solid waste disposal site facility reporting requirements—Fees.

(1) At least sixty days prior to receiving solid waste generated from outside of the state, the operator of a solid waste disposal site facility shall report to the department the types and quantities of waste to be received from an out-of-state source. The department shall develop guidelines for reporting this information. The guidelines shall provide for less than sixty days notice for shipments of waste made on a short-term or emergency basis. The requirements of this subsection shall take effect upon completion of the guidelines.

(2) Upon notice under subsection (1) of this section, the department shall identify all activities and costs necessary to ensure that solid waste generated out-of-state meets standards relating to solid waste reduction, recycling, and management substantially equivalent to those required of solid waste generated within the state. The department may assess a fee on the out-of-state waste sufficient to recover the actual costs incurred in ensuring that the out-of-state waste meets equivalent state standards. The department may delegate, to a local health department, authority to implement the activities identified by the department under this subsection. All money received from fees imposed under this subsection shall be deposited into the solid waste management account created by *RCW 70.95.800, and shall be used solely for the activities required by this section.

(3) The department may prohibit in-state disposal of solid waste generated from outside of the state, unless the generators of the waste meet: (a) Waste reduction and recycling requirements substantially equivalent to those applicable in Washington state; and (b) solid waste handling standards substantially equivalent to those applicable in Washington state.

(4) The department may adopt rules to implement this section. [1993 c 286 § 2.]

***Reviser's note:** RCW 70.95.800 was repealed by 2000 c 150 § 2, effective July 1, 2001.

Severability—Effective date—1993 c 286: See notes following RCW 70.95.217.

70.95.220 Financial aid to jurisdictional health departments—Applications—Allocations. Any jurisdictional health department may apply to the department for financial aid for the enforcement of rules and regulations promulgated under this chapter. Such application shall contain such information, including budget and program description, as may be prescribed by regulations of the department.

After receipt of such applications the department may allocate available funds according to criteria established by regulations of the department considering population, urban development, the number of the disposal sites, and geographical area.

The sum allocated to a jurisdictional health department shall be paid to the treasury from which the operating expenses of the health department are paid, and shall be used exclusively for inspections and administrative expenses necessary to enforce applicable regulations. [1969 ex.s. c 134 § 22.]

70.95.230 Financial aid to jurisdictional health departments—Matching funds requirements. The jurisdictional health department applying for state assistance for the enforcement of this chapter shall match such aid allocated by the department in an amount not less than twenty-five percent of the total amount spent for such enforcement activity during the year. The local share of enforcement costs may be met by cash and contributed services. [1969 ex.s. c 134 § 23.]

70.95.235 Diversion of recyclable material—Penalty. (1) No person may divert to personal use any recyclable material placed in a container as part of a recycling program, without the consent of the generator of such recyclable material or the solid waste collection company operating under the authority of a town, city, county, or the utilities and transportation commission, and no person may divert to commercial use any recyclable material placed in a container as part of a recycling program, without the consent of the person owning or operating such container.

(2) A violation of subsection (1) of this section is a class 1 civil infraction under chapter 7.80 RCW. Each violation of this section shall be a separate infraction. [1991 c 319 § 407.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.95.240 Unlawful to dump or deposit solid waste without permit—Penalties—Litter cleanup restitution payment. (1) After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit. This section does not:

(a) Prohibit a person from dumping or depositing solid waste resulting from his or her own activities onto or under the surface of ground owned or leased by him or her when

such action does not violate statutes or ordinances, or create a nuisance;

(b) Apply to a person using a waste-derived soil amendment that has been approved by the department under RCW 70.95.205; or

(c) Apply to the application of commercial fertilizer that has been registered with the department of agriculture as provided in RCW 15.54.325, and that is applied in accordance with the standards established in RCW 15.54.800(3).

(2)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the jurisdictional health department investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(c) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the jurisdictional health department investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(d) If a junk vehicle is abandoned in violation of this chapter, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle. [2001 c 139 § 2; 2000 c 154 § 3; 1998 c 36 § 19; 1997 c 427 § 4; 1993 c 292 § 3; 1969 ex.s. c 134 § 24.]

Severability—2000 c 154: See note following RCW 70.93.030.

Intent—1998 c 36: See RCW 15.54.265.

Short title—1998 c 36: See note following RCW 15.54.265.

70.95.250 Name appearing on waste material—Presumption. Whenever solid wastes dumped in violation of RCW 70.95.240 contain three or more items bearing the name of one individual, there shall be a rebuttable presumption that the individual whose name appears on such items committed the unlawful act of dumping. [1969 ex.s. c 134 § 25.]

70.95.255 Disposal of sewage sludge or septic tank sludge prohibited—Exemptions—Uses of sludge material permitted. After January 1, 1988, the department of ecology may prohibit disposal of sewage sludge or septic tank sludge (septage) in landfills for final disposal, except on a temporary, emergency basis, if the jurisdictional health department determines that a potentially unhealthful circumstance exists. Beneficial uses of sludge in landfill reclamation is acceptable utilization and not considered disposal.

The department of ecology shall adopt rules that provide exemptions from this section on a case-by-case basis. Exemptions shall be based on the economic infeasibility of using or disposing of the sludge material other than in a landfill.

The department of ecology, in conjunction with the department of health and the department of agriculture, shall adopt rules establishing labeling and notification requirements for sludge material sold commercially or given away to the public. The department shall specify mandatory wording for labels and notification to warn the public against improper use of the material. [1992 c 174 § 15; 1986 c 297 § 1.]

70.95.260 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling. The department shall in addition to its other powers and duties:

(1) Cooperate with the appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the provisions of this chapter.

(2) Coordinate the development of a solid waste management plan for all areas of the state in cooperation with local government, the department of community, trade, and economic development, and other appropriate state and regional agencies. The plan shall relate to solid waste management for twenty years in the future and shall be reviewed biennially, revised as necessary, and extended so that perpetually the plan shall look to the future for twenty years as a guide in carrying out a state coordinated solid waste management program. The plan shall be developed into a single integrated document and shall be adopted no later than October 1990. The plan shall be revised regularly after its initial completion so that local governments revising local comprehensive solid waste management plans can take advantage of the data and analysis in the state plan.

(3) Provide technical assistance to any person as well as to cities, counties, and industries.

(4) Initiate, conduct, and support research, demonstration projects, and investigations, and coordinate research programs pertaining to solid waste management systems.

(5) Develop statewide programs to increase public awareness of and participation in tire recycling, and to stimulate and encourage local private tire recycling centers and public participation in tire recycling.

(6) May, under the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended, from time to time promulgate such rules and regulations as are necessary to carry out the purposes of this chapter. [1995 c 399 § 189; 1989 c 431 § 9. Prior: 1985 c 345 § 8; 1985 c 6 § 23; 1969 ex.s. c 134 § 26.]

(2008 Ed.)

Study—1989 c 431: "The institute for urban and local studies at Eastern Washington State University shall conduct a study of enforcement of solid waste management laws and regulations as a component of the 1990 state solid waste management plan. This study shall include, but shall not be limited to:

(1) A review of current state and local solid waste rules, requirements, policies, and resources devoted to state and local solid waste enforcement, and of the effectiveness of these programs in promoting environmental health and public safety;

(2) An examination of federal regulations and the latest proposed amendments to the Resource Conservation and Recovery Act, in subtitle D of the code of federal regulations;

(3) A review of regulatory approaches used by other states;

(4) A review and evaluation of educational and technical assistance programs related to enforcement;

(5) An inventory of regulatory compliance for all processing and disposal facilities handling mixed solid waste;

(6) A review of the role and effectiveness of other enforcement jurisdictions;

(7) An evaluation of the need for redefining institutional roles and responsibilities for enforcement of solid waste management laws and regulations in order to establish public confidence in solid waste management systems and ensure public protection; and

(8) An evaluation of possible benefits in separating the solid waste planning and technical assistance responsibilities from the enforcement responsibilities within the department." [1989 c 431 § 96.]

70.95.263 Additional powers and duties of department. The department shall in addition to its other duties and powers under this chapter:

(1) Prepare the following:

(a) A management system for recycling waste paper generated by state offices and institutions in cooperation with such offices and institutions;

(b) An evaluation of existing and potential systems for recovery of energy and materials from solid waste with recommendations to affected governmental agencies as to those systems which would be the most appropriate for implementation;

(c) A data management system to evaluate and assist the progress of state and local jurisdictions and private industry in resource recovery;

(d) Identification of potential markets, in cooperation with private industry, for recovered resources and the impact of the distribution of such resources on existing markets;

(e) Studies on methods of transportation, collection, reduction, separation, and packaging which will encourage more efficient utilization of existing waste recovery facilities;

(f) Recommendations on incentives, including state grants, loans, and other assistance, to local governments which will encourage the recovery and recycling of solid wastes.

(2) Provide technical information and assistance to state and local jurisdictions, the public, and private industry on solid waste recovery and/or recycling.

(3) Procure and expend funds available from federal agencies and other sources to assist the implementation by local governments of solid waste recovery and/or recycling programs, and projects.

(4) Conduct necessary research and studies to carry out the purposes of this chapter.

(5) Encourage and assist local governments and private industry to develop pilot solid waste recovery and/or recycling projects.

(6) Monitor, assist with research, and collect data for use in assessing feasibility for others to develop solid waste

recovery and/or recycling projects. [1998 c 245 § 131; 1975-'76 2nd ex.s. c 41 § 5.]

70.95.265 Department to cooperate with public and private departments, agencies and associations. The department shall work closely with the department of community, trade, and economic development, the department of general administration, and with other state departments and agencies, the Washington state association of counties, the association of Washington cities, and business associations, to carry out the objectives and purposes of chapter 41, Laws of 1975-'76 2nd ex. sess. [1995 c 399 § 190; 1985 c 466 § 69; 1975-'76 2nd ex.s. c 41 § 6.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

70.95.267 Department authorized to disburse referendum 26 (chapter 43.83A RCW) fund for local government solid waste projects. The department is authorized to use referendum 26 (chapter 43.83A RCW) funds of the Washington futures account to disburse to local governments in developing solid waste recovery and/or recycling projects. [1975-'76 2nd ex.s. c 41 § 10.]

70.95.268 Department authorized to disburse funds under chapter 43.99F RCW for local government solid waste projects. The department is authorized to use funds under chapter 43.99F RCW to disburse to local governments in developing solid waste recovery or recycling projects. Priority shall be given to those projects that use incineration of solid waste to produce energy and to recycling projects. [1984 c 123 § 10.]

70.95.270 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 16.]

Severability—1994 c 257: See note following RCW 36.70A.270.

70.95.280 Determination of best solid waste management practices—Department to develop method to monitor waste stream—Collectors to report quantity and quality of waste—Confidentiality of proprietary information. The department of ecology shall determine the best management practices for categories of solid waste in accordance with the priority solid waste management methods established in RCW 70.95.010. In order to make this determination, the department shall conduct a comprehensive solid waste stream analysis and evaluation. Following establishment of baseline data resulting from an initial in-depth analysis of the waste stream, the department shall develop a less

intensive method of monitoring the disposed waste stream including, but not limited to, changes in the amount of waste generated and waste type. The department shall monitor curbside collection programs and other waste segregation and disposal technologies to determine, to the extent possible, the effectiveness of these programs in terms of cost and participation, their applicability to other locations, and their implications regarding rules adopted under this chapter. Persons who collect solid waste shall annually report to the department the types and quantities of solid waste that are collected and where it is delivered. The department shall adopt guidelines for reporting and for keeping proprietary information confidential. [1989 c 431 § 13; 1988 c 184 § 1.]

70.95.285 Solid waste stream analysis. The comprehensive, statewide solid waste stream analysis under RCW 70.95.280 shall be based on representative solid waste generation areas and solid waste generation sources within the state. The following information and evaluations shall be included:

- (1) Solid waste generation rates for each category;
- (2) The rate of recycling being achieved within the state for each category of solid waste;
- (3) The current and potential rates of solid waste reduction within the state;
- (4) A technological assessment of current solid waste reduction and recycling methods and systems, including cost/benefit analyses;
- (5) An assessment of the feasibility of segregating solid waste at: (a) The original source, (b) transfer stations, and (c) the point of final disposal;
- (6) A review of methods that will increase the rate of solid waste reduction; and
- (7) An assessment of new and existing technologies that are available for solid waste management including an analysis of the associated environmental risks and costs.

The data required by the analysis under this section shall be kept current and shall be available to local governments and the waste management industry. [1988 c 184 § 2.]

70.95.290 Solid waste stream evaluation. (1) The evaluation of the solid waste stream required in RCW 70.95.280 shall include the following elements:

- (a) The department shall determine which management method for each category of solid waste will have the least environmental impact; and
- (b) The department shall evaluate the costs of various management options for each category of solid waste, including a review of market availability, and shall take into consideration the economic impact on affected parties;
- (c) Based on the results of (a) and (b) of this subsection, the department shall determine the best management for each category of solid waste. Different management methods for the same categories of waste may be developed for different parts of the state.

(2) The department shall give priority to evaluating categories of solid waste that, in relation to other categories of solid waste, comprise a large volume of the solid waste stream or present a high potential of harm to human health.

At a minimum the following categories of waste shall be evaluated:

(a) By January 1, 1989, yard waste and other biodegradable materials, paper products, disposable diapers, and batteries; and

(b) By January 1, 1990, metals, glass, plastics, styrofoam or rigid lightweight cellular polystyrene, and tires. [1988 c 184 § 3.]

70.95.295 Analysis and evaluation to be incorporated in state solid waste management plan. The department shall incorporate the information from the analysis and evaluation conducted under RCW 70.95.280 through 70.95.290 to the state solid waste management plan under RCW 70.95.260. The plan shall be revised periodically as the evaluation and analysis is updated. [1988 c 184 § 4.]

70.95.300 Solid waste—Beneficial uses—Permitting requirement exemptions. (1) The department may by rule exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses. In adopting such rules, the department shall specify both the solid waste that is exempted from the permitting requirements and the beneficial use or uses for which the solid waste is so exempted. The department shall consider: (a) Whether the material will be beneficially used or reused; and (b) whether the beneficial use or reuse of the material will present threats to human health or the environment.

(2) The department may also exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses by approving an application for such an exemption. The department shall establish by rule procedures under which a person may apply to the department for such an exemption. The rules shall establish criteria for providing such an exemption, which shall include, but not be limited to: (a) The material will be beneficially used or reused; and (b) the beneficial use or reuse of the material will not present threats to human health or the environment. Rules adopted under this subsection shall identify the information that an application shall contain. Persons seeking such an exemption shall apply to the department under the procedures established by the rules adopted under this subsection.

(3) After receipt of an application filed under rules adopted under subsection (2) of this section, the department shall review the application to determine whether it is complete, and forward a copy of the completed application to all jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward to the department their comments and any other information they deem relevant to the department's decision to approve or disapprove the application. Every complete application shall be approved or disapproved by the department within ninety days of receipt. If the application is approved by the department, the solid waste is exempt from the permitting requirements of this chapter when used anywhere in the state in the manner approved by the department. If the composition, use, or reuse of the solid waste is not consistent with the terms and conditions of the department's approval of the application, the use of the solid waste remains subject to the permitting requirements of this chapter.

(4) The department shall establish procedures by rule for providing to the public and the solid waste industry notice of and an opportunity to comment on each application for an exemption under subsection (2) of this section.

(5) Any jurisdictional health department or applicant may appeal the decision of the department to approve or disapprove an application under subsection (3) of this section. The appeal shall be made to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days of the decision of the department. The hearings board's review of the decision shall be made in accordance with chapter 43.21B RCW and any subsequent appeal of a decision of the board shall be made in accordance with RCW 43.21B.180.

(6) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on June 11, 1998, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule. [1998 c 156 § 2.]

70.95.305 Solid waste handling permit—Exemption from requirements—Application of section—Rules. (1) Notwithstanding any other provision of this chapter, the department may by rule exempt from the requirements to obtain a solid waste handling permit any category of solid waste handling facility that it determines to:

(a) Present little or no environmental risk; and

(b) Meet the environmental protection and performance requirements required for other similar solid waste facilities.

(2) This section does not apply to any facility or category of facilities that:

(a) Receives municipal solid waste destined for final disposal, including but not limited to transfer stations, landfills, and incinerators;

(b) Applies putrescible solid waste on land for final disposal purposes;

(c) Handles mixed solid wastes that have not been processed to segregate solid waste materials destined for disposal from other solid waste materials destined for a beneficial use or recycling;

(d) Receives or processes organic waste materials into compost in volumes that generally far exceed those handled by municipal park departments, master gardening programs, and households; or

(e) Receives solid waste destined for recycling or reuse, the operation of which is determined by the department to present risks to human health and the environment.

(3) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. If a facility does not operate in compliance with the terms and conditions established for an exemption under subsection (1) of this section, the facility is subject to the permitting requirements for solid waste handling under this chapter.

(4) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on June 11, 1998, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to

modify or revoke those exemptions or determinations by rule. [2005 c 394 § 3; 1998 c 156 § 5.]

Intent—Severability—2005 c 394: See notes following RCW 70.95.400.

70.95.306 Composting of bovine and equine carcasses—Guidelines—Exemption from solid waste handling rules. (1) By July 1, 2005, the department of ecology and the department of agriculture, in consultation with the department of health, shall make available to livestock producers clearly written guidelines for the composting of bovine and equine carcasses for routine animal disposal.

(2) Composters of bovine and equine carcasses are exempt from the metals testing and permit requirements under the solid waste handling rules for compost that is distributed off-site if the following conditions are met:

(a) The carcasses to be composted are not known or suspected to be affected with a prion-protein disease such as bovine spongiform encephalopathy, a spore-forming disease such as anthrax or other diseases designated by the state veterinarian;

(b) The composter follows the written guidelines provided for in subsection (1) of this section;

(c) The composter does not accept for composting animal mortalities from other sources not directly affiliated with the composter's operation;

(d) The composter provides information to the end-user that includes the source of the material; the quality of the compost as to its nutrient content, pathogens, and stability; and the restrictions on use of the compost as stated in (f) of this subsection;

(e) The composter reports annually to the department the number of bovines and equines and the amounts of other material composted, including the composter's best estimate of the tonnage or yardage involved; and

(f) The end-user applies the compost only to agricultural lands that are not used for the production of root crops except as prescribed in the guidelines and ensures no compost comes into contact with the crops harvested from the lands where the compost is applied.

(3) If a compost production facility does not operate in compliance with the terms and conditions established for an exemption in this section, the facility shall be subject to the permitting requirements for solid waste handling under this chapter. [2005 c 510 § 6.]

70.95.310 Rules—Department "deferring" to other permits—Application of section. (1) Notwithstanding any other provisions of this chapter, the department shall adopt rules:

(a) Describing when a jurisdictional health department may, at its discretion, waive the requirement that a permit be issued for a facility under this chapter if other air, water, or environmental permits are issued for the same facility. As used in this section, a jurisdictional health department's waiving the requirement that a permit be issued for a facility under this chapter based on the issuance of such other permits for the facility is the health department's "deferring" to the other permits; and

(b) Allowing deferral only if the applicant and the jurisdictional health department demonstrate that other permits

for the facility will provide a comparable level of protection for human health and the environment that would be provided by a solid waste handling permit.

(2) This section does not apply to any transfer station, landfill, or incinerator that receives municipal solid waste destined for final disposal.

(3) If, before June 11, 1998, either the department or a jurisdictional health department has deferred solid waste permitting or regulation of a solid waste facility to permitting or regulation under other environmental permits for the same facility, such deferral is valid and shall not be affected by the rules developed under subsection (1) of this section.

(4) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. [1998 c 156 § 6.]

70.95.315 Penalty. The department may assess a civil penalty in an amount not to exceed one thousand dollars per day per violation to any person exempt from solid waste permitting in accordance with RCW 70.95.300, 70.95.305, or 70.95.306 who fails to comply with the terms and conditions of the exemption. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation. [2005 c 510 § 7; 1998 c 156 § 7.]

70.95.320 Construction. Nothing in chapter 156, Laws of 1998 may be construed to affect chapter 81.77 RCW and the authority of the utilities and transportation commission. [1998 c 156 § 9.]

70.95.400 Transporters—Definition—Registration required—Penalties. (1) For the purposes of this section and RCW 70.95.410, "transporter" means any person or entity that transports recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation, and who are required to possess a permit to operate from the Washington utilities and transportation commission under chapter 81.80 RCW. "Transporter" includes commercial recycling operations of certificated solid waste collection companies as provided in chapter 81.77 RCW. "Transporter" does not include:

(a) Carriers of commercial recyclable materials, when such materials are owned or being bought or sold by the entity or person, and being carried in their own vehicle, when such activity is incidental to the conduct of an entity or person's primary business;

(b) Entities or persons hauling their own recyclables or hauling recyclables they generated or purchased and transported in their own vehicles;

(c) Nonprofit or charitable organizations collecting and transporting recyclable materials from a buyback center, drop box, or from a commercial or industrial generator of recyclable materials;

(d) City municipal solid waste departments or city solid waste contractors; or

(e) Common carriers under chapter 81.80 RCW whose primary business is not the transportation of recyclable materials.

(2) All transporters shall register with the department prior to the transportation of recyclable materials. The department shall supply forms for registration.

(3) A transporter who transports recyclable materials within the state without a transporter registration required by this section is subject to a civil penalty in an amount up to one thousand dollars per violation. [2005 c 394 § 4.]

Intent—2005 c 394: "It is the intent of the legislature to improve recycling, eliminate illegal disposal of recyclable materials, protect consumers from sham recycling, and to further the purposes of RCW 70.95.020 and the goal of consistency in jurisdictional treatment of the statewide solid waste management plan adopted by the department of ecology." [2005 c 394 § 1.]

Severability—2005 c 394: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 394 § 9.]

70.95.410 Transporters—Delivery of recyclable materials to transfer station or landfill prohibited—Records—Penalty. (1) A transporter may not deliver any recyclable materials for disposal to a transfer station or landfill.

(2) A transporter shall keep records of locations and quantities specifically identified in relation to a generator's name, service date, address, and invoice, documenting where recyclables have been sold, delivered for processing, or otherwise marketed. These records must be retained for two years from the date of collection, and must be made accessible for inspection by the department and the local health department.

(3) A transporter who violates the provisions of this section is subject to a civil penalty of up to one thousand dollars per violation. [2005 c 394 § 5.]

Intent—Severability—2005 c 394: See notes following RCW 70.95.400.

70.95.420 Damages. Any person damaged by a violation of RCW 70.95.400 through 70.95.440 may bring a civil action for such a violation by seeking either injunctive relief or damages, or both, in the superior court of the county in which the violation took place or in Thurston county. The prevailing party in such an action is entitled to reasonable costs and attorneys' fees, including those on appeal. [2005 c 394 § 6.]

Intent—Severability—2005 c 394: See notes following RCW 70.95.400.

70.95.430 Solid waste recyclers—Notice—Report—Penalty. (1) All facilities that recycle solid waste, except for those facilities with a current solid waste handling permit issued under RCW 70.95.170, must notify the department in writing within thirty days prior to operation, or ninety days from July 24, 2005, for existing recycling operations, of the intent to conduct recycling in accordance with this section. Notification must be in writing, and include:

- (a) Contact information for the person conducting the recycling activity;
- (b) A general description of the recycling activity;
- (c) A description of the types of solid waste being recycled; and
- (d) A general explanation of the recycling processes and methods.

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(2) Each facility that recycles solid waste, except those facilities with a current solid waste handling permit issued under RCW 70.95.170, shall prepare and submit an annual report to the department by April 1st on forms supplied by the department. The annual report must detail recycling activities during the previous calendar year and include the following information:

- (a) The name and address of the recycling operation;
- (b) The calendar year covered by the report;
- (c) The annual quantities and types of waste received, recycled, and disposed, in tons, for purposes of determining progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4); and
- (d) Any additional information required by written notification of the department that is needed to determine progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4).

(3) Any facility, except for product take-back centers, that recycles solid waste materials within the state without first obtaining a solid waste handling permit under RCW 70.95.170 or completing a notification under this section is subject to a civil penalty of up to one thousand dollars per violation. [2005 c 394 § 7.]

Intent—Severability—2005 c 394: See notes following RCW 70.95.400.

70.95.440 Financial assurance requirements. (1) The department may adopt rules that establish financial assurance requirements for recycling facilities that do not already have financial assurance requirements under this chapter, or are not already specifically exempted from financial assurance requirements under this chapter. The financial assurance requirements must take into consideration the amounts and types of recyclable materials recycled at the facility, and the potential closure and postclosure costs associated with the recycling facility; which assurance may consist of posting of a surety bond in an amount sufficient to meet these requirements or other financial instrument, but in no case less than ten thousand dollars.

(2) A recycling facility is required to meet financial assurance requirements adopted by the department by rule, unless the facility is already required to provide financial assurance under other provisions of this chapter.

(3) Facilities that collect, recover, process, or otherwise recycle scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal are exempt from the requirements of this section. [2005 c 394 § 8.]

Intent—Severability—2005 c 394: See notes following RCW 70.95.400.

70.95.500 Disposal of vehicle tires outside designated area prohibited—Penalty—Exemption. (1) No person may drop, deposit, discard, or otherwise dispose of vehicle tires on any public property or private property in this state or in the waters of this state whether from a vehicle or otherwise, including, but not limited to, any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley unless:

(a) The property is designated by the state, or by any of its agencies or political subdivisions, for the disposal of discarded vehicle tires; and

(b) The person is authorized to use the property for such purpose.

(2) A violation of this section is punishable by a civil penalty, which shall not be less than two hundred dollars nor more than two thousand dollars for each offense.

(3) This section does not apply to the storage or deposit of vehicle tires in quantities deemed exempt under rules adopted by the department of ecology under its functional standards for solid waste. [1985 c 345 § 4.]

70.95.510 Fee on the retail sale of new replacement vehicle tires. (1) There is levied a one dollar per tire fee on the retail sale of new replacement vehicle tires for a period of five years, beginning July 1, 2005. The fee imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the fee. The fee collected from the buyer by the seller less the ten percent amount retained by the seller as provided in RCW 70.95.535(1) shall be paid to the department of revenue in accordance with RCW 82.32.045.

(2) The department of revenue shall incorporate into the agency's regular audit cycle a reconciliation of the number of tires sold and the amount of revenue collected by the businesses selling new replacement vehicle tires at retail. The department of revenue shall collect on the business excise tax return from the businesses selling new replacement vehicle tires at retail:

(a) The number of tires sold; and

(b) The fee levied in this section.

(3) All other applicable provisions of chapter 82.32 RCW have full force and application with respect to the fee imposed under this section. The department of revenue shall administer this section.

(4) For the purposes of this section, "new replacement vehicle tires" means tires that are newly manufactured for vehicle purposes and does not include retreaded vehicle tires. [2005 c 354 § 2; 1989 c 431 § 92; 1985 c 345 § 5.]

Finding—Intent—2005 c 354: "The legislature finds that discarded tires in unauthorized dump sites pose a health and safety risk to the public. Many of these tire piles have been in existence for a significant amount of time and are a continuing challenge to state and local officials responsible for cleaning up unauthorized dump sites and preventing further accumulation of waste tires. Therefore it is the intent of the legislature to document the extent of the problem, create and fund an effective program to eliminate unauthorized tire piles, and minimize potential future problems and costs." [2005 c 354 § 1.]

Severability—2005 c 354: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 354 § 11.]

Effective date—2005 c 354: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 354 § 12.]

70.95.515 Fee on the retail sale of new replacement vehicle tires—Failure to collect, pay to department—Penalties. (1) The fee required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department of revenue, and any seller who

appropriates or converts the fee collected to his or her own use or to any use other than the payment of the fee to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) In case any seller fails to collect the fee imposed in this chapter or, having collected the fee, fails to pay it to the department of revenue in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the fee.

(3) The amount of the fee, until paid by the buyer to the seller or to the department of revenue, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the fee as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any fee due under this chapter is guilty of a misdemeanor. [2005 c 354 § 4.]

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70.95.510.

70.95.521 Waste tire removal account. The waste tire removal account is created in the state treasury. All receipts from tire fees imposed under RCW 70.95.510 must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles and measures that prevent future accumulation of unauthorized waste tire piles. During the 2007-2009 fiscal biennium, the legislature may transfer from the waste tire removal account to the motor vehicle fund such amounts as reflect the excess fund balance of the waste tire removal account. [2007 c 518 § 708; 2005 c 354 § 3.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70.95.510.

70.95.530 Waste tire removal account—Use. (1) Moneys in the waste tire removal account may be appropriated to the department of ecology:

(a) To provide for funding to state and local governments for the removal of discarded vehicle tires from unauthorized tire dump sites;

(b) To accomplish the other purposes of RCW 70.95.020 as they relate to waste tire cleanup under this chapter; and

(c) To conduct a study of existing tire cleanup sites. The office of financial management shall oversee the study process and approve the completed study. The completed study shall be delivered to the house of representatives and senate transportation committees by November 15, 2005. In conducting the study, the department shall consult on a regular basis with interested parties. The following identified elements at a minimum shall be included in the completed study:

(i) Identification of existing tire cleanup sites in the state of Washington;

(ii) The estimated number of tires in each tire cleanup site;

- (iii) A map identifying the location of each one of the tire cleanup sites;
- (iv) A photograph of each one of the tire cleanup sites;
- (v) The estimated cost for cleanup of each tire [cleanup] site by cost component;
- (vi) The estimated reimbursement of costs to be recovered from persons or entities that created or have responsibility for the tire cleanup site;
- (vii) Identification of the type of reimbursements for recovery by each of the tire cleanup sites;
- (viii) The estimated time frame to begin the cleanup project and the estimated completion date for each tire cleanup site;
- (ix) An assessment of local government functions relating to unauthorized tire piles, including cleanup, enforcement, and public health;
- (x) Identification of needs in the areas in (c)(ix) of this subsection for each one of the counties; and
- (xi) A statewide cleanup plan based on multiple funding options between twenty cents and sixty cents for each new tire sold at retail in the state starting on July 1, 2005. The plan shall include the estimated time frame to begin each of the tire cleanup sites and the estimated completion date for each one of the sites. In addition, the plan must include a process to be followed in selecting entities to perform the tire site cleanups. The 2006 legislature shall determine the final distribution of the tire cleanup fee and the appropriations for this statewide tire cleanup plan.

(2) In spending funds in the account under this section, the department of ecology shall identify communities with the most severe problems with waste tires and provide funds first to those communities to remove accumulations of waste tires.

(3) Immediately after July 1, 2005, the department of ecology shall initiate a pilot project in a city with a population between three and four thousand within a county with a population less than twenty thousand to contract to clean up a formerly licensed tire pile in existence for ten or more years. To begin the project, the department shall seek to use financial assurance funds set aside for clean up of the tire pile. For purposes of this subsection, population figures are the official 2004 population as estimated by the office of financial management for purposes of state revenue allocation. [2005 c 354 § 5; 1988 c 250 § 1; 1985 c 345 § 7.]

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70.95.510.

70.95.535 Disposition of fee. (1) Every person engaged in making retail sales of new replacement vehicle tires in this state shall retain ten percent of the collected one dollar fee. The moneys retained may be used for costs associated with the proper management of the waste vehicle tires by the retailer.

(2) The department of ecology will administer the funds for the purposes specified in *RCW 70.95.020(5) including, but not limited to:

- (a) Making grants to local governments for pilot demonstration projects for on-site shredding and recycling of tires from unauthorized dump sites;
- (b) Grants to local government for enforcement programs;

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(c) Implementation of a public information and education program to include posters, signs, and informational materials to be distributed to retail tire sales and tire service outlets;

(d) Product marketing studies for recycled tires and alternatives to land disposal. [1989 c 431 § 93.]

*Reviser's note: RCW 70.95.020 was amended by 1998 c 90 § 1, changing subsection (5) to subsection (6).

70.95.540 Cooperation with department to aid tire recycling. To aid in the statewide tire recycling campaign, the legislature strongly encourages various industry organizations which are active in resource recycling efforts to provide active cooperation with the department of ecology so that additional technology can be developed for the tire recycling campaign. [1985 c 345 § 9.]

70.95.545 Tire recycling—Report. The department of ecology, in conjunction with the appropriate private sector stakeholders, shall track and report annually to the legislature the total increase or reduction of tire recycling or reuse rates in the state for each calendar year and for the cumulative calendar years from June 13, 2002. [2002 c 299 § 9.]

70.95.550 Waste tires—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.95.555 through 70.95.565.

(1) "Storage" or "storing" means the placing of more than eight hundred waste tires in a manner that does not constitute final disposal of the waste tires.

(2) "Transportation" or "transporting" means picking up or transporting waste tires for the purpose of storage or final disposal.

(3) "Waste tires" means tires that are no longer suitable for their original intended purpose because of wear, damage, or defect. [1988 c 250 § 3.]

70.95.555 Waste tires—License for transport or storage business—Requirements. Any person engaged in the business of transporting or storing waste tires shall be licensed by the department. To obtain a license, each applicant must:

(1) Provide assurances that the applicant is in compliance with this chapter and the rules regarding waste tire storage and transportation;

(2) Accept liability for and authorize the department to recover any costs incurred in any cleanup of waste tires transported or newly stored by the applicant in violation of this section, or RCW 70.95.560, 70.95.515, or 70.95.570, or rules adopted thereunder, after July 1, 2005;

(3) Until January 1, 2006, post a bond in the sum of ten thousand dollars in favor of the state of Washington for waste tires transported or stored before July 1, 2005. In lieu of the bond, the applicant may submit financial assurances acceptable to the department;

(4) After January 1, 2006, for waste tires transported or stored before July 1, 2005, or for waste tires transported or stored after July 1, 2005, post a bond in an amount to be determined by the department sufficient to cover the liability for the cost of cleanup of the transported or stored waste tires,

in favor of the state of Washington. In lieu of the bond, the applicant may submit financial assurances acceptable to the department;

(5) Be registered in the state of Washington as a business and be in compliance with all state laws, rules, and local ordinances;

(6) Have a federal tax identification number and be in compliance with all applicable federal codes and regulations; and

(7) Report annually to the department the amount of tires transported and their disposition. Failure to report shall result in revocation of the license. [2005 c 354 § 6; 1988 c 250 § 4.]

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70.95.510.

70.95.560 Waste tires—Violation of RCW 70.95.555—Penalty. (1) Any person who transports or stores waste tires without a license in violation of RCW 70.95.555 shall be guilty of a gross misdemeanor and upon conviction shall be punished under RCW 9A.20.021(2).

(2) Any person who transports or stores waste tires without a license in violation of RCW 70.95.555 is liable for the costs of cleanup of any and all waste tires transported or stored. This subsection does not apply to the storage of waste tires when the storage of the tires occurred before July 1, 2005, and the storage was licensed in accordance with RCW 70.95.555 at the time the tires were stored. [2005 c 354 § 7; 1989 c 431 § 95; 1988 c 250 § 5.]

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70.95.510.

70.95.565 Waste tires—Contracts with unlicensed persons prohibited. No business may enter into a contract for:

(1) Transportation of waste tires with an unlicensed waste tire transporter; or

(2) Waste tire storage with an unlicensed owner or operator of a waste tire storage site. [1988 c 250 § 6.]

70.95.570 Limitations on liability. No person or business, having documented proof that it legally transferred possession of waste tires to a validly licensed transporter or storer of waste tires or to a validly permitted recycler, has any further liability related to the waste tires legally transferred. [2005 c 354 § 8.]

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70.95.510.

70.95.600 Educational material promoting household waste reduction and recycling. The department of ecology, at the request of a local government jurisdiction, may periodically provide educational material promoting household waste reduction and recycling to public and private refuse haulers. The educational material shall be distributed to households receiving refuse collection service by local governments or the refuse hauler providing service. The refuse hauler may distribute the educational material by any means that assures timely delivery.

Reasonable expenses incurred in the distribution of this material shall be considered, for rate-making purposes, as

legitimate operating expenses of garbage and refuse haulers regulated under chapter 81.77 RCW. [1988 c 175 § 3.]

Effective date—1988 c 175: See note following RCW 43.19.538.

70.95.610 Battery disposal—Restrictions—Violators subject to fine—"Vehicle battery" defined. (1) No person may knowingly dispose of a vehicle battery except by delivery to: A person or entity selling lead acid batteries, a person or entity authorized by the department to accept the battery, or to a secondary lead smelter.

(2) No owner or operator of a solid waste disposal site shall knowingly accept for disposal used vehicle batteries except when authorized to do so by the department or by the federal government.

(3) Any person who violates this section shall be subject to a fine of up to one thousand dollars. Each battery will constitute a separate violation. Nothing in this section and RCW 70.95.620 through 70.95.660 shall supersede the provisions under chapter 70.105 RCW.

(4) For purposes of this section and RCW 70.95.620 through 70.95.660, "vehicle battery" means batteries capable for use in any vehicle, having a core consisting of elemental lead, and a capacity of six or more volts. [1989 c 431 § 37.]

70.95.620 Identification procedure for persons accepting used vehicle batteries. The department shall establish a procedure to identify, on an annual basis, those persons accepting used vehicle batteries from retail establishments. [1989 c 431 § 38.]

70.95.630 Requirements for accepting used batteries by retailers of vehicle batteries—Notice. A person selling vehicle batteries at retail in the state shall:

(1) Accept, at the time of purchase of a replacement battery, in the place where the new batteries are physically transferred to the purchasers, and in a quantity at least equal to the number of new batteries purchased, used vehicle batteries from the purchasers, if offered by the purchasers. When a purchaser fails to provide an equivalent used battery or batteries, the purchaser may reclaim the core charge paid under RCW 70.95.640 by returning, to the point of purchase within thirty days, a used battery or batteries and a receipt showing proof of purchase from the establishment where the replacement battery or batteries were purchased; and

(2) Post written notice which must be at least eight and one-half inches by eleven inches in size and must contain the universal recycling symbol and the following language:

(a) "It is illegal to put a motor vehicle battery or other vehicle battery in your garbage."

(b) "State law requires us to accept used motor vehicle batteries or other vehicle batteries for recycling, in exchange for new batteries purchased."

(c) "When you buy a battery, state law also requires us to include a core charge of five dollars or more if you do not return your old battery for exchange." [1989 c 431 § 39.]

70.95.640 Retail core charge. Each retail sale of a vehicle battery shall include, in the price of the battery for sale, a core charge of not less than five dollars. When a purchaser offers the seller a used battery of equivalent size, the

seller shall omit the core charge from the price of the battery. [1989 c 431 § 40.]

70.95.650 Vehicle battery wholesalers—Obligations regarding used batteries—Noncompliance procedure. (1) A person selling vehicle batteries at wholesale to a retail establishment in this state shall accept, at the time and place of transfer, used vehicle batteries in a quantity at least equal to the number of new batteries purchased, if offered by the purchaser.

(2) When a battery wholesaler, or agent of the wholesaler, fails to accept used vehicle batteries as provided in this section, a retailer may file a complaint with the department and the department shall investigate any such complaint.

(3)(a) The department shall issue an order suspending any of the provisions of RCW 70.95.630 through 70.95.660 whenever it finds that the market price of lead has fallen to the extent that new battery wholesalers' estimated statewide average cost of transporting used batteries to a smelter or other person or entity in the business of purchasing used batteries is clearly greater than the market price paid for used lead batteries by such smelter or person or entity.

(b) The order of suspension shall only apply to batteries that are sold at retail during the period in which the suspension order is effective.

(c) The department shall limit its suspension order to a definite period not exceeding six months, but shall revoke the order prior to its expiration date should it find that the reasons for its issuance are no longer valid. [1989 c 431 § 41.]

70.95.660 Department to distribute printed notice—Issuance of warnings and citations—Fines. The department shall produce, print, and distribute the notices required by RCW 70.95.630 to all places where vehicle batteries are offered for sale at retail and in performing its duties under this section the department may inspect any place, building, or premise governed by RCW 70.95.640. Authorized employees of the agency may issue warnings and citations to persons who fail to comply with the requirements of RCW 70.95.610 through 70.95.670. Failure to conform to the notice requirements of RCW 70.95.630 shall subject the violator to a fine imposed by the department not to exceed one thousand dollars. However, no such fine shall be imposed unless the department has issued a warning of infraction for the first offense. Each day that a violator does not comply with the requirements of chapter 431, Laws of 1989 following the issuance of an initial warning of infraction shall constitute a separate offense. [1989 c 431 § 42.]

70.95.670 Rules. The department shall adopt rules providing for the implementation and enforcement of RCW 70.95.610 through 70.95.660. [1989 c 431 § 43.]

70.95.700 Solid waste incineration or energy recovery facility—Environmental impact statement requirements. No solid waste incineration or energy recovery facility shall be operated prior to the completion of an environmental impact statement containing the considerations required under RCW 43.21C.030(2)(c) and prepared pursuant to the procedures of chapter 43.21C RCW. This section

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does not apply to a facility operated prior to January 1, 1989, as a solid waste incineration facility or energy recovery facility burning solid waste. [1989 c 431 § 55.]

70.95.710 Incineration of medical waste. Incineration of medical waste shall be conducted under sufficient burning conditions to reduce all combustible material to a form such that no portion of the combustible material is visible in its uncombusted state. [1989 c 431 § 77.]

70.95.715 Sharps waste—Drop-off sites—Pharmacy return program. (1) A solid waste planning jurisdiction may designate sharps waste container drop-off sites.

(2) A pharmacy return program shall not be considered a solid waste handling facility and shall not be required to obtain a solid waste permit. A pharmacy return program is required to register, at no cost, with the department. To facilitate designation of sharps waste drop-off sites, the department shall share the name and location of registered pharmacy return programs with jurisdictional health departments and local solid waste management officials.

(3) A public or private provider of solid waste collection service may provide a program to collect source separated residential sharps waste containers as provided in chapter 70.95K RCW.

(4) For the purpose of this section, "sharps waste," "sharps waste container," and "pharmacy return program" shall have the same meanings as provided in RCW 70.95K.010. [1994 c 165 § 5.]

Findings—Purposes—Intent—1994 c 165: See note following RCW 70.95K.010.

70.95.720 Closure of energy recovery and incineration facilities—Recordkeeping requirements. The department shall require energy recovery and incineration facilities to retain records of monitoring and operation data for a minimum of ten years after permanent closure of the facility. [1990 c 114 § 4.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95.810 Composting food and yard wastes—Grants and study. (1) In order to establish the feasibility of composting food and yard wastes, the department shall provide funds, as available, to local governments submitting a proposal to compost such wastes.

(2) The department, in cooperation with the department of community, trade, and economic development, may approve an application if the project can demonstrate the essential parameters for successful composting, including, but not limited to, cost-effectiveness, handling and safety requirements, and current and potential markets. [1998 c 245 § 132; 1995 c 399 § 191; 1989 c 431 § 97.]

70.95.900 Authority and responsibility of utilities and transportation commission not changed. Nothing in this act shall be deemed to change the authority or responsibility of the Washington utilities and transportation commission to regulate all intrastate carriers. [1969 ex.s. c 134 § 27.]

70.95.901 Severability—1989 c 431. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 431 § 107.]

70.95.902 Section captions not law—1989 c 431. Captions and headings used in this act do not constitute any part of the law. [1989 c 431 § 108.]

70.95.903 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 32.]

70.95.910 Severability—1969 ex.s. c 134. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1969 ex.s. c 134 § 28.]

70.95.911 Severability—1975-'76 2nd ex.s. c 41. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 41 § 11.]

Chapter 70.95A RCW POLLUTION CONTROL— MUNICIPAL BONDING AUTHORITY

Sections

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70.95A.010 Legislative declaration—Liberal construction. The legislature finds:

(1) That environmental damage seriously endangers the public health and welfare;

(2) That such environmental damage results from air, water, and other resources pollution and from solid waste disposal, noise and other environmental problems;

(3) That to abate or control such environmental damage antipollution devices, equipment, and facilities must be acquired, constructed and installed;

(4) That the tax exempt financing permitted by Section 103 of the Internal Revenue Code of 1954, as amended, and authorized by this chapter results in lower costs of installation of pollution control facilities;

(5) That such lower costs benefit the public with no measurable cost impact;

(6) That the method of financing provided in this chapter is in the public interest and its use serves a public purpose in (a) protecting and promoting the health and welfare of the citizens of the cities, towns, counties, and port districts and of this state by encouraging and accelerating the installation of facilities for abating or controlling and preventing environmental damage and (b) in attracting and retaining environmentally sound industry in this state which reduces unemployment and provides a more diversified tax base.

(7) For the reasons set forth in subsection (6) of this section, the provisions of this chapter relating to port districts and all proceedings heretofore or hereafter taken by port districts pursuant thereto are, and shall be deemed to be, for industrial development as authorized by Article 8, section 8 of the Washington state Constitution.

This chapter shall be liberally construed to accomplish the intentions expressed in this section. [1975 c 6 § 1; 1973 c 132 § 2.]

70.95A.020 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Municipality" shall mean any city, town, county, or port district in the state;

(2) "Facility" or "facilities" shall mean any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof, or any interest therein, and all real and personal properties deemed necessary in connection therewith whether or not now in existence, which is used or to be used by any person, corporation or municipality in furtherance of the purpose of abating, controlling or preventing pollution;

(3) "Pollution" shall mean any form of environmental pollution, including but not limited to water pollution, air pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution;

(4) "Governing body" shall mean the body or bodies in which the legislative powers of the municipality are vested;

(5) "Mortgage" shall mean a mortgage or a mortgage and deed of trust or other security device; and

(6) "Department" shall mean the state department of ecology. [1973 c 132 § 3.]

70.95A.030 Municipalities—Powers. In addition to any other powers which it may now have, each municipality shall have the following powers:

(1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more facilities which shall be located within, or partially within the municipality;

(2) To lease, lease with option to purchase, sell or sell by installment sale, any or all of the facilities upon such terms and conditions as the governing body may deem advisable but which shall at least fully reimburse the municipality for all debt service on any bonds issued to finance the facilities and for all costs incurred by the municipality in financing and operating the facilities and as shall not conflict with the provisions of this chapter;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any facility or facilities or refunding any bonds issued for such purpose and to secure the payment of such bonds as provided in this chapter. Revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may have the same or different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on security available for assuring payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this chapter. [1973 c 132 § 4.]

70.95A.035 Actions by municipalities validated. All actions heretofore taken by any municipality in conformity with the provisions of this chapter and the provisions of chapter 6, Laws of 1975 hereby made applicable thereto relating to pollution control facilities, including but not limited to all bonds issued for such purposes, are hereby declared to be valid, legal and binding in all respects. [1975 c 6 § 4.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.040 Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms. (1) All bonds issued by a municipality under the authority of this chapter shall be secured solely by revenues derived from the lease or sale of the facility. Bonds and any interest coupons issued under the authority of this chapter shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds. The use of the municipality's name on revenue bonds authorized hereunder shall not be construed to be the giving or lending of the municipality's financial guarantee or pledge, i.e. credit to any private person, firm, or corporation as the term credit is used in Article 8, section 7 of the Washington state Constitution.

(2) The bonds referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in bearer or registered form either as to principal or interest or both, as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds of varying denominations, (e) be payable in such installments and at such time or times not exceeding forty years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates as may be determined by the governing body, payable at such place or places within or

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without this state and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds issued under the authority of this chapter, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the facilities.

(4) All bonds issued under the authority of this chapter, and any interest coupons applicable thereto shall be investment securities within the meaning of the uniform commercial code and shall be deemed to be issued by a political subdivision of the state.

(5) The proceeds from any bonds issued under this chapter shall be used only for purposes qualifying under Section 103(c)(4)(f) of the Internal Revenue Code of 1954, as amended.

(6) Notwithstanding subsections (2) and (3) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 174; 1975 c 6 § 3; 1973 c 132 § 5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.045 Proceeds of bonds are separate trust funds—Municipal treasurer, compensation. The proceeds of any bonds heretofore or hereafter issued in conformity with the authority of this chapter, together with interest and premiums thereon, and any revenues used to pay or redeem any of such bonds, together with interest and any premiums thereon, shall be separate trust funds and used only for the purposes permitted herein and shall not be considered to be money of the municipality. The services of the treasurer of a municipality, if such treasurer is or has been used, were and are intended to be for the administrative convenience of receipt and payment of nonpublic moneys only for which reasonable compensation may be charged by such treasurer or municipality. [1975 c 6 § 2.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.050 Revenue bonds—Security—Scope—Default—Authorization proceedings. (1) The principal of and interest on any bonds issued under the authority of this chapter (a) shall be secured by a pledge of the revenues derived from the sale or lease of the facilities out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the facilities, (c) may be secured by a pledge or assignment of the lease of such facilities, or (d) may be secured by a trust agreement or such other security device as may be deemed most advantageous by the governing body.

(2) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any facilities covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such facilities, (c) the maintenance and insurance of such facilities, (d) the creation and maintenance of special funds from the revenues of such facilities, and (e) the rights and remedies available in the event of a default to the bond owners or to the trustee under a mortgage or trust agreement, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this chapter: PROVIDED, That in making any such agreements or provisions a municipality shall not have the power to obligate itself except with respect to the facilities and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the facilities in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage made under the provisions of this chapter, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the mortgaged property sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the owner of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon their general credit or against their taxing powers.

(5) The proceedings authorizing the issuance of bonds hereunder may provide for the appointment of a trustee or trustees for the protection of the owners of the bonds, whether or not a mortgage is entered into as security for such bonds. Any such trustee may be a bank with trust powers or a trust company and shall be located in the United States, within or without the state of Washington, shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank (including the trustee) which are continuously secured by such obligations of or guaranteed by the United States. Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued hereunder to the same extent as if it were not such trustee. Said proceedings may provide for one or more co-

trustees, and any co-trustee may be any competent individual over the age of twenty-one years or a bank having trust powers or trust company within or without the state. The proceedings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, of any insurance policy or of any condemnation award be deposited with the trustee or a co-trustee and applied as provided in said proceedings. [1983 c 167 § 175; 1973 c 132 § 6.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

70.95A.060 Facilities—Leases authorized. Prior to the issuance of the bonds authorized by this chapter, the municipality may lease the facilities to a lessee or lessees under an agreement providing for payment to the municipality of such rentals as will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the facilities, (b) to pay the taxes on the facilities, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the facilities, to pay the costs of maintaining the facilities in good repair and keeping the same properly insured. Subject to the limitations of this chapter, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities, such lease may contain an option for the lessees to purchase the facilities on such terms and conditions with or without consideration as may be mutually acceptable to the parties. [1973 c 132 § 7.]

70.95A.070 Facilities—Revenue bonds—Refunding provisions. Any bonds issued under the provisions of this chapter and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith: PROVIDED, That an issue of refunding bonds may be combined with an issue of additional revenue bonds on any facilities. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: PROVIDED FURTHER, That the owners of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange except on the terms expressed on the face thereof. Any refunding bonds issued under the authority of this chapter shall be subject to the provisions contained in RCW 70.95A.040 and may be secured in accordance with the provisions of RCW 70.95A.050. [1983 c 167 § 176; 1973 c 132 § 8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

70.95A.080 Revenue bonds—Disposition of proceeds. The proceeds from the sale of any bonds issued under authority of this chapter shall be applied only for the purpose for which the bonds were issued: PROVIDED, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: AND PROVIDED FURTHER, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any facilities shall be deemed to include the following: The actual cost of acquiring or improving real estate for any facilities; the actual cost of construction of all or any part of the facilities which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvements; and the interest on such bonds for a reasonable time prior to construction, during construction, and for a time not exceeding six months after completion of construction. [1973 c 132 § 9.]

70.95A.090 Facilities—Sale or lease—Certain restrictions on municipalities not applicable. The facilities shall be constructed, reconstructed, and improved and shall be leased, sold or otherwise disposed of in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of a municipality is not applicable to any action taken under authority of this chapter. [1973 c 132 § 10.]

70.95A.100 Facilities—Department of ecology certification. Upon request by a municipality or by a user of the facilities the department of ecology may in relation to chapter 54, Laws of 1972 ex. sess. and this chapter issue its certificate stating that the facilities (1) as designed are in furtherance of the purpose of abating, controlling or preventing pollution, and/or (2) as designed or as operated meet state and local requirements for the control of pollution. This section shall not be construed as modifying the provisions of RCW 82.34.030; chapter 70.94 RCW; or chapter 90.48 RCW. [1973 c 132 § 11.]

70.95A.910 Construction—1973 c 132. Nothing in this chapter shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative. [1973 c 132 § 12.]

70.95A.912 Construction—1975 c 6. This 1975 amendatory act shall be liberally construed to accomplish the intention expressed herein. [1975 c 6 § 6.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

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70.95A.920 Severability—1973 c 132. If any provision of this 1973 act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this 1973 act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1973 c 132 § 13.]

70.95A.930 Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations. All acquisitions by port districts pursuant to RCW 53.08.040 may, at the option of a port commission, be deemed to be made under this chapter, or under both: PROVIDED, That nothing contained in this chapter shall impair rights or obligations under contracts entered into before March 19, 1973. [1973 c 132 § 14.]

70.95A.940 Severability—1975 c 6. If any provision of this 1975 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this 1975 amendatory act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1975 c 6 § 7.]

Chapter 70.95B RCW

DOMESTIC WASTE TREATMENT PLANTS—OPERATORS

Sections

- 70.95B.010 Legislative declaration.
- 70.95B.020 Definitions.
- 70.95B.030 Wastewater treatment plant operators—Certification required.
- 70.95B.040 Administration of chapter—Rules and regulations—Director's duties.
- 70.95B.050 Wastewater treatment plants—Classification.
- 70.95B.060 Criteria and guidelines.
- 70.95B.071 Ad hoc advisory committees.
- 70.95B.080 Certificates—When examination not required.
- 70.95B.090 Certificates—Issuance and renewal conditions.
- 70.95B.095 Certificates—Fees.
- 70.95B.100 Certificates—Revocation procedures.
- 70.95B.110 Administration of chapter—Powers and duties of director.
- 70.95B.115 Licenses or certificates—Suspension for noncompliance with support order—Reissuance.
- 70.95B.120 Violations.
- 70.95B.130 Certificates—Reciprocity with other states.
- 70.95B.140 Penalties for violations—Injunctions.
- 70.95B.150 Administration of chapter—Receipts—Payment to general fund.
- 70.95B.900 Effective date—1973 c 139.

Reviser's note: Chapter 139, Laws of 1973 has been codified as chapter 70.95B RCW to conform with code organization. Section 16 of chapter 139 had directed that the chapter be added to Title 43 RCW.

Public water supply systems—Certification and regulation of operators: Chapter 70.119 RCW.

70.95B.010 Legislative declaration. The legislature declares that competent operation of waste treatment plants plays an important part in the protection of the environment of the state and therefore it is of vital interest to the public. In order to protect the public health and to conserve and protect the water resources of the state, it is necessary to provide for the classifying of all domestic wastewater treatment plants; to require the examination and certification of the persons responsible for the supervision and operation of such systems

tems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1973 c 139 § 1.]

70.95B.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Director" means the director of the department of ecology.

(2) "Department" means the department of ecology.

(3) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(4) "Wastewater treatment plant" means a facility used to treat any liquid or waterborne waste of domestic origin or a combination of domestic, commercial or industrial origin, and which by its design requires the presence of an operator for its operation. It shall not include any facility used exclusively by a single family residence, septic tanks with subsoil absorption, industrial wastewater treatment plants, or wastewater collection systems.

(5) "Operator in responsible charge" means an individual who is designated by the owner as the person on-site in responsible charge of the routine operation of a wastewater treatment plant.

(6) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(7) "Wastewater collection system" means any system of lines, pipes, manholes, pumps, liftstations, or other facilities used for the purpose of collecting and transporting wastewater.

(8) "Operating experience" means routine performance of duties, on-site in a wastewater treatment plant, that affects plant performance or effluent quality.

(9) "Owner" means in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chairman of the county legislative authority or the chairman's designee; in the case of a water-sewer district, board of public utilities, association, municipality or other public body, the president or chairman of the body or the president's or chairman's designee; in the case of a privately owned wastewater treatment plant, the legal owner.

(10) "Wastewater certification program coordinator" means an employee of the department who administers the wastewater treatment plant operators' certification program. [1999 c 153 § 66; 1995 c 269 § 2901; 1987 c 357 § 1; 1973 c 139 § 2.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.030 Wastewater treatment plant operators—Certification required. As provided for in this chapter, the individual on-site at a wastewater treatment plant who is designated by the owner as the operator in responsible charge of the operation and maintenance of the plant on a routine basis shall be certified at a level equal to or higher than the classification rating of the plant being operated.

If a wastewater treatment plant is operated on more than one daily shift, the operator in charge of each shift shall be certified at a level no lower than one level lower than the classification rating of the plant being operated and shall be subordinate to the operator in responsible charge who is certified at a level equal to or higher than the plant. This requirement for shift operator certification shall be met by January 1, 1989.

Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1987 c 357 § 2; 1973 c 139 § 3.]

70.95B.040 Administration of chapter—Rules and regulations—Director's duties. The director shall adopt and enforce such rules and regulations as may be necessary for the administration of this chapter. The rules and regulations shall include, but not be limited to, provisions for the qualification and certification of operators for different classifications of wastewater treatment plants. [1995 c 269 § 2902; 1987 c 357 § 3; 1973 c 139 § 4.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.050 Wastewater treatment plants—Classification. The director shall classify all wastewater treatment plants with regard to the size, type, and other conditions affecting the complexity of such treatment plants and the skill, knowledge, and experience required of an operator to operate such facilities to protect the public health and the state's water resources. [1987 c 357 § 4; 1973 c 139 § 5.]

70.95B.060 Criteria and guidelines. The director is authorized when taking action pursuant to RCW 70.95B.040 and 70.95B.050 to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1973 c 139 § 6.]

70.95B.071 Ad hoc advisory committees. The director, in cooperation with the secretary of health, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the examination and certification of operators of wastewater treatment plants. [1995 c 269 § 2908.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.080 Certificates—When examination not required. Certificates shall be issued without examination under the following conditions:

(1) Certificates, in appropriate classifications, shall be issued without application fee to operators who, on July 1,

1973, hold certificates of competency attained by examination under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest pollution control association.

(2) Certificates, in appropriate classifications, shall be issued to persons certified by a governing body or owner to have been the operator in responsible charge of a waste treatment plant on July 1, 1973. A certificate so issued will be valid only for the existing plant.

(3) A nonrenewable certificate, temporary in nature, may be issued for a period not to exceed twelve months, to an operator who fills a vacated position required to be filled by a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1987 c 357 § 5; 1973 c 139 § 8.]

70.95B.090 Certificates—Issuance and renewal conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) A certificate shall be issued if the operator has satisfactorily passed a written examination, or has met the requirements of RCW 70.95B.080, and has met the requirements specified in the rules and regulations as authorized by this chapter, and has paid the department an application fee. Such application fee shall not exceed fifty dollars.

(2) The term for all certificates shall be from the first of January of the year of issuance until the thirty-first of December of the renewal year. The renewal period, not to exceed three years, shall be set by agency rule. Every certificate shall be renewed upon the payment of a renewal fee and satisfactory evidence presented to the director that the operator demonstrates continued professional growth in the field. Such renewal fee shall not exceed thirty dollars.

(3) Individuals who fail to renew their certificates before December 31 of the renewal year, upon notice by the director shall have their certificates suspended for sixty days. If, during the suspension period, the renewal is not completed, the director shall give notice of revocation to the employer and to the operator and the certificate will be revoked ten days after such notice is given. An operator whose certificate has been revoked must reapply for certification and will be requested to meet the requirements of a new applicant. [1987 c 357 § 6; 1973 c 139 § 9.]

70.95B.095 Certificates—Fees. Effective January 1, 1988, the department shall establish rules for the collection of fees for the issuance and renewal of certificates as provided for in RCW 70.95B.090. Beginning January 1, 1992, these fees shall be sufficient to recover the costs of the certification program. [1987 c 357 § 9.]

70.95B.100 Certificates—Revocation procedures. The director may, after conducting a hearing, revoke a certificate found to have been obtained by fraud or deceit, or for gross negligence in the operation of a waste treatment plant, or for violating the requirements of this chapter or any lawful rule, order or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of

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this final order or revocation. [1995 c 269 § 2903; 1973 c 139 § 10.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.110 Administration of chapter—Powers and duties of director. To carry out the provisions and purposes of this chapter, the director is authorized and empowered to:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the director deems appropriate with other state, federal, or interstate agencies, municipalities, education institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government and other public or private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, education institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out the provisions of this chapter. [1987 c 357 § 7; 1973 c 139 § 11.]

70.95B.115 Licenses or certificates—Suspension for noncompliance with support order—Reissuance. The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 876.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

70.95B.120 Violations. On and after one year following July 1, 1973, it shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a wastewater treatment plant unless the individuals identified in RCW 70.95B.030 are duly certified by the director under the provisions of this chapter or any lawful rule, order, or regulation of the department. It

shall also be unlawful for any person to perform the duties of an operator as defined in this chapter, or in any lawful rule, order, or regulation of the department, without being duly certified under the provisions of this chapter. [1987 c 357 § 8; 1973 c 139 § 12.]

70.95B.130 Certificates—Reciprocity with other states. On or after July 1, 1973, certification of operators by any state which, as determined by the director, accepts certifications made or certification requirements deemed satisfied pursuant to the provisions of this chapter, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this chapter, if in the judgment of the director the certification requirements of such state are substantially equivalent to the requirements of this chapter or any rules or regulations promulgated hereunder.

In making determinations pursuant to this section, the director shall consult with the *board and may consider any generally applicable criteria and guidelines developed by the nationally recognized association of certification authorities. [1973 c 139 § 13.]

***Reviser's note:** RCW 70.95B.070, which created the water and wastewater operator certification board of examiners, was repealed by 1995 c 269 § 2907, effective July 1, 1995.

70.95B.140 Penalties for violations—Injunctions. Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency violating any provisions of this chapter or the rules and regulations adopted hereunder, is guilty of a misdemeanor. Each day of operation in such violation of this chapter or any rules or regulations adopted hereunder shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate, to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereunder. [1973 c 139 § 14.]

70.95B.150 Administration of chapter—Receipts—Payment to general fund. All receipts realized in the administration of this chapter shall be paid into the general fund. [1973 c 139 § 15.]

70.95B.900 Effective date—1973 c 139. This 1973 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973. [1973 c 139 § 17.]

Chapter 70.95C RCW WASTE REDUCTION

Sections

70.95C.010	Legislative findings.
70.95C.020	Definitions.
70.95C.030	Office of waste reduction—Duties.
70.95C.040	Waste reduction and hazardous substance use reduction consultation program.
70.95C.050	Waste reduction techniques—Workshops and seminars.
70.95C.060	Waste reduction hot line—Database system.

70.95C.070	Waste reduction research and development program—Contracts.
70.95C.080	Director's authority.
70.95C.110	Waste reduction and recycling program to promote activities by state agencies—Recycled paper goal.
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70.95C.250	Multimedia permit pilot program—Air, water, hazardous waste management.

70.95C.010 Legislative findings. The legislature finds that land disposal and incineration of solid and hazardous waste can be both harmful to the environment and costly to those who must dispose of the waste. In order to address this problem in the most cost-effective and environmentally sound manner, and to implement the highest waste management priority as articulated in RCW 70.95.010 and 70.105.150, public and private efforts should focus on reducing the generation of waste. Waste reduction can be achieved by encouraging voluntary efforts to redesign industrial, commercial, production, and other processes to result in the reduction or elimination of waste byproducts and to maximize the in-process reuse or reclamation of valuable spent material.

In the interest of protecting the public health, safety, and the environment, the legislature declares that it is the policy of the state of Washington to encourage reduction in the use of hazardous substances and reduction in the generation of hazardous waste whenever economically and technically practicable.

The legislature finds that hazardous wastes are generated by numerous different sources including, but not limited to, large and small business, households, and state and local government. The legislature further finds that a goal against which efforts at waste reduction may be measured is essential for an effective hazardous waste reduction program. The Pacific Northwest hazardous waste advisory council has endorsed a goal of reducing, through hazardous substance use reduction and waste reduction techniques, the generation of hazardous waste by fifty percent by 1995. The legislature adopts this as a policy goal for the state of Washington. The legislature recognizes that many individual businesses have already reduced the generation of hazardous waste through appropriate hazardous waste reduction techniques. The legislature also recognizes that there are some basic industrial processes which by their nature have limited potential for significantly reducing the use of certain raw materials or substantially reducing the generation of hazardous wastes. Therefore, the goal of reducing hazardous waste generation by fifty percent cannot be applied as a regulatory requirement. [1990 c 114 § 1; 1988 c 177 § 1.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or the director's designee.

(3) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall specifically include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.

(4) "EPA/state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

(5) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

(6) "Fee" means the annual hazardous waste fees imposed under RCW 70.95E.020 and 70.95E.030.

(7) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(8) "Hazardous substance" means any hazardous substance listed as a hazardous substance as of March 21, 1990, pursuant to section 313 of Title III of the Superfund Amendments and Reauthorization Act, any other substance determined by the director by rule to present a threat to human health or the environment, and all ozone depleting compounds as defined by the Montreal Protocol of October 1987.

(9)(a) "Hazardous substance use reduction" means the reduction, avoidance, or elimination of the use or production of hazardous substances without creating substantial new risks to human health or the environment.

(b) "Hazardous substance use reduction" includes proportionate changes in the usage of hazardous substances as the usage of a hazardous substance or hazardous substances changes as a result of production changes or other business changes.

(10) "Hazardous substance user" means any facility required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act, except for those facilities which only distribute or use fertilizers or pesticides intended for commercial agricultural applications.

(11) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes, but does not include radioactive wastes or a substance composed of both radioactive and hazardous components and does not include any hazardous waste generated as a result of a remedial action under state or federal law.

(12) "Hazardous waste generator" means any person generating hazardous waste regulated by the department.

(13) "Office" means the office of waste reduction.

(14) "Plan" means the plan provided for in RCW 70.95C.200.

(15) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government, including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(16) "Process" means all industrial, commercial, production, and other processes that result in the generation of waste.

(17) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(18) "Recycling" means reusing waste materials and extracting valuable materials from a waste stream. Recycling does not include burning for energy recovery.

(19) "Treatment" means the physical, chemical, or biological processing of waste to render it completely innocuous, produce a recyclable by-product, reduce toxicity, or substantially reduce the volume of material requiring disposal as described in the priorities established in RCW 70.105.150. Treatment does not include incineration.

(20) "Used oil" means (a) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; (b) any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and (c) any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

(21) "Waste" means any solid waste as defined under RCW 70.95.030, any hazardous waste, any air contaminant as defined under RCW 70.94.030, and any organic or inorganic matter that shall cause or tend to cause water pollution as defined under RCW 90.48.020.

(22) "Waste generator" means any individual, business, government agency, or any other organization that generates waste.

(23) "Waste reduction" means all in-plant practices that reduce, avoid, or eliminate the generation of wastes or the toxicity of wastes, prior to generation, without creating substantial new risks to human health or the environment. As used in RCW 70.95C.200 through 70.95C.240, "waste reduction" refers to hazardous waste only. [1991 c 319 § 313; 1990 c 114 § 2; 1988 c 177 § 2.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.030 Office of waste reduction—Duties. (1)

There is established in the department an office of waste reduction. The office shall use its authorities to encourage the voluntary reduction of hazardous substance usage and waste generation by waste generators and hazardous substance users. The office shall prepare and submit a quarterly progress report to the director.

(2) The office shall be the coordinating center for all state agency programs that provide technical assistance to waste generators and hazardous substance users and shall serve as the state's lead agency and promoter for such programs. In addition to this coordinating function, the office shall encourage hazardous substance use reduction and waste reduction by:

(a) Providing for the rendering of advice and consultation to waste generators and hazardous substance users on hazardous substance use reduction and waste reduction tech-

niques, including assistance in preparation of plans provided for in RCW 70.95C.200;

(b) Sponsoring or co-sponsoring with public or private organizations technical workshops and seminars on waste reduction and hazardous substance use reduction;

(c) Administering a waste reduction and hazardous substance use reduction database and hot line providing comprehensive referral services to waste generators and hazardous substance users;

(d) Administering a waste reduction and hazardous substance use reduction research and development program;

(e) Coordinating a waste reduction and hazardous substance use reduction public education program that includes the utilization of existing publications from public and private sources, as well as publishing necessary new materials on waste reduction;

(f) Recommending to institutions of higher education in the state courses and curricula in areas related to waste reduction and hazardous substance use reduction; and

(g) Operating an intern program in cooperation with institutions of higher education and other outside resources to provide technical assistance on hazardous substance use reduction and waste reduction techniques and to carry out research projects as needed within the office. [1998 c 245 § 133; 1990 c 114 § 3; 1988 c 177 § 3.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.040 Waste reduction and hazardous substance use reduction consultation program. (1) The office shall establish a waste reduction and hazardous substance use reduction consultation program to be coordinated with other state waste reduction and hazardous substance use reduction consultation programs.

(2) The director may grant a request by any waste generator or hazardous substance user for advice and consultation on waste reduction and hazardous substance use reduction techniques and assistance in preparation or modification of a plan, executive summary, or annual progress report, or assistance in the implementation of a plan required by RCW 70.95C.200. Pursuant to a request from a facility such as a business, governmental entity, or other process site in the state, the director may visit the facility making the request for the purposes of observing hazardous substance use and the waste-generating process, obtaining information relevant to waste reduction and hazardous substance use reduction, rendering advice, and making recommendations. No such visit may be regarded as an inspection or investigation, and no notices or citations may be issued, or civil penalty be assessed, upon such a visit. A representative of the director providing advisory or consultative services under this section may not have any enforcement authority.

(3) Consultation and advice given under this section shall be limited to the matters specified in the request and shall include specific techniques of waste reduction and hazardous substance use reduction tailored to the relevant process. In granting any request for advisory or consultative services, the director may provide for an alternative means of affording consultation and advice other than on-site consultation.

(4) Any proprietary information obtained by the director while carrying out the duties required under this section shall remain confidential and shall not be publicized or become part of the database established under RCW 70.95C.060 without written permission of the requesting party. [1990 c 114 § 5; 1988 c 177 § 4.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.050 Waste reduction techniques—Workshops and seminars. The office, in coordination with all other state waste reduction technical assistance programs, shall sponsor technical workshops and seminars on waste reduction techniques that have been successfully used to eliminate or reduce substantially the amount of waste or toxicity of hazardous waste generated, or that use in-process reclamation or reuse of spent material. [1988 c 177 § 5.]

70.95C.060 Waste reduction hot line—Database system. (1) The office shall establish a statewide waste reduction hot line with the capacity to refer waste generators and the public to sources of information on specific waste reduction techniques and procedures. The hot line shall coordinate with all other state waste hot lines.

(2) The director shall work with the state library to establish a database system that shall include proven waste reduction techniques and case studies of effective waste reduction. The database system shall be: (a) Coordinated with all other state agency databases on waste reduction; (b) administered in conjunction with the statewide waste reduction hot line; and (c) readily accessible to the public. [1988 c 177 § 6.]

70.95C.070 Waste reduction research and development program—Contracts. (1) The office may administer a waste reduction research and development program. The director may contract with any public or private organization for the purpose of developing methods and technologies that achieve waste reduction. All research performed and all methods or technologies developed as a result of a contract entered into under this section shall become the property of the state and shall be incorporated into the database system established under RCW 70.95C.060.

(2) Any contract entered into under this section shall be awarded only after requests for proposals have been circulated to persons, firms, or organizations who have requested that their names be placed on a proposal list. The director shall establish a proposal list and shall review and evaluate all proposals received. [1988 c 177 § 7.]

70.95C.080 Director's authority. (1) The director may solicit and accept gifts, grants, conveyances, bequests, and devises, in trust or otherwise, to be directed to the office of waste reduction.

(2) The director may enter into contracts with any public or private organization to carry out the purposes of this chapter. [1988 c 177 § 8.]

70.95C.110 Waste reduction and recycling program to promote activities by state agencies—Recycled paper goal. The legislature finds and declares that the buildings and facilities owned and leased by state government produce

significant amounts of solid and hazardous wastes, and actions must be taken to reduce and recycle these wastes and thus reduce the costs associated with their disposal. In order for the operations of state government to provide the citizens of the state an example of positive waste management, the legislature further finds and declares that state government should undertake an aggressive program designed to reduce and recycle solid and hazardous wastes produced in the operations of state buildings and facilities to the maximum extent possible.

The office of waste reduction, in cooperation with the department of general administration, shall establish an intensive waste reduction and recycling program to promote the reduction of waste produced by state agencies and to promote the source separation and recovery of recyclable and reusable materials.

All state agencies, including but not limited to, colleges, community colleges, universities, offices of elected and appointed officers, the supreme court, court of appeals, and administrative departments of state government shall fully cooperate with the office of waste reduction and recycling in all phases of implementing the provisions of this section. The office shall establish a coordinated state plan identifying each agency's participation in waste reduction and recycling. The office shall develop the plan in cooperation with a multi-agency committee on waste reduction and recycling. Appointments to the committee shall be made by the director of the department of general administration. The director shall notify each agency of the committee, which shall implement the applicable waste reduction and recycling plan elements. All state agencies are to use maximum efforts to achieve a goal of increasing the use of recycled paper by fifty percent by July 1, 1993. [1989 c 431 § 53.]

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

70.95C.120 Waste reduction and recycling awards program in K-12 public schools—Encouraging waste reduction and recycling in private schools. The office of waste reduction shall develop, in consultation with the superintendent of public instruction, an awards program to achieve waste reduction and recycling in public schools, and to encourage waste reduction and recycling in private schools, grades kindergarten through high school. The office shall develop guidelines for program development and implementation. Each public school shall, and each private school may, implement a waste reduction and recycling program conforming to guidelines developed by the office.

For the purpose of granting awards, the office may group all participating schools into not more than three classes, based upon student population, distance to markets for recyclable materials, and other criteria, as deemed appropriate by the office. Except as otherwise provided, five or more awards may be granted to each of the three classes. Each award shall be no more than five thousand dollars. Awards shall be granted each year to the schools that achieve the greatest levels of waste reduction and recycling. A single award of not less than five thousand dollars may be presented to the school having the best recycling program as measured by the total amount of materials recycled, including materials generated outside of the school. A single award of not less

than five thousand dollars may be presented to the school having the best waste reduction program as determined by the office.

The superintendent of public instruction shall distribute guidelines and other materials developed by the office to implement programs to reduce and recycle waste generated in administrative offices, classrooms, laboratories, cafeterias, and maintenance operations. [2008 c 178 § 1; 1991 c 319 § 114; 1989 c 431 § 54.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

70.95C.200 Hazardous waste generators and users—Voluntary reduction plan. (1) Each hazardous waste generator who generates more than two thousand six hundred forty pounds of hazardous waste per year and each hazardous substance user, except for those facilities that are primarily permitted treatment, storage, and disposal facilities or recycling facilities, shall prepare a plan for the voluntary reduction of the use of hazardous substances and the generation of hazardous wastes. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculation of hazardous waste generated for purposes of this section. The department may develop reporting requirements, consistent with existing reporting, to establish recycling for beneficial use under this section. Used oil to be re-refined or burned for energy or heat recovery shall not be used in the calculation of hazardous wastes generated for purposes of this section, and is not required to be addressed by plans prepared under this section. A person with multiple interrelated facilities where the processes in the facilities are substantially similar, may prepare a single plan covering one or more of those facilities.

(2) Each user or generator required to write a plan is encouraged to advise its employees of the planning process and solicit comments or suggestions from its employees on hazardous substance use and waste reduction options.

(3) The department shall adopt by April 1, 1991, rules for preparation of plans. The rules shall require the plan to address the following options, according to the following order of priorities: Hazardous substance use reduction, waste reduction, recycling, and treatment. In the planning process, first consideration shall be given to hazardous substance use reduction and waste reduction options. Consideration shall be given next to recycling options. Recycling options may be considered only after hazardous substance use reduction options and waste reduction options have been thoroughly researched and shown to be inappropriate. Treatment options may be considered only after hazardous substance use reduction, waste reduction, and recycling options have been thoroughly researched and shown to be inappropriate. Documentation of the research shall be available to the department upon request. The rules shall also require the plans to discuss the hazardous substance use reduction, waste reduction, and closed loop recycling options separately from other recycling and treatment options. All plans shall be written in conformance with the format prescribed in the rules adopted under

this section. The rules shall require the plans to include, but not be limited to:

(a) A written policy articulating management and corporate support for the plan and a commitment to implementing planned activities and achieving established goals;

(b) The plan scope and objectives;

(c) Analysis of current hazardous substance use and hazardous waste generation, and a description of current hazardous substance use reduction, waste reduction, recycling, and treatment activities;

(d) An identification of further hazardous substance use reduction, waste reduction, recycling, and treatment opportunities, and an analysis of the amount of hazardous substance use reduction and waste reduction that would be achieved, and the costs. The analysis of options shall demonstrate that the priorities provided for in this section have been followed;

(e) A selection of options to be implemented in accordance with the priorities established in this section;

(f) An analysis of impediments to implementing the options. Impediments that shall be considered acceptable include, but are not limited to: Adverse impacts on product quality, legal or contractual obligations, economic practicality, and technical feasibility;

(g) A written policy stating that in implementing the selected options, whenever technically and economically practicable, risks will not be shifted from one part of a process, environmental media, or product to another;

(h) Specific performance goals in each of the following categories, expressed in numeric terms:

(i) Hazardous substances to be reduced or eliminated from use;

(ii) Wastes to be reduced or eliminated through waste reduction techniques;

(iii) Materials or wastes to be recycled; and

(iv) Wastes to be treated;

If the establishment of numeric performance goals is not practicable, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as is practicable. Goals shall be set for a five-year period from the first reporting date;

(i) A description of how the wastes that are not recycled or treated and the residues from recycling and treatment processes are managed may be included in the plan;

(j) Hazardous substance use and hazardous waste accounting systems that identify hazardous substance use and waste management costs and factor in liability, compliance, and oversight costs;

(k) A financial description of the plan;

(l) Personnel training and employee involvement programs;

(m) A five-year plan implementation schedule;

(n) Documentation of hazardous substance use reduction and waste reduction efforts completed before or in progress at the time of the first reporting date; and

(o) An executive summary of the plan, which shall include, but not be limited to:

(i) The information required by (c), (e), (h), and (n) of this subsection; and

(ii) A summary of the information required by (d) and (f) of this subsection.

(4) Upon completion of a plan, the owner, chief executive officer, or other person with the authority to commit management to the plan shall sign and submit an executive summary of the plan to the department.

(5) Plans shall be completed and executive summaries submitted in accordance with the following schedule:

(a) Hazardous waste generators who generated more than fifty thousand pounds of hazardous waste in calendar year 1991 and hazardous substance users who were required to report in 1991, by September 1, 1992;

(b) Hazardous waste generators who generated between seven thousand and fifty thousand pounds of hazardous waste in calendar year 1992 and hazardous substance users who were required to report for the first time in 1992, by September 1, 1993;

(c) Hazardous waste generators who generated between two thousand six hundred forty and seven thousand pounds of hazardous waste in 1993 and hazardous substance users who were required to report for the first time in 1993, by September 1, 1994;

(d) Hazardous waste generators who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they generate more than two thousand six hundred forty pounds of hazardous waste; and

(e) Hazardous substance users who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they are required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act.

(6) Annual progress reports, including a description of the progress made toward achieving the specific performance goals established in the plan, shall be prepared and submitted to the department in accordance with rules developed under this section. Upon the request of two or more users or generators belonging to similar industrial classifications, the department may aggregate data contained in their annual progress reports for the purpose of developing a public record.

(7) Every five years, each plan shall be updated, and a new executive summary shall be submitted to the department. [1991 c 319 § 314; 1990 c 114 § 6.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.210 Voluntary reduction plan—Exemption.

A person required to prepare a plan under RCW 70.95C.200 because of the quantity of hazardous waste generated may petition the director to be excused from this requirement. The person must demonstrate to the satisfaction of the director that the quantity of hazardous waste generated was due to unique circumstances not likely to be repeated and that the person is unlikely to generate sufficient hazardous waste to require a plan in the next five years. [1990 c 114 § 7.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.220 Voluntary reduction plan, executive summary, or progress report—Department review. (1)

The department may review a plan, executive summary, or an annual progress report to determine whether the plan, executive summary, or annual progress report is adequate pursuant to the rules developed under this section and with the provisions of RCW 70.95C.200. In determining the adequacy of any plan, executive summary, or annual progress report, the department shall base its determination solely on whether the plan, executive summary, or annual progress report is complete and prepared in accordance with the provisions of RCW 70.95C.200.

(2) Plans developed under RCW 70.95C.200 shall be retained at the facility of the hazardous substance user or hazardous waste generator preparing a plan. The plan is not a public record under the public records act, chapter 42.56 RCW. A user or generator required to prepare a plan shall permit the director or a representative of the director to review the plan to determine its adequacy. No visit made by the director or a representative of the director to a facility for the purposes of this subsection may be regarded as an inspection or investigation, and no notices or citations may be issued, nor any civil penalty assessed, upon such a visit.

(3) If a hazardous substance user or hazardous waste generator fails to complete an adequate plan, executive summary, or annual progress report, the department shall notify the user or generator of the inadequacy, identifying specific deficiencies. For the purposes of this section, a deficiency may include failure to develop a plan, failure to submit an executive summary pursuant to the schedule provided in RCW 70.95C.200(5), and failure to submit an annual progress report pursuant to the rules developed under RCW 70.95C.200(6). The department shall specify a reasonable time frame, of not less than ninety days, within which the user or generator shall complete a modified plan, executive summary, or annual progress report addressing the specified deficiencies.

(4) If the department determines that a modified plan, executive summary, or annual progress report is inadequate, the department may, within its discretion, either require further modification or enter an order pursuant to subsection (5)(a) of this section.

(5)(a) If, after having received a list of specified deficiencies from the department, a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete modification of a plan, executive summary, or annual progress report within the time period specified by the department, the department may enter an order pursuant to chapter 34.05 RCW finding the user or generator not in compliance with the requirements of RCW 70.95C.200. When the order is final, the department shall notify the department of revenue to charge a penalty fee. The penalty fee shall be the greater of one thousand dollars or three times the amount of the user's or generator's previous year's fee, in addition to the current year's fee. If no fee was assessed the previous year, the penalty shall be the greater of one thousand dollars or three times the amount of the current year's fee. The penalty assessed under this subsection shall be collected each year after the year for which the penalty was assessed until an adequate plan or executive summary is completed.

(b) If a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete an adequate plan, executive summary, or annual progress report

after the department has levied against the user or generator the penalty provided in (a) of this subsection, the user or generator shall be required to pay a surcharge to the department whenever the user or generator disposes of a hazardous waste at any hazardous waste incinerator or hazardous waste landfill facility located in Washington state, until a plan, executive summary, or annual progress report is completed and determined to be adequate by the department. The surcharge shall be equal to three times the fee charged for disposal. The department shall furnish the incinerator and landfill facilities in this state with a list of environmental protection agency/state identification numbers of the hazardous waste generators that are not in compliance with the requirements of RCW 70.95C.200. [2005 c 274 § 338; 1990 c 114 § 8.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.230 Appeal of department order or surcharge. A user or generator may appeal from a department order or a surcharge under RCW 70.95C.220 to the pollution control hearings board pursuant to chapter 43.21B RCW. [1990 c 114 § 9.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.240 Public inspection of plans, summaries, progress reports. (1) The department shall make available for public inspection any executive summary or annual progress report submitted to the department. Any hazardous substance user or hazardous waste generator required to prepare an executive summary or annual progress report who believes that disclosure of any information contained in the executive summary or annual progress report may adversely affect the competitive position of the user or generator may request the department pursuant to RCW 43.21A.160 to delete from the public record those portions of the executive summary or annual progress report that may affect the user's or generator's competitive position. The department shall not disclose any information contained in an executive summary or annual progress report pending a determination of whether the department will delete any information contained in the report from the public record.

(2) Any ten persons residing within ten miles of a hazardous substance user or hazardous waste generator required to prepare a plan may file with the department a petition requesting the department to examine a plan to determine its adequacy. The department shall report its determination of adequacy to the petitioners and to the user or generator within a reasonable time. The department may deny a petition if the department has within the previous year determined the plan of the user or generator named in the petition to be adequate.

(3) The department shall maintain a record of each plan, executive summary, or annual progress report it reviews, and a list of all plans, executive summaries, or annual progress reports the department has determined to be inadequate, including descriptions of corrective actions taken. This information shall be made available to the public. [1990 c 114 § 10.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.250 Multimedia permit pilot program—Air, water, hazardous waste management. (1) Not later than January 1, 1995, the department shall designate an industry type and up to ten individual facilities within that industry type to be the focus of a pilot multimedia program. The program shall be designed to coordinate department actions related to environmental permits, plans, approvals, certificates, registrations, technical assistance, and inspections. The program shall also investigate the feasibility of issuing facility-wide permits. The director shall determine the industry type and facilities based on:

- (a) A review of at least three industry types; and
- (b) Criteria which shall include at least the following factors:
 - (i) The potential for the industry to serve as a statewide model for multimedia environmental programs including pollution prevention;
 - (ii) Whether the industry type is subject to regulatory requirements relating to at least two of the following subject areas: Air quality, water quality, or hazardous waste management;
 - (iii) The existence within the industry type of a range of business sizes; and
 - (iv) Voluntary participation in the program.

(2) In developing the program, the department shall consult with and seek the cooperation of the environmental protection agency.

(3) For purposes of this section, "facility-wide permit" means a single multimedia permit issued by the department to the owner or operator of a facility incorporating the permits and any other relevant department approvals previously issued to the owner or operator or currently required by the department. [1998 c 245 § 134; 1994 c 248 § 1.]

Conflict with federal requirements—1994 c 248: "If any part of this act is found to be in conflict with federal requirements, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned." [1994 c 248 § 5.]

Chapter 70.95D RCW

SOLID WASTE INCINERATOR AND LANDFILL OPERATORS

Sections

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70.95D.110	Deposit of receipts.
70.95D.900	Severability—1989 c 431.
70.95D.901	Section captions not law—1989 c 431.

70.95D.010 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology.

(4) "Incinerator" means a facility which has the primary purpose of burning or which is designed with the primary purpose of burning solid waste or solid waste derived fuel, but excludes facilities that have the primary purpose of burning hog fuel.

(5) "Landfill" means a landfill as defined under RCW 70.95.030.

(6) "Owner" means, in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chief elected official of the county legislative authority or the chief elected official's designee; in the case of a board of public utilities, association, municipality, or other public body, the president or chief elected official of the body or the president's or chief elected official's designee; in the case of a privately owned landfill or incinerator, the legal owner.

(7) "Solid waste" means solid waste as defined under RCW 70.95.030. [1995 c 269 § 2801; 1989 c 431 § 65.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95D.020 Incineration facilities—Owner and operator certification requirements. (1) By January 1, 1992, the owner or operator of a solid waste incineration facility shall employ a certified operator. At a minimum, the individual on-site at a solid waste incineration facility who is designated by the owner as the operator in responsible charge of the operation and maintenance of the facility on a routine basis shall be certified by the department.

(2) If a solid waste incinerator is operated on more than one daily shift, the operator in charge of each shift shall be certified.

(3) Operators not required to be certified are encouraged to become certified on a voluntary basis.

(4) The department shall adopt and enforce such rules as may be necessary for the administration of this section. [1989 c 431 § 66.]

70.95D.030 Landfills—Owner and operator certification requirements. (1) By January 1, 1992, the owner or operator of a landfill shall employ a certified landfill operator.

(2) For each of the following types of landfills defined in existing regulations: Inert, demolition waste, problem waste, and municipal solid waste, the department shall adopt rules classifying all landfills in each class. The factors to be considered in the classification shall include, but not be limited to, the type and amount of waste in place and projected to be disposed of at the site, whether the landfill currently meets state and federal operating criteria, the location of the landfill, and such other factors as may be determined to affect the skill, knowledge, and experience required of an operator to

operate the landfill in a manner protective of human health and the environment.

(3) The rules shall identify the landfills in each class in which the owner or operator will be required to employ a certified landfill operator who is on-site at all times the landfill is operating. At a minimum, the rule shall require that owners and operators of landfills are required to employ a certified landfill operator who is on call at all times the landfill is operating. [1989 c 431 § 67.]

70.95D.040 Certification process—Suspension of license or certificate for noncompliance with support order. (1) The department shall establish a process to certify incinerator and landfill operators. To the greatest extent possible, the department shall rely on the certification standards and procedures developed by national organizations and the federal government.

(2) Operators shall be certified if they:

- (a) Attend the required training sessions;
- (b) Successfully complete required examinations; and
- (c) Pay the prescribed fee.

(3) By January 1, 1991, the department shall adopt rules to require incinerator and appropriate landfill operators to:

(a) Attend a training session concerning the operation of the relevant type of landfill or incinerator;

(b) Demonstrate sufficient skill and competency for proper operation of the incinerator or landfill by successfully completing an examination prepared by the department; and

(c) Renew the certificate of competency at reasonable intervals established by the department.

(4) The department shall provide for the collection of fees for the issuance and renewal of certificates. These fees shall be sufficient to recover the costs of the certification program.

(5) The department shall establish an appeals process for the denial or revocation of a certificate.

(6) The department shall establish a process to automatically certify operators who have received comparable certification from another state, the federal government, a local government, or a professional association.

(7) Upon July 23, 1989, and prior to January 1, 1992, the owner or operator of an incinerator or landfill may apply to the department for interim certification. Operators shall receive interim certification if they:

(a) Have received training provided by a recognized national organization, educational institution, or the federal government that is acceptable to the department; or

(b) Have received individualized training in a manner approved by the department; and

(c) Have successfully completed any required examinations.

(8) No interim certification shall be valid after January 1, 1992, and interim certification shall not automatically qualify operators for certification pursuant to subsections (2) through (4) of this section.

(9) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for rein-

statement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 875; 1989 c 431 § 68.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

70.95D.051 Ad hoc advisory committees. The director may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance on the certification of solid waste incinerator and landfill operators. [1995 c 269 § 2804.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95D.060 Revocation of certification. (1) The director may revoke a certificate:

(a) If it were found to have been obtained by fraud or deceit;

(b) For gross negligence in the operation of a solid waste incinerator or landfill;

(c) For violating the requirements of this chapter or any lawful rule or order of the department; or

(d) If the facility operated by the certified employee is operated in violation of state or federal environmental laws.

(2) A person whose certificate is revoked under this section shall not be eligible to apply for a certificate for one year from the effective date of the final order of revocation. [1995 c 269 § 2802; 1989 c 431 § 70.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95D.070 Certification of inspectors. Any person who is employed by a public agency to inspect the operation of a landfill or a solid waste incinerator to determine the compliance of the facility with state or local laws or rules shall be required to be certified in the same manner as an operator under this chapter. [1989 c 431 § 71.]

70.95D.080 Authority of director. To carry out the provisions and purposes of this chapter, the director may:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the director deems appropriate, with other state, federal, or interstate agencies, municipalities, educational institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government, other public agencies, and private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, other public agencies, or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, educational institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out this chapter.

(6) Adopt rules under chapter 34.05 RCW. [1989 c 431 § 72.]

70.95D.090 Unlawful acts—Variance from requirements. After January 1, 1992, it is unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a solid waste incineration or landfill facility unless the operators are duly certified by the director under this chapter or any lawful rule or order of the department. It is unlawful for any person to perform the duties of an operator without being duly certified under this chapter. The department shall adopt rules that allow the owner or operator of a landfill or solid waste incineration facility to request a variance from this requirement under emergency conditions. The department may impose such conditions as may be necessary to protect human health and the environment during the term of the variance. [1989 c 431 § 73.]

70.95D.100 Penalties. (1) Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, with the exception of incinerator operators, violating any provision of this chapter or the rules adopted under this chapter, is guilty of a misdemeanor.

(2) Any incinerator operator who violates any provision of this chapter is guilty of a gross misdemeanor.

(3) Each day of operation in violation of this chapter or any rules adopted under this chapter shall constitute a separate offense.

(4) The prosecuting attorney or the attorney general, as appropriate, shall secure injunctions of continuing violations of any provisions of this chapter or the rules adopted under this chapter. [2003 c 53 § 356; 1989 c 431 § 74.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.95D.110 Deposit of receipts. All receipts realized in the administration of this chapter shall be paid into the general fund. [1989 c 431 § 75.]

70.95D.900 Severability—1989 c 431. See RCW 70.95.901.

70.95D.901 Section captions not law—1989 c 431. See RCW 70.95.902.

Chapter 70.95E RCW HAZARDOUS WASTE FEES

Sections

70.95E.010	Definitions.
70.95E.020	Hazardous waste generation—Fee.
70.95E.030	Voluntary reduction plan—Fees.
70.95E.040	Fees—Generally.
70.95E.050	Administration of fees.
70.95E.080	Hazardous waste assistance account.
70.95E.090	Technical assistance and compliance education—Grants.
70.95E.100	Exclusion from chapter.
70.95E.900	Severability—1990 c 114.

70.95E.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.

(2) "Department" means the department of ecology.

(3) "EPA/ state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/ or transporter and treatment, storage, and/ or disposal facility.

(4) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

(5) "Fee" means the annual fees imposed under this chapter.

(6) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes but for the purposes of this chapter excludes all radioactive wastes or substances composed of both radioactive and hazardous components.

(8) "Hazardous waste generator" means all persons whose primary business activities are identified by the department to generate any quantity of hazardous waste in the calendar year for which the fee is imposed.

(9) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(10) "Price deflator" means the United States department of commerce bureau of economic analysis, "Implicit Price Deflator for Gross National Product" for "Government Purchases of Goods and Services," for "State and Local Government."

(11) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(12) "Waste generation site" means any geographical area that has been assigned an EPA/ state identification number. [1995 c 207 § 1; 1994 c 136 § 1; 1990 c 114 § 11.]

Effective date—1995 c 207: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 3, 1995]." [1995 c 207 § 5.]

70.95E.020 Hazardous waste generation—Fee. A fee is imposed for the privilege of generating hazardous waste in the state. The annual amount of the fee shall be thirty-five dollars upon every hazardous waste generator doing business in Washington in the current calendar year or any part thereof. This fee shall be collected by the department or its designee. A hazardous waste generator shall be exempt from the fee imposed under this section if the value of products, gross proceeds of sales, or gross income of the business, from all business activities of the hazardous waste generator, is less than twelve thousand dollars in the current calendar year. The department shall, subject to appropriation, use the funds collected from the fees assessed in this subsection to support the activities of the office of waste reduction as specified in RCW 70.95C.030. The fee imposed pursuant to this section is due annually by July 1 of the year following the calendar year for which the fee is imposed. [1995 c 207 § 2. Prior: 1994 sp.s. c 2 § 3; 1994 c 136 § 2; 1990 c 114 § 12.]

Effective date—1995 c 207: See note following RCW 70.95E.010.

Effective date—1994 sp.s. c 2: See note following RCW 82.04.4451.

70.95E.030 Voluntary reduction plan—Fees. Hazardous waste generators and hazardous substance users required to prepare plans under RCW 70.95C.200 shall pay an annual fee to support implementation of RCW 70.95C.200 and 70.95C.040. These fees are to be used by the department, subject to appropriation, for plan review, technical assistance to facilities that are required to prepare plans, other activities related to plan development and implementation, and associated indirect costs. The total fees collected under this subsection shall not exceed the department's costs of implementing RCW 70.95C.200 and 70.95C.040 and shall not exceed one million dollars per year. The annual fee for a facility shall not exceed ten thousand dollars per year. Any facility that generates less than two thousand six hundred forty pounds of hazardous waste per waste generation site in the previous calendar year shall be exempt from the fee imposed by this section. The annual fee for a facility generating at least two thousand six hundred forty pounds but not more than four thousand pounds of hazardous waste per waste generation site in the previous calendar year shall not exceed fifty dollars. A person that develops a plan covering more than one interrelated facility as provided for in RCW 70.95C.200 shall be assessed fees only for the number of plans prepared. The department shall adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculations of hazardous waste generated for purposes of this section.

The annual fee imposed by this section shall be first due on July 1 of the year prior to the year that the facility is required to prepare a plan, and by July 1 of each year thereafter. [1994 c 136 § 3; 1990 c 114 § 13.]

(2008 Ed.)

70.95E.040 Fees—Generally. On an annual basis, the department shall adjust the fees provided for in RCW 70.95E.020 and 70.95E.030, including the maximum annual fee, and maximum total fees, by conducting the calculation in subsection (1) of this section and taking the actions set forth in subsection (2) of this section:

(1) In November of each year, the fees, annual fee, and maximum total fees imposed in RCW 70.95E.020 and 70.95E.030, or as subsequently adjusted by this section, shall be multiplied by a factor equal to the most current quarterly "price deflator" available, divided by the "price deflator" used in the numerator the previous year. However, the "price deflator" used in the denominator for the first adjustment shall be defined by the second quarter "price deflator" for 1990.

(2) Each year by March 1 the fee schedule, as adjusted in subsection (1) of this section will be published. The department will round the published fees to the nearest dollar. [1990 c 114 § 14.]

70.95E.050 Administration of fees. In administration of this chapter for the enforcement and collection of the fees due and owing under RCW 70.95E.020 and 70.95E.030, the department may apply RCW 43.17.240. [1995 c 207 § 3; 1994 c 136 § 4; 1990 c 114 § 15.]

Effective date—1995 c 207: See note following RCW 70.95E.010.

70.95E.080 Hazardous waste assistance account. The hazardous waste assistance account is hereby created in the state treasury. The following moneys shall be deposited into the hazardous waste assistance account:

(1) Those revenues which are raised by the fees imposed under RCW 70.95E.020 and 70.95E.030;

(2) Penalties and surcharges collected under chapter 70.95C RCW and this chapter; and

(3) Any other moneys appropriated or transferred to the account by the legislature. Moneys in the hazardous waste assistance account may be spent only for the purposes of this chapter following legislative appropriation. [1991 sp.s. c 13 § 75; 1990 c 114 § 18.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

70.95E.090 Technical assistance and compliance education—Grants. The department may use funds in the hazardous waste assistance account to provide technical assistance and compliance education assistance to hazardous substance users and waste generators, to provide grants to local governments, and for administration of this chapter.

Technical assistance may include the activities authorized under chapter 70.95C RCW and RCW 70.105.170 to encourage hazardous waste reduction and hazardous use reduction and the assistance provided for by RCW 70.105.100(2).

Compliance education may include the activities authorized under RCW 70.105.100(2) to train local agency officials and to inform hazardous substance users and hazardous waste generators and owners and operators of hazardous waste management facilities of the requirements of chapter 70.105 RCW and related federal laws and regulations. To the

extent practicable, the department shall contract with private businesses to provide compliance education.

Grants to local governments shall be used for small quantity generator technical assistance and compliance education components of their moderate risk waste plans as required by RCW 70.105.220. [1995 c 207 § 4; 1990 c 114 § 19.]

Effective date—1995 c 207: See note following RCW 70.95E.010.

70.95E.100 Exclusion from chapter. Nothing in this chapter relates to radioactive wastes or substances composed of both radioactive and hazardous components, and the department is precluded from using the funds of the hazardous waste assistance account for the regulation and control of such wastes. [1990 c 114 § 20.]

70.95E.900 Severability—1990 c 114. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 114 § 23.]

Chapter 70.95F RCW LABELING OF PLASTICS

Sections

70.95F.010	Definitions.
70.95F.020	Labeling requirements—Plastic industry standards.
70.95F.030	Violations, penalty.
70.95F.900	Severability—1991 c 319.
70.95F.901	Part headings not law—1991 c 319.

70.95F.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Container," unless otherwise specified, refers to "rigid plastic container" or "plastic bottle" as those terms are defined in this section.

(2) "Distributors" means those persons engaged in the distribution of packaged goods for sale in the state of Washington, including manufacturers, wholesalers, and retailers.

(3) "Label" means a molded, imprinted, or raised symbol on or near the bottom of a plastic container or bottle.

(4) "Person" means an individual, sole proprietor, partnership, association, or other legal entity.

(5) "Plastic" means a material made of polymeric organic compounds and additives that can be shaped by flow.

(6) "Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure and has a capacity of sixteen fluid ounces or more, but less than five gallons.

(7) "Rigid plastic container" means a formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons. [1991 c 319 § 103.]

70.95F.020 Labeling requirements—Plastic industry standards. (1) The provisions of this section and any rules

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adopted under this section shall be interpreted to conform with nation-wide plastics industry standards.

(2) Except as provided in RCW 70.95F.030(2), after January 1, 1992, no person may distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the container is labeled with a code identifying the appropriate resin type used to produce the structure of the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

- (a) 1. = PETE (polyethylene terephthalate)
- (b) 2. = HDPE (high density polyethylene)
- (c) 3. = V (vinyl)
- (d) 4. = LDPE (low density polyethylene)
- (e) 5. = PP (polypropylene)
- (f) 6. = PS (polystyrene)
- (g) 7. = OTHER

[1991 c 319 § 104.]

70.95F.030 Violations, penalty. (1) A person who, after written notice from the department, violates RCW 70.95F.020 is subject to a civil penalty of fifty dollars for each violation up to a maximum of five hundred dollars and may be enjoined from continuing violations. Each distribution constitutes a separate offense.

(2) Retailers and distributors shall have two years from May 21, 1991, to clear current inventory, delivered or received and held in their possession as of May 21, 1991. [1991 c 319 § 105.]

70.95F.900 Severability—1991 c 319. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 319 § 411.]

70.95F.901 Part headings not law—1991 c 319. Part headings as used in this act do not constitute any part of the law. [1991 c 319 § 409.]

Chapter 70.95G RCW PACKAGES CONTAINING METALS

Sections

70.95G.005	Finding.
70.95G.010	Definitions.
70.95G.020	Concentration levels.
70.95G.030	Exemptions.
70.95G.040	Certificate of compliance.
70.95G.050	Certificate of compliance—Public access.
70.95G.060	Prohibition of sale of package.
70.95G.900	Severability—Part headings not law—1991 c 319.

(2008 Ed.)

70.95G.005 Finding. The legislature finds and declares that:

(1) The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;

(2) Packaging comprises a significant percentage of the overall solid waste stream;

(3) The presence of heavy metals in packaging is a part of the total concern in light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled;

(4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern;

(5) The intent of this chapter is to achieve a reduction in toxicity without impeding or discouraging the expanded use of postconsumer materials in the production of packaging and its components. [1991 c 319 § 106.]

Report to legislature—1991 c 319: "By July 1, 1993, the solid waste advisory committee created under chapter 70.95 RCW shall report to the appropriate standing committees of the legislature on the need to further reduce toxic metals from packaging. The report shall contain recommendations to add other toxic substances contained in packaging to the list set forth in this chapter, including but not limited to mutagens, carcinogens, and teratogens, in order to further reduce the toxicity of packaging waste, and shall contain a recommendation regarding imposition of penalty for violation of section 108 of this act." [1991 c 319 § 113.]

70.95G.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Package" means a container providing a means of marketing, protecting, or handling a product and shall include a unit package, an intermediate package, and a shipping container. "Package" also means and includes unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(2) "Manufacturer" means a person, firm, or corporation that applies a package to a product for distribution or sale.

(3) "Packaging component" means an individual assembled part of a package such as, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels. [1991 c 319 § 107.]

70.95G.020 Concentration levels. The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in any package or packaging component shall not exceed the following:

(1) Six hundred parts per million by weight effective July 1, 1993;

(2) Two hundred fifty parts per million by weight effective July 1, 1994; and

(3) One hundred parts per million by weight effective July 1, 1995.

This section shall apply only to lead, cadmium, mercury, and hexavalent chromium that has been intentionally introduced as an element during manufacturing or distribution. [1992 c 131 § 1; 1991 c 319 § 108.]

(2008 Ed.)

70.95G.030 Exemptions. All packages and packaging components shall be subject to this chapter except the following:

(1) Those packages or package components with a code indicating date of manufacture that were manufactured prior to May 21, 1991;

(2) Those packages or packaging components that have been purchased by, delivered to, or are possessed by a retailer on or before twenty-four months following May 21, 1991, to permit opportunity to clear existing inventory of the proscribed packaging material;

(3) Those packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative; or

(4) Those packages and packaging components that would not exceed the maximum contaminant levels set forth in RCW 70.95G.020(1) but for the addition of postconsumer materials; and provided that the exemption for this subsection shall expire six years after May 21, 1991. [1991 c 319 § 109.]

70.95G.040 Certificate of compliance. By July 1, 1993, a certificate of compliance stating that a package or packaging component is in compliance with the requirements of this chapter shall be developed by its manufacturer. If compliance is achieved under the exemption or exemptions provided in RCW 70.95G.030 (3) or (4), the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturing company. The certificate of compliance shall be kept on file by the manufacturer for as long as the package or packaging component is in use, and for three years from the date of the last sale or distribution by the manufacturer. Certificates of compliance, or copies thereof, shall be furnished to the department of ecology upon request within sixty days. If manufacturers are required under any other state statute to provide a certificate of compliance, one certificate may be developed containing all required information.

If the manufacturer or supplier of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer shall develop an amended or new certificate of compliance for the reformulated or new package or packaging component. [1991 c 319 § 110.]

70.95G.050 Certificate of compliance—Public access. Requests from a member of the public for any certificate of compliance shall be:

(1) Made in writing to the department of ecology;

(2) Made specific as to package or packaging component information requested; and

(3) Responded to by the department of ecology within ninety days. [1991 c 319 § 111.]

70.95G.060 Prohibition of sale of package. The department of ecology may prohibit the sale of any package for which a manufacturer has failed to respond to a request by the department for a certificate of compliance within the

allotted period of time pursuant to RCW 70.95G.040. [1991 c 319 § 112.]

70.95G.900 Severability—Part headings not law—1991 c 319. See RCW 70.95F.900 and 70.95F.901.

Chapter 70.95H RCW
CLEAN WASHINGTON CENTER

Sections

70.95H.005	Finding.
70.95H.007	Center created.
70.95H.010	Purpose—Market development defined.
70.95H.030	Duties and responsibilities.
70.95H.040	Authority.
70.95H.050	Funding.
70.95H.900	Termination.
70.95H.901	Captions not law.
70.95H.902	Severability—Part headings not law—1991 c 319.

70.95H.005 Finding. (1) The legislature finds that:

(a) Recycling conserves energy and landfill space, provides jobs and valuable feedstock materials to industry, and promotes health and environmental protection;

(b) Seventy-eight percent of the citizens of the state actively participate in recycling programs and Washington currently has the highest recycling rate in the nation;

(c) The current supply of many recycled commodities far exceeds the demand for such commodities;

(d) Many local governments and private entities cumulatively affect, and are affected by, the market for recycled commodities but have limited jurisdiction and cannot adequately address the problems of market development that are complex, wide-ranging, and regional in nature; and

(e) The private sector has the greatest capacity for creating and expanding markets for recycled commodities, and the development of private markets for recycled commodities is in the public interest.

(2) It is therefore the policy of the state to create a single entity to be known as the clean Washington center to develop new, and expand existing, markets for recycled commodities. [1991 c 319 § 201.]

70.95H.007 Center created. There is created the clean Washington center within the department of community, trade, and economic development. As used in this chapter, "center" means the clean Washington center. [1995 c 399 § 192; 1991 c 319 § 202.]

70.95H.010 Purpose—Market development defined. The purpose of the center is to provide or facilitate business assistance, basic and applied research and development, marketing, public education, and policy analysis in furthering the development of markets for recycled products. As used in this chapter, market development consists of public and private activities that are used to overcome impediments preventing full use of secondary materials diverted from the waste stream, and that encourage and expand use of those materials and subsequent products. In fulfilling this mission the center shall primarily direct its services to businesses that transform or remanufacture waste materials into usable or

marketable materials or products for use other than landfill disposal or incineration. [1991 c 319 § 203.]

70.95H.030 Duties and responsibilities. The center shall:

(1) Provide targeted business assistance to recycling businesses, including:

- (a) Development of business plans;
- (b) Market research and planning information;
- (c) Access to financing programs;
- (d) Referral and information on market conditions; and
- (e) Information on new technology and product development;

(2) Negotiate voluntary agreements with manufacturers to increase the use of recycled materials in product development;

(3) Support and provide research and development to stimulate and commercialize new and existing technologies and products using recycled materials;

(4) Undertake an integrated, comprehensive education effort directed to recycling businesses to promote processing, manufacturing, and purchase of recycled products, including:

- (a) Provide information to recycling businesses on the availability and benefits of using recycled materials;
- (b) Provide information and referral services on recycled material markets;
- (c) Provide information on new research and technologies that may be used by local businesses and governments; and

(d) Participate in projects to demonstrate new market uses or applications for recycled products;

(5) Assist the departments of ecology and general administration in the development of consistent definitions and standards on recycled content, product performance, and availability;

(6) Undertake studies on the unmet capital needs of reprocessing and manufacturing firms using recycled materials;

(7) Undertake and participate in marketing promotions for the purposes of achieving expanded market penetration for recycled content products;

(8) Coordinate with the department of ecology to ensure that the education programs of both are mutually reinforcing, with the center acting as the lead entity with respect to recycling businesses, and the department as the lead entity with respect to the general public and retailers;

(9) Develop an annual work plan. The plan shall describe actions and recommendations for developing markets for commodities comprising a significant percentage of the waste stream and having potential for use as an industrial or commercial feedstock. The initial plan shall address, but not be limited to, mixed waste paper, waste tires, yard and food waste, and plastics; and

(10) Represent the state in regional and national market development issues. [1992 c 131 § 2; 1991 c 319 § 205.]

70.95H.040 Authority. In order to carry out its responsibilities under this chapter, the center may:

(1) Receive such gifts, grants, funds, fees, and endowments, in trust or otherwise, for the use and benefit of the pur-

poses of the center. The center may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments;

(2) Initiate, conduct, or contract for studies and searches relating to market development for recyclable materials, including but not limited to applied research, technology transfer, and pilot demonstration projects;

(3) Obtain and disseminate information relating to market development for recyclable materials from other state and local agencies;

(4) Enter into, amend, and terminate contracts with individuals, corporations, trade associations, and research institutions for the purposes of this chapter;

(5) Provide grants to local governments or other public institutions to further the development of recycling markets;

(6) Provide business and marketing assistance to public and private sector entities within the state; and

(7) Evaluate, analyze, and make recommendations on state policies that may affect markets for recyclable materials. [1991 c 319 § 206.]

70.95H.050 Funding. The center shall solicit financial contributions and support from manufacturing industries and other private sector sources, foundations, and grants from governmental sources to assist in conducting its activities. It may also use separately appropriated funds of the department of community, trade, and economic development for the center's activities. [1995 c 399 § 194; 1991 c 319 § 207.]

70.95H.900 Termination. The center shall terminate on June 30, 1997. [1991 c 319 § 209.]

70.95H.901 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1991 c 319 § 211.]

70.95H.902 Severability—Part headings not law—1991 c 319. See RCW 70.95F.900 and 70.95F.901.

Chapter 70.95I RCW USED OIL RECYCLING

Sections

70.95I.005	Finding.
70.95I.010	Definitions.
70.95I.020	Used oil recycling element.
70.95I.030	Used oil recycling element guidelines—Waiver—Statewide goals.
70.95I.040	Oil sellers—Education responsibility—Penalty.
70.95I.050	Statewide education.
70.95I.060	Disposal of used oil—Penalty.
70.95I.070	Used oil transporter and processor requirements—Civil penalties.
70.95I.080	Above-ground used oil collection tanks.
70.95I.900	Captions not law.
70.95I.901	Short title.
70.95I.902	Severability—Part headings not law—1991 c 319.

70.95I.005 Finding. (1) The legislature finds that:

(a) Millions of gallons of used oil are generated each year in this state, and used oil is a valuable petroleum resource that can be recycled;

(b) The improper collection, transportation, recycling, use, or disposal of used oil contributes to the pollution of air, water, and land, and endangers public health and welfare;

(c) The private sector is a vital resource in the collection and recycling of used oil and should be involved in its collection and recycling whenever practicable.

(2) In light of the harmful consequences of improper disposal and use of used oil, and its value as a resource, the legislature declares that the collection, recycling, and reuse of used oil is in the public interest.

(3) The department, when appropriate, should promote the rerefining of used oil in its grants, public education, regulatory, and other programs. [1991 c 319 § 301.]

Hazardous waste: Chapter 70.95C RCW.

70.95I.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Rerefining used oil" means the reclaiming of base lube stock from used oil for use again in the production of lube stock. Rerefining used oil does not mean combustion or landfilling.

(2) "Used oil" means (a) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; (b) any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and (c) any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

(3) "Public used oil collection site" means a site where a used oil collection tank has been placed for the purpose of collecting household generated used oil. "Public used oil collection site" also means a vehicle designed or operated to collect used oil from the public.

(4) "Lubricating oil" means any oil designed for use in, or maintenance of, a vehicle, including, but not limited to, motor oil, gear oil, and hydraulic oil. "Lubricating oil" does not mean petroleum hydrocarbons with a flash point below one hundred degrees Centigrade.

(5) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, watercourse, or trail, and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, watercourse, or trail, except devices moved by human or animal power.

(6) "Department" means the department of ecology.

(7) "Local government" means a city or county developing a local hazardous waste plan under RCW 70.105.220. [1991 c 319 § 302.]

70.95I.020 Used oil recycling element. (1) Each local government and its local hazardous waste plan under RCW 70.105.220 is required to include a used oil recycling element. This element shall include:

(a) A plan to reach the local goals for household used oil recycling established by the local government and the depart-

ment under RCW 70.951.030. The plan shall, to the maximum extent possible, incorporate voluntary agreements with the private sector and state agencies to provide sites for the collection of used oil. Where provided, the plan shall also incorporate residential collection of used oil;

(b) A plan for enforcing the sign and container ordinances required by RCW 70.951.040;

(c) A plan for public education on used oil recycling; and

(d) An estimate of funding needed to implement the requirements of this chapter. This estimate shall include a budget reserve for disposal of contaminated oil detected at any public used oil collection site administered by the local government.

(2) By July 1, 1993, each local government or combination of contiguous local governments shall submit its used oil recycling element to the department. The department shall approve or disapprove the used oil recycling element by January 1, 1994, or within ninety days of submission, whichever is later. The department shall approve or disapprove the used oil recycling element if it determines that the element is consistent with this chapter and the guidelines developed by the department under RCW 70.951.030.

(3) Each local government, or combination of contiguous local governments, shall submit an annual statement to the department describing the number of used oil collection sites and the quantity of household used oil recycled for the jurisdiction during the previous calendar year. The first statement shall be due April 1, 1994. Subsequent statements shall be due April 1st of each year.

Nothing in this section shall be construed to require a city or county to construct or operate a public used oil collection site. [1991 c 319 § 303.]

70.951.030 Used oil recycling element guidelines—Waiver—Statewide goals. (1) By July 1, 1992, the department shall, in consultation with local governments, prepare guidelines for the used oil recycling elements required by RCW 70.951.020. The guidelines shall:

(a) Require development of local collection and rerefining goals for household used oil for each entity preparing a used oil recycling element under RCW 70.951.020;

(b) Require local government to recommend the number of used oil collection sites needed to meet the local goals. The department shall establish criteria regarding minimum levels of used oil collection sites;

(c) Require local government to identify locations suitable as public used oil collection sites as described under RCW 70.951.020(1)(a).

(2) The department may waive all or part of the specific requirements of RCW 70.951.020 if a local government demonstrates to the satisfaction of the department that the objectives of this chapter have been met.

(3) The department may prepare and implement a used oil recycling plan for any local government failing to complete the used oil recycling element of the plan.

(4) The department shall develop statewide collection and rerefining goals for household used oil for each calendar year beginning with calendar year 1994. Goals shall be based on the estimated statewide collection and rerefining rate for calendar year 1993, and shall increase each year until calendar year 1996, when the rate shall be eighty percent.

(5) By July 1, 1993, the department shall prepare guidelines establishing statewide equipment and operating standards for public used oil collection sites. Standards shall:

(a) Allow the use of used oil collection igloos and other types of portable used oil collection tanks;

(b) Prohibit the disposal of nonhousehold-generated used oil;

(c) Limit the amount of used oil deposited to five gallons per household per day;

(d) Ensure adequate protection against leaks and spills; and

(e) Include other requirements deemed appropriate by the department. [1991 c 319 § 304.]

70.951.040 Oil sellers—Education responsibility—Penalty. (1) A person annually selling one thousand or more gallons of lubricating oil to ultimate consumers for use or installation off the premises, or five hundred or more vehicle oil filters to ultimate consumers for use or installation off the premises within a city or county having an approved used oil recycling element, shall:

(a) Post and maintain at or near the point of sale, durable and legible signs informing the public of the importance of used oil recycling and how and where used oil may be properly recycled; and

(b) Provide for sale at or near the display location of the lubricating oil or vehicle oil filters, household used oil recycling containers. The department shall design and print the signs required by this section, and shall make them available to local governments and retail outlets.

(2) A person, who, after notice, violates this section is guilty of a misdemeanor and on conviction is subject to a fine not to exceed one thousand dollars.

(3) The department is responsible for notifying retailers subject to this section.

(4) A city or county may adopt household used oil recycling container standards in order to ensure compatibility with local recycling programs.

(5) Each local government preparing a used oil recycling element of a local hazardous waste plan pursuant to RCW 70.951.020 shall adopt ordinances within its jurisdiction to enforce subsections (1) and (4) of this section. [1991 c 319 § 305.]

70.951.050 Statewide education. The department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil in order to conserve resources and protect the environment. As part of this program, the department shall:

(1) Establish and maintain a statewide list of public used oil collection sites, and a list of all persons coordinating local government used oil programs;

(2) Establish a statewide media campaign describing used oil recycling;

(3) Assist local governments in providing public education and awareness programs concerning used oil by providing technical assistance and education materials; and

(4) Encourage the establishment of voluntary used oil collection and recycling programs, including public-private

partnerships, and provide technical assistance to persons organizing such programs. [1991 c 319 § 306.]

70.95I.060 Disposal of used oil—Penalty. (1) Effective January 1, 1992, the use of used oil for dust suppression or weed abatement is prohibited.

(2) Effective July 1, 1992, no person may sell or distribute absorbent-based kits, intended for home use, as a means for collecting, recycling, or disposing of used oil.

(3) Effective January 1, 1994, no person may knowingly dispose of used oil except by delivery to a person collecting used oil for recycling, treatment, or disposal, subject to the provisions of this chapter and chapter 70.105 RCW.

(4) Effective January 1, 1994, no owner or operator of a solid waste landfill may knowingly accept used oil for disposal in the landfill.

(5) A person who violates this section is guilty of a misdemeanor. [1991 c 319 § 307.]

70.95I.070 Used oil transporter and processor requirements—Civil penalties. (1) By January 1, 1993, the department shall adopt rules requiring any transporter of used oil to comply with minimum notification, invoicing, record-keeping, and reporting requirements. For the purpose of this section, a transporter means a person engaged in the off-site transportation of used oil in quantities greater than twenty-five gallons per day.

(2) By January 1, 1993, the department shall adopt minimum standards for used oil that is blended into fuels. Standards shall, at a minimum, establish testing and recordkeeping requirements. Unless otherwise exempted, a processor is any person involved in the marketing, blending, mixing, or processing of used oil to produce fuel to be burned for energy recovery.

(3) Any person who knowingly transports used oil without meeting the requirements of this section shall be subject to civil penalties under chapter 70.105 RCW.

(4) Rules developed under this section shall not require a manifest from individual residences served by a waste oil curbside collection program. [1991 c 319 § 308.]

70.95I.080 Above-ground used oil collection tanks. By January 1, 1987, the state fire protection board, in cooperation with the department of ecology, shall develop a statewide standard for the placement of above-ground tanks to collect used oil from private individuals for recycling purposes. [1986 c 37 § 1. Formerly RCW 19.114.040.]

70.95I.900 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1991 c 319 § 309.]

70.95I.901 Short title. This chapter shall be known and may be cited as the used oil recycling act. [1991 c 319 § 310.]

70.95I.902 Severability—Part headings not law—1991 c 319. See RCW 70.95F.900 and 70.95F.901.

(2008 Ed.)

Chapter 70.95J RCW

MUNICIPAL SEWAGE SLUDGE—BIOSOLIDS

Sections

70.95J.005	Findings—Municipal sewage sludge as a beneficial commodity.
70.95J.007	Purpose—Federal requirements.
70.95J.010	Definitions.
70.95J.020	Biosolid management program—Transportation of biosolids and sludge.
70.95J.025	Biosolids permits—Fees—Biosolids permit account—Report.
70.95J.030	Beneficial uses for biosolids and glassified sewage sludge.
70.95J.040	Violations—Orders.
70.95J.050	Enforcement of chapter.
70.95J.060	Violations—Punishment.
70.95J.070	Violations—Monetary penalty.
70.95J.080	Delegation to local health department—Generally.
70.95J.090	Delegation to local health department—Review.

70.95J.005 Findings—Municipal sewage sludge as a beneficial commodity. (1) The legislature finds that:

(a) Municipal sewage sludge is an unavoidable byproduct of the wastewater treatment process;

(b) Population increases and technological improvements in wastewater treatment processes will double the amount of sludge generated within the next ten years;

(c) Sludge management is often a financial burden to municipalities and to ratepayers;

(d) Properly managed municipal sewage sludge is a valuable commodity and can be beneficially used in agriculture, silviculture, and in landscapes as a soil conditioner; and

(e) Municipal sewage sludge can contain metals and microorganisms that, under certain circumstances, may pose a risk to public health.

(2) The legislature declares that a program shall be established to manage municipal sewage sludge and that the program shall, to the maximum extent possible, ensure that municipal sewage sludge is reused as a beneficial commodity and is managed in a manner that minimizes risk to public health and the environment. [1992 c 174 § 1.]

70.95J.007 Purpose—Federal requirements. The purpose of this chapter is to provide the department of ecology and local governments with the authority and direction to meet federal regulatory requirements for municipal sewage sludge. The department of ecology may seek delegation and administer the sludge permit program required by the federal clean water act as it existed February 4, 1987. [1992 c 174 § 2.]

70.95J.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all requirements under this chapter. For the purposes of this chapter, "biosolids" includes septic tank sludge, also known as septage, that can be beneficially recycled and meets all requirements under this chapter.

(2) "Department" means the department of ecology.

(3) "Local health department" has the same meaning as "jurisdictional health department" in RCW 70.95.030.

(4) "Municipal sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a publicly owned wastewater treatment plant. [1992 c 174 § 3.]

70.95J.020 Biosolid management program—Transportation of biosolids and sludge. (1) The department shall adopt rules to implement a biosolid management program within twelve months of the adoption of federal rules, 40 C.F.R. Sec. 503, relating to technical standards for the use and disposal of sewage sludge. The biosolid management program shall, at a minimum, conform with all applicable federal rules adopted pursuant to the federal clean water act as it existed on February 4, 1987.

(2) In addition to any federal requirements, the state biosolid management program may include, but not be limited to, an education program to provide relevant legal and scientific information to local governments and citizen groups.

(3) Rules adopted by the department under this section shall provide for public input and involvement for all state and local permits.

(4) Materials that have received a permit as a biosolid shall be regulated pursuant to this chapter.

(5) The transportation of biosolids and municipal sewage sludge shall be governed by Title 81 RCW. Certificates issued by the utilities and transportation commission before June 11, 1992, that include or authorize transportation of municipal sewage sludge shall continue in force and effect and be interpreted to include biosolids. [1992 c 174 § 4.]

70.95J.025 Biosolids permits—Fees—Biosolids permit account—Report. (1) The department shall establish annual fees to collect expenses for issuing and administering biosolids permits under this chapter. An initial fee schedule shall be established by rule and shall be adjusted no more often than once every two years. This fee schedule applies to all permits, regardless of date of issuance, and fees shall be assessed prospectively. Fees shall be established in amounts to recover expenses incurred by the department in processing permit applications and modifications, reviewing related plans and documents, monitoring, evaluating, conducting inspections, overseeing performance of delegated program elements, providing technical assistance and supporting overhead expenses that are directly related to these activities.

(2) The annual fee paid by a permittee for any permit issued under this chapter shall be determined by the number of residences or residential equivalents contributing to the permittee's biosolids management system. If residences or residential equivalents cannot be determined or reasonably estimated, fees shall be based on other appropriate criteria.

(3) The biosolids permit account is created in the state treasury. All receipts from fees under this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of administering permits under this chapter.

(4) The department shall present a biennial progress report on the use of moneys from the biosolids permit account to the legislature. The first report is due on or before

December 31, 1998, and thereafter on or before December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

(5) The department shall work with the regulated community and local health departments to study the feasibility of modifying the fee schedule to support delegated local health departments and reduce local health department fees paid by biosolids permittees. [1997 c 398 § 1.]

70.95J.030 Beneficial uses for biosolids and glassified sewage sludge. The department may work with all appropriate state agencies, local governments, and private entities to establish beneficial uses for biosolids and glassified sewage sludge. [1992 c 174 § 5.]

70.95J.040 Violations—Orders. If a person violates any provision of this chapter, or a permit issued or rule adopted pursuant to this chapter, the department may issue an appropriate order to assure compliance with the chapter, permit, or rule. [1992 c 174 § 6.]

70.95J.050 Enforcement of chapter. The department, with the assistance of the attorney general, may bring an action at law or in equity, including an action for injunctive relief, to enforce this chapter or a permit issued or rule adopted by the department pursuant to this chapter. [1992 c 174 § 7.]

70.95J.060 Violations—Punishment. A person who willfully violates, without sufficient cause, any of the provisions of this chapter, or a permit or order issued pursuant to this chapter, is guilty of a gross misdemeanor. Willful violation of this chapter, or a permit or order issued pursuant to this chapter is a gross misdemeanor punishable by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to one year, or by both. Each day of violation may be deemed a separate violation. [1992 c 174 § 8.]

70.95J.070 Violations—Monetary penalty. In addition to any other penalty provided by law, a person who violates this chapter or rules or orders adopted or issued pursuant to it shall be subject to a penalty in an amount of up to five thousand dollars a day for each violation. Each violation shall be a separate violation. In the case of a continuing violation, each day of violation is a separate violation. An act of commission or omission that procures, aids, or abets in the violation shall be considered a violation under this section. [1992 c 174 § 9.]

70.95J.080 Delegation to local health department—Generally. The department may delegate to a local health department the powers necessary to issue and enforce permits to use or dispose of biosolids. A delegation may be withdrawn if the department finds that a local health department is not effectively administering the permit program. [1992 c 174 § 10.]

70.95J.090 Delegation to local health department—Review. (1) Any permit issued by a local health department

under RCW 70.95J.080 may be reviewed by the department to ensure that the proposed site or facility conforms with all applicable laws, rules, and standards under this chapter.

(2) If the department does not approve or disapprove a permit within sixty days, the permit shall be considered approved.

(3) A local health department may appeal the department's decision to disapprove a permit to the pollution control hearings board, as provided in chapter 43.21B RCW. [1992 c 174 § 11.]

Chapter 70.95K RCW BIOMEDICAL WASTE

Sections

70.95K.005	Findings.
70.95K.010	Definitions.
70.95K.011	State definition preempts local definitions.
70.95K.020	Waste treatment technologies.
70.95K.030	Residential sharps—Disposal—Violation.
70.95K.040	Residential sharps waste collection.
70.95K.900	Section headings.
70.95K.910	Severability—1992 c 14.
70.95K.920	Effective dates—1992 c 14.

70.95K.005 Findings. The legislature finds and declares that:

(1) It is a matter of statewide concern that biomedical waste be handled in a manner that protects the health, safety, and welfare of the public, the environment, and the workers who handle the waste.

(2) Infectious disease transmission has not been identified from improperly disposed biomedical waste, but the potential for such transmission may be present.

(3) A uniform, statewide definition of biomedical waste will simplify compliance with local regulations while preserving local control of biomedical waste management. [1992 c 14 § 1.]

70.95K.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biomedical waste" means, and is limited to, the following types of waste:

(a) "Animal waste" is waste animal carcasses, body parts, and bedding of animals that are known to be infected with, or that have been inoculated with, human pathogenic microorganisms infectious to humans.

(b) "Biosafety level 4 disease waste" is waste contaminated with blood, excretions, exudates, or secretions from humans or animals who are isolated to protect others from highly communicable infectious diseases that are identified as pathogenic organisms assigned to biosafety level 4 by the centers for disease control, national institute of health, biosafety in microbiological and biomedical laboratories, current edition.

(c) "Cultures and stocks" are wastes infectious to humans and includes specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, discarded live and attenuated vaccines, and laboratory waste that has come into contact with cultures and stocks of etiologic agents or blood specimens. Such waste includes

but is not limited to culture dishes, blood specimen tubes, and devices used to transfer, inoculate, and mix cultures.

(d) "Human blood and blood products" is discarded waste human blood and blood components, and materials containing free-flowing blood and blood products.

(e) "Pathological waste" is waste human source biopsy materials, tissues, and anatomical parts that emanate from surgery, obstetrical procedures, and autopsy. "Pathological waste" does not include teeth, human corpses, remains, and anatomical parts that are intended for interment or cremation.

(f) "Sharps waste" is all hypodermic needles, syringes with needles attached, IV tubing with needles attached, scalpel blades, and lancets that have been removed from the original sterile package.

(2) "Local government" means city, town, or county.

(3) "Local health department" means the city, county, city-county, or district public health department.

(4) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, or local government.

(5) "Treatment" means incineration, sterilization, or other method, technique, or process that changes the character or composition of a biomedical waste so as to minimize the risk of transmitting an infectious disease.

(6) "Residential sharps waste" has the same meaning as "sharps waste" in subsection (1) of this section except that the sharps waste is generated and prepared for disposal at a residence, apartment, dwelling, or other noncommercial habitat.

(7) "Sharps waste container" means a leak-proof, rigid, puncture-resistant red container that is taped closed or tightly lidded to prevent the loss of the residential sharps waste.

(8) "Mail programs" means those programs that provide sharps users with a multiple barrier protection kit for the placement of a sharps container and subsequent mailing of the wastes to an approved disposal facility.

(9) "Pharmacy return programs" means those programs where sharps containers are returned by the user to designated return sites located at a pharmacy to be transported by a biomedical or solid waste collection company approved by the utilities and transportation commission.

(10) "Drop-off programs" means those program sites designated by the solid waste planning jurisdiction where sharps users may dispose of their sharps containers.

(11) "Source separation" has the same meaning as in RCW 70.95.030.

(12) "Unprotected sharps" means residential sharps waste that are not disposed of in a sharps waste container. [1994 c 165 § 2; 1992 c 14 § 2.]

Findings—Purpose—Intent—1994 c 165: "The legislature finds that the improper disposal and labeling of sharps waste from residences poses a potential health risk and perceived threat to the waste generators, public, and workers in the waste and recycling industry. The legislature further finds that a uniform method for handling sharps waste generated at residences will reduce confusion and injuries, and enhance public and waste worker confidence.

It is the purpose and intent of this act that residential generated sharps waste be contained in easily identified containers and separated from the regular solid waste stream to ensure worker safety and promote proper disposal of these wastes in a manner that is environmentally safe and economically sound." [1994 c 165 § 1.]

70.95K.011 State definition preempts local definitions. The definition of biomedical waste set forth in RCW

70.95K.010 shall be the sole state definition for biomedical waste within the state, and shall preempt biomedical waste definitions established by a local health department or local government. [1992 c 14 § 3.]

70.95K.020 Waste treatment technologies. (1) At the request of an applicant, the department of health, in consultation with the department of ecology and local health departments, may evaluate the environmental and public health impacts of biomedical waste treatment technologies. The department shall make available the results of any evaluation to local health departments.

(2) All direct costs associated with the evaluation shall be paid by the applicant to the department of health or to a state or local entity designated by the department of health.

(3) For the purposes of this section, "applicant" means any person representing a biomedical waste treatment technology that seeks an evaluation under subsection (1) of this section.

(4) The department of health may adopt rules to implement this section. [1992 c 14 § 4.]

70.95K.030 Residential sharps—Disposal—Violation. (1) A person shall not intentionally place unprotected sharps or a sharps waste container into: (a) Recycling containers provided by a city, county, or solid waste collection company, or any other recycling collection site unless that site is specifically designated by a local health department as a drop-off site for sharps waste containers; or (b) cans, carts, drop boxes, or other containers in which refuse, trash, or solid waste has been placed for collection if a source separated collection service is provided for residential sharps waste.

(2) Local health departments shall enforce this section, primarily through an educational approach regarding proper disposal of residential sharps. On the first and second violation, the health department shall provide a warning to the person that includes information on proper disposal of residential sharps. A subsequent violation shall be a class 3 infraction under chapter 7.80 RCW.

(3) It is not a violation of this section to place a sharps waste container into a household refuse receptacle if the utilities and transportation commission determines that such placement is necessary to reduce the potential for theft of the sharps waste container. [1994 c 165 § 3.]

Effective date—1994 c 165 § 3: "Section 3 of this act shall take effect July 1, 1995." [1994 c 165 § 6.]

Findings—Purpose—Intent—1994 c 165: See note following RCW 70.95K.010.

70.95K.040 Residential sharps waste collection. (1) A public or private provider of solid waste collection service may provide a program to collect source separated residential sharps waste containers in conjunction with regular collection services.

(2) A company collecting source separated residential sharps waste containers shall notify the public, in writing, on the availability of this service. Notice shall occur at least forty-five days prior to the provision of this service and shall include the following information: (a) How to properly dispose of residential sharps waste; (b) how to obtain sharps waste containers; (c) the cost of the program; (d) options to

home collection of sharps waste; and (e) the legal requirements of residential sharps waste disposal.

(3) A company under the jurisdiction of the utilities and transportation commission may provide the service authorized under subsection (1) of this section only under tariff.

The commission may require companies collecting sharps waste containers to implement practices that will protect the containers from theft. [1994 c 165 § 4.]

Findings—Purpose—Intent—1994 c 165: See note following RCW 70.95K.010.

70.95K.900 Section headings. Section headings as used in this chapter do not constitute any part of the law. [1992 c 14 § 5.]

70.95K.910 Severability—1992 c 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 14 § 6.]

70.95K.920 Effective dates—1992 c 14. (1) Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1992].

(2) Section 4 of this act shall take effect October 1, 1992. [1992 c 14 § 7.]

Chapter 70.95L RCW

DETERGENT PHOSPHORUS CONTENT

Sections

70.95L.005	Finding.
70.95L.010	Definitions.
70.95L.020	Phosphorus content regulated.
70.95L.030	Notice to distributors and wholesalers.
70.95L.040	Injunction.

70.95L.005 Finding. The legislature hereby finds and declares that:

(1) Phosphorus loading of surface waters can stimulate the growth of weeds and algae, and that such growth can have adverse environmental, health, and aesthetic effects;

(2) Household detergents contribute to phosphorus loading, and that a limit on detergents containing phosphorus can significantly reduce the discharge of phosphorus into the state's surface and ground waters;

(3) Household detergents containing no or very low phosphorus are readily available and that over thirty percent of the United States population lives in areas with a ban on detergents containing phosphorus;

(4) Phosphorus limits on household detergents can significantly reduce treatment costs at those sewage treatment facilities that remove phosphorus from the waste stream; and

(5) While significant reductions of phosphorus from laundry detergent have been accomplished, similar progress in reducing phosphorus contributions from dishwashing detergents has not been achieved.

It is therefore the intent of the legislature to impose a statewide limit on the phosphorus content of household detergents. [2006 c 223 § 1; 1993 c 118 § 1.]

70.95L.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.95L.005 through 70.95L.030.

(1) "Department" means the department of ecology.

(2) "Dishwashing detergent" means a cleaning agent sold, used, or manufactured for the purpose of cleaning dishes, whether by hand or by household machine.

(3) "Laundry detergent" means a cleaning agent sold, used, or manufactured for the purpose of cleaning laundry, whether by hand or by household machine.

(4) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(5) "Phosphorus" means elemental phosphorus. [1993 c 118 § 2.]

70.95L.020 Phosphorus content regulated. (1) After July 1, 1994, a person may not sell or distribute for sale a laundry detergent that contains 0.5 percent or more phosphorus by weight.

(2)(a) After July 1, 1994, and until the dates specified in this subsection, a person may not sell or distribute for sale a dishwashing detergent that contains 8.7 percent or more phosphorus by weight.

(b) Beginning July 1, 2008, in counties located east of the crest of the Cascade mountains with populations greater than four hundred thousand, as determined by office of financial management population estimates, a person may not sell or distribute for sale a dishwashing detergent that contains 0.5 percent or more phosphorus by weight.

(c) From July 1, 2008, to June 30, 2010, in counties located west of the crest of the Cascade mountains with populations greater than one hundred eighty thousand and less than two hundred twenty thousand, as determined by office of financial management population estimates, a person may not sell or distribute for sale a dishwashing detergent that contains 0.5 percent or more phosphorus by weight except in a single-use package containing no more than 2.0 grams of phosphorus.

(d) Beginning July 1, 2010, a person may not sell or distribute for sale a dishwashing detergent that contains 0.5 percent or more phosphorus by weight in the state.

(e) For purposes of this section, "single-use package" means a tablet or other form of dishwashing detergent that is constituted and intended for use in a single washing.

(3) This section does not apply to the sale or distribution of detergents for commercial and industrial uses. [2008 c 193 § 1; 2006 c 223 § 2; 1993 c 118 § 3.]

70.95L.030 Notice to distributors and wholesalers. The department is responsible for notifying major distributors and wholesalers of the statewide limit on phosphorus in detergents. [1993 c 118 § 4.]

(2008 Ed.)

70.95L.040 Injunction. The attorney general or appropriate city or county prosecuting attorney is authorized to bring an appropriate action to enjoin any violation of the provisions of RCW 70.95L.020. [1993 c 118 § 5.]

Chapter 70.95M RCW MERCURY

Sections

70.95M.010	Definitions.
70.95M.020	Fluorescent lamps—Labeling requirements.
70.95M.030	Mercury disposal education plan.
70.95M.040	Schools—Purchase of mercury prohibited.
70.95M.050	Prohibited sales—Novelties, manometers, thermometers, thermostats, motor vehicles.
70.95M.060	Rules—Product preference.
70.95M.070	Clearinghouse—Department participation.
70.95M.080	Penalties.
70.95M.090	Crematories—Nonapplicability of chapter.
70.95M.100	Prescription drugs, biological products, over-the-counter items—Nonapplicability of chapter.
70.95M.110	Medical equipment, research tests—Nonapplicability of chapter.
70.95M.115	Vaccines.
70.95M.120	Fiscal impact—Toxics control account.
70.95M.130	National mercury repository site.

70.95M.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Automotive mercury switch" includes a convenience switch, such as a switch for a trunk or hood light, and a mercury switch in antilock brake systems.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Health care facility" includes a hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office, or health maintenance organization.

(5) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a mercury-added product or an importer or domestic distributor of a mercury-added product produced in a foreign country. In the case of a multicomponent product containing mercury, the manufacturer is the last manufacturer to produce or assemble the product. If the multicomponent product or mercury-added product is produced in a foreign country, the manufacturer is the first importer or domestic distributor.

(6) "Mercury-added button-cell battery" means a button-cell battery to which the manufacturer intentionally introduces mercury for the operation of the battery.

(7) "Mercury-added novelty" means a mercury-added product intended mainly for personal or household enjoyment or adornment. Mercury-added novelties include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel, and other similar products. Mercury-added novelty does not include games, toys, or products that require a button-cell or lithium battery, liquid crystal display screens, or a lamp that contains mercury.

(8) "Mercury-added product" means a product, commodity, or chemical, or a product with a component that contains mercury or a mercury compound intentionally added to the product, commodity, or chemical in order to provide a specific characteristic, appearance, or quality, or to perform a specific function, or for any other reason. Mercury-added products include, but are not limited to, mercury thermometers, mercury thermostats, and mercury switches in motor vehicles.

(9) "Mercury manometer" means a mercury-added product that is used for measuring blood pressure.

(10) "Mercury thermometer" means a mercury-added product that is used for measuring temperature.

(11) "Retailer" means a retailer of a mercury-added product. [2003 c 260 § 2.]

70.95M.020 Fluorescent lamps—Labeling requirements. (1) Effective January 1, 2004, a manufacturer, wholesaler, or retailer may not knowingly sell at retail a fluorescent lamp if the fluorescent lamp contains mercury and was manufactured after November 30, 2003, unless the fluorescent lamp is labeled in accordance with the guidelines listed under subsection (2) of this section. Primary responsibility for affixing labels required under this section is on the manufacturer, and not on the wholesaler or retailer.

(2) Except as provided in subsection (3) of this section, a lamp is considered labeled pursuant to subsection (1) of this section if the lamp has all of the following:

(a) A label affixed to the lamp that displays the internationally recognized symbol for the element mercury; and

(b) A label on the lamp's packaging that: (i) Clearly informs the purchaser that mercury is present in the item; (ii) explains that the fluorescent lamp should be disposed of according to applicable federal, state, and local laws; and (iii) provides a toll-free telephone number, and a uniform resource locator internet address to a web site, that contains information on applicable disposal laws.

(3) The manufacturer of a mercury-added lamp is in compliance with the requirements of this section if the manufacturer is in compliance with the labeling requirements of another state.

(4) The provisions of this section do not apply to products containing mercury-added lamps. [2003 c 260 § 3.]

70.95M.030 Mercury disposal education plan. The department of health must develop an educational plan for schools, local governments, businesses, and the public on the proper disposal methods for mercury and mercury-added products. [2003 c 260 § 4.]

70.95M.040 Schools—Purchase of mercury prohibited. A school may not purchase for use in a primary or secondary classroom bulk elemental mercury or chemical mercury compounds. By January 1, 2006, all primary and secondary schools in the state must remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. [2003 c 260 § 5.]

70.95M.050 Prohibited sales—Novelties, manometers, thermometers, thermostats, motor vehicles. (1) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a mercury-added novelty. A manufacturer of mercury-added novelties must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining mercury-added novelty inventory.

(2)(a) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a manometer used to measure blood pressure or a thermometer that contains mercury. This subsection (2)(a) does not apply to:

(i) An electronic thermometer with a button-cell battery containing mercury;

(ii) A thermometer that contains mercury and that is used for food research and development or food processing, including meat, dairy products, and pet food processing;

(iii) A thermometer that contains mercury and that is a component of an animal agriculture climate control system or industrial measurement system or for veterinary medicine until such a time as the system is replaced or a nonmercury component for the system or application is available;

(iv) A thermometer or manometer that contains mercury that is used for calibration of other thermometers, manometers, apparatus, or equipment, unless a nonmercury calibration standard is approved for the application by the national institute of standards and technology;

(v) A thermometer that is provided by prescription. A manufacturer of a mercury thermometer shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur; or

(vi) A manometer or thermometer sold or distributed to a hospital, or a health care facility controlled by a hospital, if the hospital has adopted a plan for mercury reduction consistent with the goals of the mercury chemical action plan developed by the department under section 302, chapter 371, Laws of 2002.

(b) A manufacturer of thermometers that contain mercury must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining thermometer inventory.

(3) Effective January 1, 2006, no person may sell, install, or reinstall a commercial or residential thermostat that contains mercury unless the manufacturer of the thermostat conducts or participates in a thermostat recovery or recycling program designed to assist contractors in the proper disposal of thermostats that contain mercury in accordance with 42 U.S.C. Sec. 6901, et seq., the federal resource conservation and recovery act.

(4) No person may sell, offer for sale, or distribute for sale or use in this state a motor vehicle manufactured after January 1, 2006, if the motor vehicle contains an automotive mercury switch.

(5) Nothing in this section restricts the ability of a manufacturer, importer, or domestic distributor from transporting products through the state, or storing products in the state for later distribution outside the state. [2003 c 260 § 6.]

70.95M.060 Rules—Product preference. (1) The department of general administration must, by January 1, 2005, revise its rules, policies, and guidelines to implement the purpose of this chapter.

(2) The department of general administration must give priority and preference to the purchase of equipment, supplies, and other products that contain no mercury-added compounds or components, unless: (a) There is no economically feasible nonmercury-added alternative that performs a similar function; or (b) the product containing mercury is designed to reduce electricity consumption by at least forty percent and there is no nonmercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product. In circumstances where a nonmercury-added product is not available, preference must be given to the purchase of products that contain the least amount of mercury added to the product necessary for the required performance. [2003 c 260 § 7.]

70.95M.070 Clearinghouse—Department participation. The department is authorized to participate in a regional or multistate clearinghouse to assist in carrying out any of the requirements of this chapter. A clearinghouse may also be used for examining notification and label requirements, developing education and outreach activities, and maintaining a list of all mercury-added products. [2003 c 260 § 8.]

70.95M.080 Penalties. A violation of this chapter is punishable by a civil penalty not to exceed one thousand dollars for each violation in the case of a first violation. Repeat violators are liable for a civil penalty not to exceed five thousand dollars for each repeat violation. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070. [2003 c 260 § 9.]

70.95M.090 Crematories—Nonapplicability of chapter. Nothing in this chapter applies to crematories as that term is defined in RCW 68.04.070. [2003 c 260 § 10.]

70.95M.100 Prescription drugs, biological products, over-the-counter items—Nonapplicability of chapter. Nothing in this chapter applies to prescription drugs regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.), to biological products regulated by the food and drug administration under the public health service act (42 U.S.C. Sec. 262 et seq.), or to any substance that may be lawfully sold over-the-counter without a prescription under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). [2003 c 260 § 12.]

70.95M.110 Medical equipment, research tests—Nonapplicability of chapter. Nothing in RCW 70.95M.020, 70.95M.050 (1), (3), or (4), or 70.95M.060 applies to medical equipment or reagents used in medical or research tests regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). [2003 c 260 § 13.]

(2008 Ed.)

70.95M.115 Vaccines. (1) Beginning July 1, 2007, a person who is known to be pregnant or who is under three years of age shall not be vaccinated with a mercury-containing vaccine or injected with a mercury-containing product that contains more than 0.5 micrograms of mercury per 0.5 milliliter dose.

(2) Notwithstanding subsection (1) of this section, an influenza vaccine may contain up to 1.0 micrograms of mercury per 0.5 milliliter dose.

(3) The secretary of the department of health may, upon the secretary's or local public health officer's declaration of an outbreak of vaccine-preventable disease or of a shortage of vaccine that complies with subsection (1) or (2) of this section, suspend the requirements of this section for the duration of the outbreak or shortage. A person who is known to be pregnant or lactating or a parent or legal guardian of a child under eighteen years of age shall be informed if the person or child is to be vaccinated or injected with any mercury-containing product that contains more than the mercury limits per dose in subsections (1) and (2) of this section.

(4) All vaccines and products referenced under this section must meet food and drug administration licensing requirements. [2007 c 268 § 1; 2006 c 231 § 2.]

Findings—2006 c 231: "The legislature finds that vaccinations and immunizations are among the most important public health innovations of the last one hundred years. The centers for disease control and prevention placed vaccinations at the top of its list of the ten greatest public health achievements of the twentieth century. In its efforts to improve public health in the world's poorest countries, the Bill and Melinda Gates foundation has identified childhood immunization as a cost-effective method of improving public health and saving the lives of millions of children around the world.

Fortunately, in Washington, safe and cost-effective vaccinations against childhood diseases are widely available through both public and private resources. The vaccines that the Washington state department of health provides to meet the requirements for the recommended childhood vaccination schedule through its universal childhood vaccine program are screened for thimerosal and preference is given toward the purchase of thimerosal-free products. The department of health currently provides thimerosal-free products for all routinely recommended childhood vaccines. Regardless of the absence of thimerosal in childhood vaccines in Washington, scientifically reputable organizations such as the centers for disease control and prevention, the national institute of medicine, the American academy of pediatrics, the food and drug administration, and the world health organization have all determined that there is no credible evidence that the use of thimerosal in vaccines poses a threat to the health and safety of children.

Notwithstanding these assurances of the safety of the vaccine supply, the legislature finds that where there is public concern over the safety of vaccines, vaccination rates may be reduced to the point that deadly, vaccine-preventable, childhood diseases return. This measure is being enacted to maintain public confidence in vaccine programs, so that the public will continue to seek vaccinations and their health benefits may continue to protect the people of Washington." [2006 c 231 § 1.]

70.95M.120 Fiscal impact—Toxics control account. Any fiscal impact on the department or the department of health that results from the implementation of this chapter must be paid for out of funds that are appropriated by the legislature from the state toxics control account for the implementation of the department's persistent bioaccumulative toxic chemical strategy. [2003 c 260 § 11.]

70.95M.130 National mercury repository site. The department of ecology shall petition the United States environmental protection agency requesting development of a national mercury repository site. [2003 c 260 § 14.]

Chapter 70.95N RCW

ELECTRONIC PRODUCT RECYCLING

Sections

70.95N.010	Findings.
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70.95N.040	Manufacturer registration.
70.95N.050	Independent plan requirements.
70.95N.060	Standard, independent plan requirements—Fees to be set by the department—Acceptance or rejection by department.
70.95N.070	Plan updates—Revised plan.
70.95N.080	Independent plan participants changing to standard plan.
70.95N.090	Collection services.
70.95N.100	Successor duties.
70.95N.110	Covered electronic sampling.
70.95N.120	Promotion of covered product recycling.
70.95N.130	Electronic products recycling account.
70.95N.140	Annual reports.
70.95N.150	Nonprofit charitable organizations—Report.
70.95N.160	Electronic products for sale must include manufacturer's brand.
70.95N.170	Sale of covered electronic products.
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70.95N.190	Return share calculation.
70.95N.200	Equivalent share calculation—Notice to manufacturers—Billing parties that do not meet their plan's equivalent share—Payments to parties that exceed their plan's equivalent share—Nonprofit charitable organizations.
70.95N.210	Preliminary return share—Notice—Challenges—Final return share.
70.95N.220	Covered electronic products collected during a program year—Payment per pound under, over equivalent share.
70.95N.230	Rules—Fees—Reports.
70.95N.240	Collector, transporter, processor registration.
70.95N.250	Processors to comply with performance standards for environmentally sound management—Rules.
70.95N.260	Selling covered electronic products without participating in an approved plan prohibited—Written warning—Penalty—Failure to comply with manufacturer registration requirements.
70.95N.270	Reports.
70.95N.280	Materials management and financing authority.
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70.95N.300	Manufacturers to pay their apportioned share of administrative and operational costs—Performance bonds—Dispute arbitration.
70.95N.310	Authority use of funds.
70.95N.320	General operating plan.
70.95N.330	Authority employees—Initial staff support—Authority powers.
70.95N.340	Federal preemption.
70.95N.900	Construction—2006 c 183.
70.95N.901	Severability—2006 c 183.
70.95N.902	Effective date—2006 c 183.

70.95N.010 Findings. The legislature finds that a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products must be established. The legislature further finds that the system must encourage the design of electronic products that are less toxic and more recyclable. The legislature further finds that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the collection, transportation, and recycling system. [2006 c 183 § 1.]

70.95N.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the Washington materials management and financing authority created under RCW 70.95N.280.

(2) "Authorized party" means a manufacturer who submits an individual independent plan or the entity authorized

to submit an independent plan for more than one manufacturer.

(3) "Board" means the board of directors of the Washington materials management and financing authority created under RCW 70.95N.290.

(4) "Collector" means an entity licensed to do business in the state that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets minimum standards that may be developed by the department.

(5) "Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, and recycling services, in whole or in part, that will be provided to the citizens of the state within service areas as described in the approved standard plan.

(6) "Covered electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally, a desktop computer, a laptop or a portable computer, or a cathode ray tube or flat panel television having a viewable area greater than four inches when measured diagonally that has been used in the state by any covered entity regardless of original point of purchase. "Covered electronic product" does not include: (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft; (b) monitoring and control instruments or systems; (c) medical devices; (d) products including materials intended for use as ingredients in those products as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts; (e) equipment used in the delivery of patient care in a health care setting; (f) a computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or (g) hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

(7) "Covered entity" means any household, charity, school district, small business, or small government located in Washington state.

(8) "Curbside service" means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

(9) "Department" means the department of ecology.

(10) "Electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or a portable computer; or a cathode ray tube or flat screen television having a viewable area greater than four inches when measured diagonally.

(11) "Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer under this chapter as determined by the department under RCW 70.95N.200.

(12) "Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

(13) "Independent plan" means a plan for the collection, transportation, and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

(14) "Manufacturer" means any person, in business or no longer in business but having a successor in interest, who, irrespective of the selling technique used, including by means of distance or remote sale:

(a) Manufactures or has manufactured a covered electronic product under its own brand names for sale in or into this state;

(b) Assembles or has assembled a covered electronic product that uses parts manufactured by others for sale in or into this state under the assembler's brand names;

(c) Resells or has resold in or into this state under its own brand names a covered electronic product produced by other suppliers, including retail establishments that sell covered electronic products under their own brand names;

(d) Manufactures or manufactured a cobranded product for sale in or into this state that carries the name of both the manufacturer and a retailer;

(e) Imports or has imported a covered electronic product into the United States that is sold in or into this state. However, if the imported covered electronic product is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (a) through (d) of this subsection, that person is the manufacturer. For purposes of this subsection, "presence" means any person that performs activities conducted under the standards established for interstate commerce under the commerce clause of the United States Constitution; or

(f) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (e) of this subsection, and elects to register in lieu of the importer as the manufacturer for those products.

(15) "New entrant" means: (a) A manufacturer of televisions that have been sold in the state for less than ten years; or (b) a manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in the state for less than five years. However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is not considered a new entrant for purposes of this chapter.

(16) "Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest.

(17) "Plan's equivalent share" means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

(18) "Plan's return share" means the sum of the return shares of each manufacturer participating in that plan.

(19) "Premium service" means services such as at-location system upgrade services provided to covered entities and

at-home pickup services offered to households. "Premium service" does not include curbside service.

(20) "Processor" means an entity engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and prepare those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter and by the department. A processor may also salvage parts to be used in new products.

(21) "Product type" means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

(22) "Program" means the collection, transportation, and recycling activities conducted to implement an independent plan or the standard plan.

(23) "Program year" means each full calendar year after the program has been initiated.

(24) "Recycling" means transforming or remanufacturing unwanted electronic products, components, and byproducts into usable or marketable materials for use other than landfill disposal or incineration. "Recycling" does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and byproducts with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

(25) "Retailer" means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(26) "Return share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by the department under RCW 70.95N.190.

(27) "Reuse" means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased.

(28) "Small business" means a business employing less than fifty people.

(29) "Small government" means a city in the state with a population less than fifty thousand, a county in the state with a population less than one hundred twenty-five thousand, and special purpose districts in the state.

(30) "Standard plan" means the plan for the collection, transportation, and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

(31) "Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

(32) "Unwanted electronic product" means a covered electronic product that has been discarded or is intended to be discarded by its owner.

(33) "White box manufacturer" means a person who manufactured unbranded covered electronic products offered

for sale in the state within ten years prior to a program year for televisions or within five years prior to a program year for desktop computers, laptop or portable computers, or computer monitors. [2006 c 183 § 2.]

70.95N.030 Manufacturer participation. (1) A manufacturer must participate in an independent plan or the standard plan to implement and finance the collection, transportation, and recycling of covered electronic products.

(2) An independent plan or the standard plan must be implemented and fully operational no later than January 1, 2009.

(3) The manufacturers participating in an approved plan are responsible for covering all administrative and operational costs associated with the collection, transportation, and recycling of their plan's equivalent share of covered electronic products. If costs are passed on to consumers, it must be done without any fees at the time the unwanted electronic product is delivered or collected for recycling. However, this does not prohibit collectors providing premium or curbside services from charging customers a fee for the additional collection cost of providing this service, when funding for collection provided by an independent plan or the standard plan does not fully cover the cost of that service.

(4) Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste in the state of Washington, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide such service itself or by contract pursuant to RCW 81.77.020.

(5) Manufacturers are encouraged to collaborate with electronic product retailers, certificated waste haulers, processors, recyclers, charities, and local governments within the state in the development and implementation of their plans. [2006 c 183 § 3.]

70.95N.040 Manufacturer registration. (1) By January 1, 2007, and annually thereafter, each manufacturer must register with the department.

(2) A manufacturer must submit to the department with each registration or annual renewal a fee to cover the administrative costs of this chapter as determined by the department under RCW 70.95N.230.

(3) The department shall review the registration or renewal application and notify the manufacturer if their registration does not meet the requirements of this section. Within thirty days of receipt of such a notification from the department, the manufacturer must file with the department a revised registration addressing the requirements noted by the department.

(4) The registration must include the following information:

(a) The name and contact information of the manufacturer submitting the registration;

(b) The manufacturer's brand names of covered electronic products, including all brand names sold in the state in the past, all brand names currently being sold in the state, and all brand names for which the manufacturer has legal responsibility under RCW 70.95N.100;

(c) The method or methods of sale used in the state; and
(d) Whether the registrant will be participating in the standard plan or submitting an independent plan to the department for approval.

(5) The registrant shall submit any changes to the information provided in the registration to the department within fourteen days of such change.

(6) The department shall identify, using all reasonable means, manufacturers that are in business or that are no longer in business but that have a successor in interest by examining best available return share data and other pertinent data. The department shall notify manufacturers that have been identified and for whom an address has been found of the requirements of this chapter, including registration and plan requirements under this section and RCW 70.95N.050. [2006 c 183 § 4.]

70.95N.050 Independent plan requirements. (1) A manufacturer must participate in the standard plan administered by the authority, unless the manufacturer obtains department approval for an independent plan for the collection, transportation, and recycling of unwanted electronic products.

(2) An independent plan may be submitted by an individual manufacturer or by a group of manufacturers, provided that:

(a) Each independent plan represents at least a five percent return share of covered electronic products; and

(b) No manufacturer may participate in an independent plan if it is a new entrant or a white box manufacturer.

(3) An individual manufacturer submitting an independent plan to the department is responsible for collecting, transporting, and recycling its equivalent share of covered electronic products.

(4)(a) Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(b) Each group of manufacturers submitting an independent plan must designate a party authorized to file the plan with the department on their behalf. A letter of certification from each of the manufacturers designating the authorized party must be submitted to the department together with the plan.

(5) Each manufacturer in the standard plan or in an independent plan retains responsibility and liability under this chapter in the event that the plan fails to meet the manufacturer's obligations under this chapter. [2006 c 183 § 5.]

70.95N.060 Standard, independent plan requirements—Fees to be set by the department—Acceptance or rejection by department. (1) All initial independent plans and the initial standard plan required under RCW 70.95N.050 must be submitted to the department by February 1, 2008. The department shall review each independent plan and the standard plan.

(2) The authority submitting the standard plan and each authorized party submitting an independent plan to the department must pay a fee to the department to cover the costs of administering and implementing this chapter. The

department shall set the fees as described under RCW 70.95N.230.

(3) The fees in subsection (2) of this section apply to the initial plan submission and plan updates and revisions required in RCW 70.95N.070.

(4) Within ninety days after receipt of a plan, the department shall determine whether the plan complies with this chapter. If the plan is approved, the department shall send a letter of approval. If a plan is rejected, the department shall provide the reasons for rejecting the plan to the authority or authorized party. The authority or authorized party must submit a new plan within sixty days after receipt of the letter of disapproval.

(5) An independent plan and the standard plan must contain the following elements:

(a) Contact information for the authority or authorized party and a comprehensive list of all manufacturers participating in the plan and their contact information;

(b) A description of the collection, transportation, and recycling systems and service providers used, including a description of how the authority or authorized party will:

(i) Seek to use businesses within the state, including retailers, charities, processors, and collection and transportation services;

(ii) Fairly compensate collectors for providing collection services; and

(iii) Fairly compensate processors for providing processing services;

(c) The method or methods for the reasonably convenient collection of all product types of covered electronic products in rural and urban areas throughout the state, including how the plan will provide for collection services in each county of the state and for a minimum of one collection site or alternate collection service for each city or town with a population greater than ten thousand. A collection site for a county may be the same as a collection site for a city or town in the county;

(d) A description of how the plan will provide service to small businesses, small governments, charities, and school districts in Washington;

(e) The processes and methods used to recycle covered electronic products including a description of the processing that will be used and the facility location;

(f) Documentation of audits of each processor used in the plan and compliance with processing standards established under RCW 70.95N.250 and *section 26 of this act;

(g) A description of the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share;

(h) A timeline describing start-up, implementation, and progress towards milestones with anticipated results;

(i) A public information campaign to inform consumers about how to recycle their covered electronic products at the end of the product's life; and

(j) A description of how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage design of electronic products and their components for recycling.

(6) The standard plan shall address how it will incorporate and fairly compensate registered collectors providing curbside or premium services such that they are not compen-

sated at a lower rate for collection costs than the compensation offered other collectors providing drop-off collection sites in that geographic area.

(7) All transporters, collectors, and processors used to fulfill the requirements of this section must be registered as described in RCW 70.95N.240. [2006 c 183 § 6.]

*Reviser's note: Section 26 of this act was vetoed by the governor.

70.95N.070 Plan updates—Revised plan. (1) An independent plan and the standard plan must be updated at least every five years and as required in (a) and (b) of this subsection.

(a) If the program fails to provide service in each county in the state or meet other plan requirements, the authority or authorized party shall submit to the department within sixty days of failing to provide service an updated plan addressing how the program will be adjusted to meet the program geographic coverage and collection service requirements established in RCW 70.95N.090.

(b) The authority or authorized party shall notify the department of any modification to the plan. If the department determines that the authority or authorized party has significantly modified the program described in the plan, the authority or authorized party shall submit a revised plan describing the changes to the department within sixty days of notification by the department.

(2) Within sixty days after receipt of a revised plan, the department shall determine whether the revised plan complies with this chapter. If the revised plan is approved, the department shall send a letter of approval. If the revised plan is rejected, the department shall provide the reasons for rejecting the plan to the authority or authorized party. The authority or authorized party must submit a new plan revision within sixty days after receipt of the letter of disapproval.

(3) The authority or authorized parties may buy and sell collected covered electronic products with other programs without submitting a plan revision for review. [2006 c 183 § 7.]

70.95N.080 Independent plan participants changing to standard plan. (1) A manufacturer participating in an independent plan may join the standard plan by notifying the authority and the department of its intention at least five months prior to the start of the next program year.

(2) Manufacturers may not change from one plan to another plan during a program year.

(3) A manufacturer participating in the standard plan wishing to implement or participate in an independent plan may do so by complying with rules adopted by the department under RCW 70.95N.230. [2006 c 183 § 8.]

70.95N.090 Collection services. (1) A program must provide collection services for covered electronic products of all product types that are reasonably convenient and available to all citizens of the state residing within its geographic boundaries, including both rural and urban areas. Each program must provide collection service in every county of the state. A program may provide collection services jointly with another plan or plans.

(a) For any city or town with a population of greater than ten thousand, each program shall provide a minimum of one collection site or alternate collection service described in subsection (3) of this section or a combination of sites and alternate service that together provide at least one collection opportunity for all product types. A collection site for a county may be the same as a collection site for a city or town in the county.

(b) Collection sites may include electronics recyclers and repair shops, recyclers of other commodities, reuse organizations, charities, retailers, government recycling sites, or other suitable locations.

(c) Collection sites must be staffed, open to the public at a frequency adequate to meet the needs of the area being served, and on an on-going basis.

(2) A program may limit the number of covered electronic products or covered electronic products by product type accepted per customer per day or per delivery at a collection site or service. All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the plans.

(3) A program may provide collection services in forms different than collection sites, such as curbside services, if those alternate services provide equal or better convenience to citizens and equal or increased recovery of unwanted covered electronic products.

(4) For rural areas without commercial centers or areas with widely dispersed population, a program may provide collection at the nearest commercial centers or solid waste sites, collection events, mail-back systems, or a combination of these options.

(5) For small businesses, small governments, charities, and school districts that may have large quantities of covered electronic products that cannot be handled at collection sites or curbside services, a program may provide alternate services. At a minimum, a program must provide for processing of these large quantities of covered electronic products at no charge to the small businesses, small governments, charities, and school districts. [2006 c 183 § 9.]

70.95N.100 Successor duties. Any person acquiring a manufacturer, or who has acquired a manufacturer, shall have all responsibility for the acquired company's covered electronic products, including covered electronic products manufactured prior to July 1, 2006, unless that responsibility remains with another entity per the purchase agreement and the acquiring manufacturer provides the department with a letter from the other entity accepting responsibility for the covered electronic products. Cobranding manufacturers may negotiate with retailers for responsibility for those products and must notify the department of the results of their negotiations. [2006 c 183 § 10.]

70.95N.110 Covered electronic sampling. (1) An independent plan and the standard plan must implement and finance an auditable, statistically significant sampling of covered electronic products entering its program every program year. The information collected must include a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type,

the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, the total weight of the sample by product type, and any additional information needed to assign return share.

(2) The sampling must be conducted in the presence of the department or a third-party organization approved by the department. The department may, at its discretion, audit the methodology and the results.

(3) After the fifth program year, the department may reassess the sampling required in this section. The department may adjust the frequency at which manufacturers must implement the sampling or may adjust the frequency at which manufacturers must provide certain information from the sampling. Prior to making any changes, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any such changes. [2006 c 183 § 11.]

70.95N.120 Promotion of covered product recycling.

(1) An independent plan and the standard plan must inform covered entities about where and how to reuse and recycle their covered electronic products at the end of the product's life, including providing a web site or a toll-free telephone number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their covered electronic products for recycling.

(2) The department shall promote covered electronic product recycling by:

(a) Posting information describing where to recycle unwanted covered electronic products on its web site;

(b) Providing information about recycling covered electronic products through a toll-free telephone service; and

(c) Developing and providing artwork for use in flyers and signage to retailers upon request.

(3) Local governments shall promote covered electronic product recycling, including listings of local collection sites and services, through existing educational methods typically used by each local government.

(4) A retailer who sells new covered electronic products shall provide information to consumers describing where and how to recycle covered electronic products and opportunities and locations for the convenient collection or return of the products. This requirement can be fulfilled by providing the department's toll-free telephone number and web site. Remote sellers may include the information in a visible location on their web site as fulfillment of this requirement.

(5) Manufacturers, state government, local governments, retailers, and collection sites and services shall collaborate in the development and implementation of the public information campaign. [2006 c 183 § 12.]

70.95N.130 Electronic products recycling account.

(1) The electronic products recycling account is created in the custody of the state treasurer. All payments resulting from plans not reaching their equivalent share, as described in RCW 70.95N.220, shall be deposited into the account. Any moneys collected for manufacturer registration fees, fees associated with reviewing and approving plans and plan revi-

sions, and penalties levied under this chapter shall be deposited into the account.

(2) Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(3) Moneys in the account may be used solely by the department for the purposes of fulfilling department responsibilities specified in this chapter and for expenditures to the authority and authorized parties resulting from plans exceeding their equivalent share, as described in RCW 70.95N.220. Funds in the account may not be diverted for any purpose or activity other than those specified in this section. [2006 c 183 § 13.]

70.95N.140 Annual reports. (1) By March 1st of the second program year and each program year thereafter, the authority and each authorized party shall file with the department an annual report for the preceding program year.

(2) The annual report must include the following information:

(a) The total weight in pounds of covered electronic products collected and recycled, by county, during the preceding program year including documentation verifying collection and processing of that material. The total weight in pounds includes orphan products. The report must also indicate and document the weight in pounds received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan. The report must document the weight in pounds that were received in large quantities from small businesses, small governments, charities and school districts as described in RCW 70.95N.090(5);

(b) The collection services provided in each county and for each city with a population over ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(c) A list of processors used, the weight of covered electronic products processed by each direct processor, and a description of the processes and methods used to recycle the covered electronic products including a description of the processing and facility locations. The report must also include a list of subcontractors who further processed or recycled unwanted covered electronic products, electronic components, or electronic scrap described in *section 26(1) of this act, including facility locations;

(d) Other documentation as established under *section 26(3) of this act;

(e) Educational and promotional efforts that were undertaken;

(f) The results of sampling and sorting as required in RCW 70.95N.110, including a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, and the total weight of the sample by product type;

(g) The list of manufacturers that are participating in the standard plan; and

(h) Any other information deemed necessary by the department.

(3) The department shall review each report within ninety days of its submission and shall notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program.

(4) All reports submitted to the department must be available to the general public through the internet. Proprietary information submitted to the department under this chapter is exempt from public disclosure under RCW 42.56.270. [2006 c 183 § 14.]

*Reviser's note: Section 26 of this act was vetoed by the governor.

70.95N.150 Nonprofit charitable organizations—Report. Nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale and that are used by a plan to collect covered electronic products shall file a report with the department by March 1st of the second program year and each program year thereafter. The report must indicate and document the weight of covered electronic products sent for recycling during the previous program year attributed to each plan that the charitable organization is participating in. [2006 c 183 § 15.]

70.95N.160 Electronic products for sale must include manufacturer's brand. (1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in the state unless the electronic product is labeled with the manufacturer's brand. The label must be permanently affixed and readily visible.

(2) In-state retailers in possession of unlabeled products on January 1, 2007, may exhaust their stock through sales to the public. [2006 c 183 § 16.]

70.95N.170 Sale of covered electronic products. No person may sell or offer for sale a covered electronic product to any person in this state unless the manufacturer of the covered electronic product has filed a registration with the department under RCW 70.95N.040 and is participating in an approved plan under RCW 70.95N.050. A person that sells or offers for sale a covered electronic product in the state shall consult the department's web site for lists of manufacturers with registrations and approved plans prior to selling a covered electronic product in the state. A person is considered to have complied with this section if on the date the product was ordered from the manufacturer or its agent, the manufacturer was listed as having registered and having an approved plan on the department's web site. [2006 c 183 § 17.]

70.95N.180 Department web site. (1) The department shall maintain on its web site the following information:

(a) The names of the manufacturers and the manufacturer's brands that are registered with the department under RCW 70.95N.040;

(b) The names of the manufacturers and the manufacturer's brands that are participating in an approved plan under RCW 70.95N.050;

(c) The names and addresses of the collectors and transporters that are listed in registrations filed with the department under RCW 70.95N.240;

(d) The names and addresses of the processors used to fulfill the requirements of the plans;

(e) Return and equivalent shares for all manufacturers.

(2) The department shall update this web site information promptly upon receipt of a registration or a report. [2006 c 183 § 18.]

70.95N.190 Return share calculation. (1) The department shall determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of covered electronic products identified for each manufacturer by the total weight of covered electronic products identified for all manufacturers in the standard plan or an independent plan, then multiplying the quotient by one hundred.

(2) For the first program year, the department shall determine the return share for such manufacturers using all reasonable means and based on best available information regarding return share data from other states and other pertinent data.

(3) For the second and each subsequent program year, the department shall determine the return share for such manufacturers using all reasonable means and based on the most recent sampling of covered electronic products conducted in the state under RCW 70.95N.110. [2006 c 183 § 19.]

70.95N.200 Equivalent share calculation—Notice to manufacturers—Billing parties that do not meet their plan's equivalent share—Payments to parties that exceed their plan's equivalent share—Nonprofit charitable organizations. (1) The department shall determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of covered electronic products collected for that program year, allowing as needed for the additional credit authorized in subsection (3) of this section.

(2)(a) By June 1st of each program year, the department shall notify each manufacturer of the manufacturer's equivalent share of covered electronic products to be applied to the previous program year. The department shall also notify each manufacturer of how its equivalent share was determined.

(b) By June 1st of each program year, the department shall bill any authorized party or authority that has not attained its plan's equivalent share as determined under RCW 70.95N.220. The authorized party or authority shall remit payment to the department within sixty days from the billing date.

(c) By September 1st of each program year, the department shall pay any authorized party or authority that exceeded its plan's equivalent share.

(3) Plans that utilize the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five

percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. The department may adjust the percentage of credit annually. [2006 c 183 § 20.]

70.95N.210 Preliminary return share—Notice—Challenges—Final return share. (1) By June 1, 2007, the department shall notify each manufacturer of its preliminary return share of covered electronic products for the first program year.

(2) Preliminary return share of covered electronic products must be announced annually by June 1st of each program year for the next program year.

(3) Manufacturers may challenge the preliminary return share by written petition to the department. The petition must be received by the department within thirty days of the date of publication of the preliminary return shares.

(4) The petition must contain a detailed explanation of the grounds for the challenge, an alternative calculation, and the basis for such a calculation, documentary evidence supporting the challenge, and complete contact information for requests for additional information or clarification.

(5) Sixty days after the publication of the preliminary return share, the department shall make a final decision on return share, having fully taken into consideration any and all challenges to its preliminary calculations.

(6) A written record of challenges received and a summary of the bases for the challenges, as well as the department's response, must be published at the same time as the publication of the final return share.

(7) By August 1, 2007, the department shall publish the final return shares for the first program year. By August 1st of each program year, the department shall publish the final return shares for use in the coming program year. [2006 c 183 § 21.]

70.95N.220 Covered electronic products collected during a program year—Payment per pound under, over equivalent share. (1) For an independent plan and the standard plan, if the total weight in pounds of covered electronic products collected during a program year is less than the plan's equivalent share of covered electronic products for that year, then the authority or authorized party shall submit to the department a payment equal to the weight in pounds of the deficit multiplied by the reasonable collection, transportation, and recycling cost for covered electronic products and an administrative fee. Moneys collected by the department must be deposited in the electronic products recycling account.

(2) For an independent plan and the standard plan, if the total weight in pounds of covered electronic products collected during a program year is more than the plan's equivalent share of covered electronic products for that year, then the department shall submit to the authority or authorized party, a payment equal to the weight in pounds of the surplus multiplied by the reasonable collection, transportation, and recycling cost for covered electronic products.

(3) For purposes of this section, the initial reasonable collection, transportation, and recycling cost for covered

electronic products is forty-five cents per pound and the administrative fee is five cents per pound.

(4) The department may annually adjust the reasonable collection, transportation, and recycling cost for covered electronic products and the administrative fee described in this section. Prior to making any changes in the fees described in this section, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any changes to the reasonable collection, transportation, and recycling cost or the administrative fee by January 1st of the program year in which the change is to take place. [2006 c 183 § 22.]

70.95N.230 Rules—Fees—Reports. (1) The department shall adopt rules to determine the process for manufacturers to change plans under RCW 70.95N.080.

(2) The department shall establish annual registration and plan review fees for administering this chapter. An initial fee schedule must be established by rule and be adjusted no more often than once every two years. All fees charged must be based on factors relating to administering this chapter and be based on a sliding scale that is representative of annual sales of covered electronic products in the state. Fees must be established in amounts to fully recover and not to exceed expenses incurred by the department to implement this chapter.

(3) The department shall establish an annual process for local governments and local communities to report their satisfaction with the services provided by plans under this chapter. This information must be used by the department in reviewing plan updates and revisions.

(4) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. [2006 c 183 § 23.]

70.95N.240 Collector, transporter, processor registration. (1) Each collector and transporter of covered electronic products in the state must register annually with the department. The registration must include all identification requirements for licensure in the state and the geographic area of the state that they serve. The department shall develop a single form for registration of both collectors and transporters.

(2) Each processor of covered electronic products utilized by an independent or standard plan must register annually with the department. The registration must include identification information and documentation of any necessary operating permits issued by state or local authorities. [2006 c 183 § 24.]

70.95N.250 Processors to comply with performance standards for environmentally sound management—Rules. (1) The authority and each authorized party shall ensure that each processor used directly by the authority or the authorized party to fulfill the requirements of their respective standard plan or independent plan has provided the authority or the authorized party a written statement that the processor will comply with the requirements of this section and *section 26 of this act.

(2) The department shall establish by rule performance standards for environmentally sound management for processors directly used to fulfill the requirements of an independent plan or the standard plan. Performance standards may include financial assurance to ensure proper closure of facilities consistent with environmental standards.

(3) The department shall establish by rule guidelines regarding nonrecycled residual that may be properly disposed after covered electronic products have been processed.

(4) The department may audit processors that are utilized to fulfill the requirements of an independent plan or the standard plan.

(5) No plan or program required under this chapter may include the use of federal or state prison labor for processing. [2006 c 183 § 25.]

**Reviser's note:* Section 26 of this act was vetoed by the governor.

70.95N.260 Selling covered electronic products without participating in an approved plan prohibited—Written warning—Penalty—Failure to comply with manufacturer registration requirements. (1) No manufacturer may sell or offer for sale a covered electronic product in or into the state unless the manufacturer of the covered electronic product is participating in an approved plan. The department shall send a written warning to a manufacturer that does not have an approved plan or is not participating in an approved plan as required under RCW 70.95N.050. The written warning must inform the manufacturer that it must participate in an approved plan within thirty days of the notice. Any violation after the initial written warning shall be assessed a penalty of up to ten thousand dollars for each violation.

(2) If the authority or any authorized party fails to implement their approved plan, the department must assess a penalty of up to five thousand dollars for the first violation along with notification that the authority or authorized party must implement its plan within thirty days of the violation. After thirty days, the authority or any authorized party failing to implement their approved plan must be assessed a penalty of up to ten thousand dollars for the second and each subsequent violation.

(3) Any person that does not comply with manufacturer registration requirements under RCW 70.95N.040, education and outreach requirements under RCW 70.95N.120, reporting requirements under RCW 70.95N.140, labeling requirements under RCW 70.95N.160, retailer responsibility requirements under RCW 70.95N.170, collector or transporter registration requirements under RCW 70.95N.240, or requirements under RCW 70.95N.250 and *section 26 of this act, must first receive a written warning including a copy of the requirements under this chapter and thirty days to correct the violation. After thirty days, a person must be assessed a penalty of up to one thousand dollars for the first violation and up to two thousand dollars for the second and each subsequent violation.

(4) All penalties levied under this section must be deposited into the electronic products recycling account created under RCW 70.95N.130.

(5) The department shall enforce this section. [2006 c 183 § 27.]

**Reviser's note:* Section 26 of this act was vetoed by the governor.

70.95N.270 Reports. (1) By December 31, 2012, the department shall provide a report to the appropriate committees of the legislature that includes the following information:

(a) For each of the preceding program years, the weight of covered electronic products recycled in the state by plan, by county, and in total;

(b) The performance of each plan in meeting its equivalent share, and payments received from and disbursed to each plan from the electronic products recycling account;

(c) A description of the various collection programs used to collect covered electronic products in the state;

(d) An evaluation of how the pounds per capita recycled of covered electronic products in the state compares to programs in other states;

(e) Comments received from local governments and local communities regarding satisfaction with the program, including accessibility and convenience of services provided by the plans;

(f) Recommendations on how to improve the statewide collection, transportation, and recycling system for convenient, safe, and environmentally sound recycling of electronic products; and

(g) An analysis of whether and in what amounts unwanted electronic products and electronic components and electronic scrap exported from Washington have been exported to countries that are not members of the organization for economic cooperation and development or the European union, and recommendations for addressing such exports.

(2) By April 1, 2010, the department shall provide a report to the appropriate committees of the legislature regarding the amount of orphan products collected as a percent of the total amount of covered electronic products collected. If the orphan products collected exceed ten percent of the total amount of covered electronic products collected, the department shall report to the appropriate committees of the legislature within ninety days describing the orphan products collected and include recommendations for decreasing the amount of orphan products or alternative methods for financing the collection, transportation, and recycling of orphan products. [2006 c 183 § 28.]

70.95N.280 Materials management and financing authority. (1) The Washington materials management and financing authority is established as a public body corporate and politic, constituting an instrumentality of the state of Washington exercising essential governmental functions.

(2) The authority shall plan and implement a collection, transportation, and recycling program for manufacturers that have registered with the department their intent to participate in the standard program as required under RCW 70.95N.040.

(3) Membership in the authority is comprised of registered participating manufacturers. Any registered manufacturer who does not qualify or is not approved to submit an independent plan, or whose independent plan has not been approved by the department, is a member of the authority. All new entrants and white box manufacturers are also members of the authority.

(4) The authority shall act as a business management organization on behalf of the citizens of the state to manage

financial resources and contract for services for collection, transportation, and recycling of covered electronic products.

(5) The authority's standard plan is responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(6) The authority shall accept into the standard program covered electronic products from any registered collector who meets the requirements of this chapter. The authority shall compensate registered collectors for the reasonable costs associated with collection, but is not required to compensate nor restricted from compensating the additional collection costs resulting from the additional convenience offered to customers through premium and curbside services.

(7) The authority shall accept and utilize in the standard program any registered processor meeting the requirements of this chapter and any requirements described in the authority's operating plan or through contractual arrangements. Processors utilized by the standard plan shall provide documentation to the authority at least annually regarding how they are meeting the requirements in RCW 70.95N.250 and *section 26 of this act, including enough detail to allow the standard plan to meet its reporting requirements in RCW 70.95N.140(2) (c) and (d), and must submit to audits conducted by or for the authority. The authority shall compensate such processors for the reasonable costs, as determined by the authority, associated with processing unwanted electronic products. Such processors must demonstrate that the unwanted electronic products have been received from registered collectors or transporters, and provide other documentation as may be required by the authority.

(8) Except as specifically allowed in this chapter, the authority shall operate without using state funds or lending the credit of the state or local governments.

(9) The authority shall develop innovative approaches to improve materials management efficiency in order to ensure and increase the use of secondary material resources within the economy. [2006 c 183 § 29.]

*Reviser's note: Section 26 of this act was vetoed by the governor.

70.95N.290 Board of directors of the authority. (1)(a) The authority is governed by a board of directors. The board of directors is comprised of eleven participating manufacturers, appointed by the director of the department. Five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products, and six board positions are reserved for representatives of other brands, including at least one board position reserved for a manufacturer who is also a retailer selling their own private label. The return share of covered electronic products used to determine the top ten brand owners for purposes of electing the board must be determined by the department by January 1, 2007.

(b) The board must have representation from both television and computer manufacturers.

(2) The board shall select from its membership the chair of the board and such other officers as it deems appropriate.

(3) A majority of the board constitutes a quorum.

(4) The directors of the department of community, trade, and economic development and the department of ecology serve as ex officio members. The state agency directors serv-

ing in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Ex officio designations must be made in writing and communicated to the authority director.

(5) The board shall create its own bylaws in accordance with the laws of the state of Washington.

(6) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless the notice and hearing are expressly waived in writing by the affected member.

(7) The members of the board serve without compensation but are entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter. [2008 c 79 § 1; 2006 c 183 § 30.]

70.95N.300 Manufacturers to pay their apportioned share of administrative and operational costs—Performance bonds—Dispute arbitration. (1) Manufacturers participating in the standard plan shall pay the authority to cover all administrative and operational costs associated with the collection, transportation, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation as described in RCW 70.95N.280(5).

(2) The authority shall assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section. Such apportionment shall be based on return share, market share, any combination of return share and market share, or any other equitable method. The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state. Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states. The authority shall adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority under this section, the authority shall notify the department that the manufacturer is no longer participating in the standard plan.

(2008 Ed.)

(6) The authority shall submit its plan for assessing charges and apportioning cost on manufacturers participating in the standard plan to the department for review and approval along with the standard plan as provided in RCW 70.95N.060.

(7)(a) Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of costs levied by the authority under this section by written petition to the director of the department. The director of the department or the director's designee shall review all appeals within timelines established by the department and shall reverse any assessments of charges or apportionment of costs if the director finds that the authority's assessments or apportionment of costs was an arbitrary administrative decision, an abuse of administrative discretion, or is not an equitable assessment or apportionment of costs. The director shall make a fair and impartial decision based on sound data. If the director of the department reverses an assessment of charges, the authority must redetermine the assessment or apportionment of costs.

(b) Disputes regarding a final decision made by the director or director's designee may be challenged through arbitration. The director shall appoint one member to serve on the arbitration panel and the challenging party shall appoint one other. These two persons shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person. The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious. [2006 c 183 § 31.]

70.95N.310 Authority use of funds. (1) The authority shall use any funds legally available to it for any purpose specifically authorized by this chapter to:

(a) Contract and pay for collecting, transporting, and recycling of covered electronic products and education and other services as identified in the standard plan;

(b) Pay for the expenses of the authority including, but not limited to, salaries, benefits, operating costs and consumable supplies, equipment, office space, and other expenses related to the costs associated with operating the authority;

(c) Pay into the electronic products recycling account amounts billed by the department to the authority for any deficit in reaching the standard plan's equivalent share as required under RCW 70.95N.220; and

(d) Pay the department for the fees for submitting the standard plan and any plan revisions.

(2) If practicable, the authority shall avoid creating new infrastructure already available through private industry in the state.

(3) The authority may not receive an appropriation of state funds, other than:

(a) Funds that may be provided as a one-time loan to cover administrative costs associated with start-up of the authority, such as electing the board of directors and conducting the public hearing for the operating plan, provided that no appropriated funds may be used to pay for collection, transportation, or recycling services; and

(b) Funds received from the department from the electronic products recycling account for exceeding the standard plan's equivalent share.

(4) The authority may receive additional sources of funding that do not obligate the state to secure debt.

(5) All funds collected by the authority under this chapter, including interest, dividends, and other profits, are and must remain under the complete control of the authority and its board of directors, be fully available to achieve the intent of this chapter, and be used for the sole purpose of achieving the intent of this chapter. [2006 c 183 § 32.]

70.95N.320 General operating plan. (1) The board shall adopt a general operating plan of procedures for the authority. The board shall also adopt operating procedures for collecting funds from participating covered electronic manufacturers and for providing funding for contracted services. These operating procedures must be adopted by resolution prior to the authority operating the applicable programs.

(2) The general operating plan must include, but is not limited to: (a) Appropriate minimum reserve requirements to secure the authority's financial stability; (b) appropriate standards for contracting for services; and (c) standards for service.

(3) The board shall conduct at least one public hearing on the general operating plan prior to its adoption. The authority shall provide and make public a written response to all comments received by the public.

(4) The general operating plan must be adopted by resolution of the board. The board may periodically update the general operating plan as necessary, but must update the plan no less than once every four years. The general operating plan or updated plan must include a report on authority activities conducted since the commencement of authority operation or since the last reported general operating plan, whichever is more recent, including a statement of results achieved under the purposes of this chapter and the general operating plan. Upon adoption, the authority shall conduct its programs in observance of the objectives established in the general operating plan. [2006 c 183 § 33.]

70.95N.330 Authority employees—Initial staff support—Authority powers. (1) The authority shall employ a chief executive officer, appointed by the board, and a chief financial officer, as well as professional, technical, and support staff, appointed by the chief executive officer, necessary to carry out its duties.

(2) Employees of the authority are not classified employees of the state. Employees of the authority are exempt from state service rules and may receive compensation only from the authority at rates competitive with state service.

(3) The authority may retain its own legal counsel.

(4) The departments of ecology and community, trade, and economic development shall provide staff to assist in the creation of the authority. If requested by the authority, the departments of ecology and community, trade, and economic development shall also provide start-up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority.

Staff expenses must be paid through funds collected by the authority and must be reimbursed to the departments from the authority's financial resources within the first twenty-four months of operation.

(5) In addition to accomplishing the activities specifically authorized in this chapter, the authority may:

(a) Maintain an office or offices;

(b) Make and execute all manner of contracts, agreements, and instruments and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;

(c) Make expenditures as appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter;

(d) Give assistance to private and public bodies contracted to provide collection, transportation, and recycling services by providing information, guidelines, forms, and procedures for implementing their programs;

(e) Delegate, through contract, any of its powers and duties if consistent with the purposes of this chapter; and

(f) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter. [2006 c 183 § 34.]

70.95N.340 Federal preemption. This chapter is void if a federal law, or a combination of federal laws, takes effect that establishes a national program for the collection and recycling of covered electronic products that substantially meets the intent of this chapter, including the creation of a financing mechanism for collection, transportation, and recycling of all covered electronic products from households, small businesses, school districts, small governments, and charities in the United States. [2006 c 183 § 35.]

70.95N.900 Construction—2006 c 183. This act must be liberally construed to carry out its purposes and objectives. [2006 c 183 § 38.]

70.95N.901 Severability—2006 c 183. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 183 § 39.]

70.95N.902 Effective date—2006 c 183. This act takes effect July 1, 2006. [2006 c 183 § 40.]

Chapter 70.96 RCW

ALCOHOLISM

Sections

70.96.150 Inability to contribute to cost no bar to admission—Department may limit admissions.

Alcoholism and drug addiction and support act: Chapter 74.50 RCW.

Chemical dependency benefit provisions

group disability contracts: RCW 48.21.160 through 48.21.190.

health care services contracts: RCW 48.44.240.

70.96.150 Inability to contribute to cost no bar to admission. [1959 c 85 § 15.] Repealed by 1989 c 270 § 35; and subsequently recodified as RCW 70.96A.430 pursuant to 1993 c 131 § 1.

Reviser's note: This section was amended by 1989 c 271 § 308, without cognizance of the repeal thereof; and subsequently recodified without cognizance of the repeal thereof.

70.96.150 Inability to contribute to cost no bar to admission—Department may limit admissions. The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism.

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the department. [1989 c 271 § 308; 1959 c 85 § 15.]

Reviser's note: This section was also repealed by 1989 c 270 § 35, without cognizance of its amendment by 1989 c 271 § 308; and subsequently recodified pursuant to 1993 c 131 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Severability—1989 c 271: See note following RCW 9.94A.510.

Chapter 70.96A RCW

TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

(Formerly: Uniform alcoholism and intoxication treatment)

Sections

- 70.96A.010 Declaration of policy.
- 70.96A.011 Legislative finding and intent—Purpose of chapter.
- 70.96A.020 Definitions.
- 70.96A.030 Chemical dependency program.
- 70.96A.035 Integrated comprehensive screening and assessment process—Implementation.
- 70.96A.037 Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening.
- 70.96A.040 Program authority.
- 70.96A.043 Agreements authorized under the Interlocal Cooperation Act.
- 70.96A.045 Funding prerequisites, facilities, plans, or programs receiving financial assistance.
- 70.96A.047 Local funding and donative funding requirements—Facilities, plans, programs.
- 70.96A.050 Duties of department.
- 70.96A.055 Drug courts.
- 70.96A.060 Interdepartmental coordinating committee.
- 70.96A.070 Citizens advisory council—Qualifications—Duties—Rules and policies.
- 70.96A.080 Comprehensive program for treatment—Regional facilities.
- 70.96A.085 City, town, or county without facility—Contribution of liquor taxes prerequisite to use of another's facility.
- 70.96A.087 Liquor taxes and profits—City and county eligibility conditioned.
- 70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties—Evaluation of treatment of children—Treatment during pregnancy.
- 70.96A.095 Age of consent—Outpatient treatment of minors for chemical dependency.
- 70.96A.096 Notice to parents, school contacts for referring students to inpatient treatment.
- 70.96A.097 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds.
- 70.96A.100 Acceptance for approved treatment—Rules.
- 70.96A.110 Voluntary treatment of alcoholics or other drug addicts.
- 70.96A.120 Treatment programs and facilities—Admissions—Peace officer duties—Protective custody.
- 70.96A.140 Involuntary commitment.
- 70.96A.141 Joinder of petitions for commitment.
- 70.96A.142 Evaluation by designated chemical dependency specialist—When required—Required notifications.

- 70.96A.145 Involuntary commitment proceedings—Prosecuting attorney may represent specialist or program.
- 70.96A.148 Detention, commitment duties—Designation of county designated mental health professional.
- 70.96A.150 Records of alcoholics and intoxicated persons.
- 70.96A.155 Court-ordered treatment—Required notifications.
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- 70.96A.160 Visitation and communication with patients.
- 70.96A.170 Emergency service patrol—Establishment—Rules.
- 70.96A.180 Payment for treatment—Financial ability of patients.
- 70.96A.190 Criminal laws limitations.
- 70.96A.230 Minor—When outpatient treatment provider must give notice to parents.
- 70.96A.235 Minor—Parental consent for inpatient treatment—Exception.
- 70.96A.240 Minor—Parent not liable for payment unless consented to treatment—No right to public funds.
- 70.96A.245 Minor—Parent may request determination whether minor has chemical dependency requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility.
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- 70.96A.300 Counties may create alcoholism and other drug addiction board—Generally.
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- 70.96A.420 Statewide treatment and operating standards for opiate substitution programs—Evaluation and report.
- 70.96A.430 Inability to contribute to cost no bar to admission—Department may limit admissions.
- 70.96A.500 Fetal alcohol screening and assessment services.
- 70.96A.510 Interagency agreement on fetal alcohol exposure programs.
- 70.96A.520 Chemical dependency treatment expenditures—Prioritization.
- 70.96A.800 Chemically dependent persons—Intensive case management pilot projects.
- 70.96A.905 Uniform application of chapter—Training for county-designated mental health professionals.
- 70.96A.910 Application—Construction—1972 ex.s. c 122.
- 70.96A.915 Department allocation of funds—Construction.
- 70.96A.920 Severability—1972 ex.s. c 122.
- 70.96A.930 Section, subsection headings not part of law.

Reviser's note: Throughout this chapter "this act" has been translated to "this chapter." This act [1972 ex.s. c 122] consists of chapter 70.96A RCW, the amendment of RCW 9.87.010, 71.24.030 and the repeal of RCW 9.68.040, 70.96.010-70.96.030, 70.96.040-70.96.080, 70.96.090, 70.96.100-70.96.140, 70.96.900, and 71.08.010-71.08.090.

Alcoholism and drug addiction and support act: Chapter 74.50 RCW.

Court files and records closed—Exceptions: RCW 71.05.620.

70.96A.010 Declaration of policy. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages but rather should, within available funds, be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. Within available funds, treatment should also be provided for drug addicts. [1989 c 271 § 304; 1972 ex.s. c 122 § 1.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Effective date—1972 ex.s. c 122. "Chapter 122, Laws of 1972 extraordinary session shall be effective January 1, 1975." [1973 c 92 § 1; 1972 ex.s. c 122 § 31.]

Chemical dependency benefit provisions

group disability contracts: RCW 48.21.160-48.21.190.

health care services contracts: RCW 48.44.240.

70.96A.011 Legislative finding and intent—Purpose of chapter. The legislature finds that the use of alcohol and other drugs has become a serious threat to the health of the citizens of the state of Washington. The use of psychoactive chemicals has been found to be a prime factor in the current AIDS epidemic. Therefore, a comprehensive statute to deal with alcoholism and other drug addiction is necessary.

The legislature agrees with the 1987 resolution of the American Medical Association that endorses the proposition that all chemical dependencies, including alcoholism, are diseases. It is the intent of the legislature to end the sharp distinctions between alcoholism services and other drug addiction services, to recognize that chemical dependency is a disease, and to insure that prevention and treatment services are available and are of high quality. It is the purpose of this chapter to provide the financial assistance necessary to enable the department of social and health services to provide a discrete program of alcoholism and other drug addiction services. [1989 c 270 § 1.]

70.96A.020 Definitions. For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who suffers from the disease of alcoholism.

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(4) "Chemical dependency" means:

(a) Alcoholism; (b) drug addiction; or (c) dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

(6) "Department" means the department of social and health services.

(7) "Designated chemical dependency specialist" or "specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

(8) "Director" means the person administering the chemical dependency program within the department.

(9) "Drug addict" means a person who suffers from the disease of drug addiction.

(10) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.

(12) "Gravely disabled by alcohol or other psychoactive chemicals" or "gravely disabled" means that a person, as a result of the use of alcohol or other psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

(13) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility, or a long-term alcoholism or drug treatment facility, or in confinement.

(14) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, is gravely disabled or presents a likelihood of serious harm to himself or herself, to any other person, or to property.

(15) "Incompetent person" means a person who has been adjudged incompetent by the superior court.

(16) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(17) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(18) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self; (ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused the harm or that places another person or persons in reasonable fear of sustaining the harm; or (iii) physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.

(19) "Medical necessity" for inpatient care of a minor means a requested certified inpatient service that is reasonably calculated to: (a) Diagnose, arrest, or alleviate a chemical dependency; or (b) prevent the worsening of chemical dependency conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(20) "Minor" means a person less than eighteen years of age.

(21) "Parent" means the parent or parents who have the legal right to custody of the child. Parent includes custodian or guardian.

(22) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(23) "Person" means an individual, including a minor.

(24) "Professional person in charge" or "professional person" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

(25) "Secretary" means the secretary of the department of social and health services.

(26) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(27) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts.

(28) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2001 c 13 § 1; 1998 c 296 § 22. Prior: 1996 c 178 § 23; 1996 c 133 § 33; 1994 c 231 § 1; 1991 c 364 § 8; 1990 c 151 § 2; prior: 1989 c 271 § 305; 1989 c 270 § 3; 1972 ex.s. c 122 § 2.]

Severability—2001 c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 13 § 5.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Effective date—1996 c 178: See note following RCW 18.35.110.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Effective date—1994 c 231: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 231 § 3.]

Findings—1991 c 364: "The legislature finds that the use of alcohol and illicit drugs continues to be a primarycrippler of our youth. This translates into incredible costs to individuals, families, and society in terms of traffic fatalities, suicides, criminal activity including homicides, sexual promiscuity, familial incorrigibility, and conduct disorders, and educational fallout. Among children of all socioeconomic groups lower expectations for the future, low motivation and self-esteem, alienation, and depression are associated with alcohol and drug abuse.

Studies reveal that deaths from alcohol and other drug-related injuries rise sharply through adolescence, peaking in the early twenties. But second peak occurs in later life, where it accounts for three times as many deaths from chronic diseases. A young victim's life expectancy is likely to be reduced by an average of twenty-six years.

Yet the cost of treating alcohol and drug addicts can be recouped in the first three years of abstinence in health care savings alone. Public money spent on treatment saves not only the life of the chemical abuser, it makes us safer as individuals, and in the long-run costs less.

The legislature further finds that many children who abuse alcohol and

other drugs may not require involuntary treatment, but still are not adequately served. These children remain at risk for future chemical dependency, and may become mentally ill or a juvenile offender or need out-of-home placement. Children placed at risk because of chemical abuse may be better served by the creation of a comprehensive integrated system for children in crisis.

The legislature declares that an emphasis on the treatment of youth will pay the largest dividend in terms of preventable costs to individuals themselves, their families, and to society. The provision of augmented involuntary alcohol treatment services to youths, as well as involuntary treatment for youths addicted by other drugs, is in the interest of the public health and safety." [1991 c 364 § 7.]

Construction—1991 c 364 §§ 7-12: "The purpose of sections 7 through 12 of this act is solely to provide authority for the involuntary commitment of minors addicted by drugs within available funds and current programs and facilities. Nothing in sections 7 through 12 of this act shall be construed to require the addition of new facilities nor affect the department's authority for the uses of existing programs and facilities authorized by law. Nothing in sections 7 through 12 of this act shall prevent a parent or guardian from requesting the involuntary commitment of a minor through a county designated chemical dependency specialist on an ability to pay basis." [1991 c 364 § 13.]

Conflict with federal requirements—1991 c 364: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1991 c 364 § 15.]

Severability—1989 c 271: See note following RCW 9.94A.510.

70.96A.030 Chemical dependency program. A discrete program of chemical dependency is established within the department of social and health services, to be administered by a qualified person who has training and experience in handling alcoholism and other drug addiction problems or the organization or administration of treatment services for persons suffering from alcoholism or other drug addiction problems. [1989 c 270 § 4; 1972 ex.s. c 122 § 3.]

70.96A.035 Integrated comprehensive screening and assessment process—Implementation. (1) Not later than January 1, 2007, all persons providing treatment under this chapter shall also implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders adopted pursuant to RCW 70.96C.010 and shall document the numbers of clients with co-occurring mental and substance abuse disorders based on a quadrant system of low and high needs.

(2) Treatment providers contracted to provide treatment under this chapter who fail to implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders by July 1, 2007, are subject to contractual penalties established under RCW 70.96C.010. [2005 c 504 § 302.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96A.037 Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening. (1) The department of social and health services shall contract for chemical

dependency specialist services at each division of children and family services office to enhance the timeliness and quality of child protective services assessments and to better connect families to needed treatment services.

(2) The chemical dependency specialist's duties may include, but are not limited to: Conducting on-site chemical dependency screening and assessment, facilitating progress reports to department social workers, in-service training of department social workers and staff on substance abuse issues, referring clients from the department to treatment providers, and providing consultation on cases to department social workers.

(3) The department of social and health services shall provide training in and ensure that each case-carrying social worker is trained in uniform screening for mental health and chemical dependency. [2005 c 504 § 305.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96A.040 Program authority. The department, in the operation of the chemical dependency program may:

(1) Plan, establish, and maintain prevention and treatment programs as necessary or desirable;

(2) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, or intoxicated persons;

(3) Enter into agreements for monitoring of verification of qualifications of counselors employed by approved treatment programs;

(4) Adopt rules under chapter 34.05 RCW to carry out the provisions and purposes of this chapter and contract, cooperate, and coordinate with other public or private agencies or individuals for those purposes;

(5) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(6) Administer or supervise the administration of the provisions relating to alcoholics, other drug addicts, and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(7) Coordinate its activities and cooperate with chemical dependency programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the common advancement of chemical dependency programs;

(8) Keep records and engage in research and the gathering of relevant statistics;

(9) Do other acts and things necessary or convenient to execute the authority expressly granted to it;

(10) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide treatment programs. [1989 c 270 § 5; 1988 c 193 § 2; 1972 ex.s. c 122 § 4.]

70.96A.043 Agreements authorized under the Interlocal Cooperation Act. Pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW, the department may enter into agreements to accomplish the purposes of this chapter. [1989 c 270 § 7.]

70.96A.045 Funding prerequisites, facilities, plans, or programs receiving financial assistance. All facilities, plans, or programs receiving financial assistance under RCW 70.96A.040 must be approved by the department before any state funds may be used to provide the financial assistance. If the facilities, plans, or programs have not been approved as required or do not receive the required approval, the funds set aside for the facility, plan, or program shall be made available for allocation to facilities, plans, or programs that have received the required approval of the department. In addition, whenever there is an excess of funds set aside for a particular approved facility, plan, or program, the excess shall be made available for allocation to other approved facilities, plans, or programs. [1989 c 270 § 10.]

70.96A.047 Local funding and donative funding requirements—Facilities, plans, programs. Except as provided in this chapter, the secretary shall not approve any facility, plan, or program for financial assistance under RCW 70.96A.040 unless at least ten percent of the amount spent for the facility, plan, or program is provided from local public or private sources. When deemed necessary to maintain public standards of care in the facility, plan, or program, the secretary may require the facility, plan, or program to provide up to fifty percent of the total spent for the program through fees, gifts, contributions, or volunteer services. The secretary shall determine the value of the gifts, contributions, and volunteer services. [1989 c 270 § 11.]

70.96A.050 Duties of department. The department shall:

(1) Develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and drug addiction, and treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(3) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for

alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons who are clients of the correctional system;

(4) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics or other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(5) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol and other psychoactive chemicals and the consequences of their use;

(6) Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol and other psychoactive chemicals, the consequences of their use, the principles of recovery, and HIV and AIDS;

(7) Organize and foster training programs for persons engaged in treatment of alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(8) Sponsor and encourage research into the causes and nature of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, and serve as a clearing house for information relating to alcoholism or other drug addiction;

(9) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) Advise the governor in the preparation of a comprehensive plan for treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism and other drug addiction, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(12) Assist in the development of, and cooperate with, programs for alcohol and other psychoactive chemical education and treatment for employees of state and local governments and businesses and industries in the state;

(13) Use the support and assistance of interested persons in the community to encourage alcoholics and other drug addicts voluntarily to undergo treatment;

(14) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the

problem of persons operating motor vehicles while intoxicated;

(15) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and to provide them with adequate and appropriate treatment;

(16) Encourage all health and disability insurance programs to include alcoholism and other drug addiction as a covered illness; and

(17) Organize and sponsor a statewide program to help court personnel, including judges, better understand the disease of alcoholism and other drug addiction and the uses of chemical dependency treatment programs. [2001 c 13 § 2; 1989 c 270 § 6; 1979 ex.s. c 176 § 7; 1972 ex.s. c 122 § 5.]

Severability—2001 c 13: See note following RCW 70.96A.020.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

70.96A.055 Drug courts. The department shall contract with counties operating drug courts and counties in the process of implementing new drug courts for the provision of drug and alcohol treatment services. [1999 c 197 § 10.]

Legislative recognition—1999 c 197: See note following RCW 2.28.170.

Severability—1999 c 197: See note following RCW 9.94A.030.

70.96A.060 Interdepartmental coordinating committee. (1) An interdepartmental coordinating committee is established, composed of the superintendent of public instruction or his or her designee, the director of licensing or his or her designee, the executive secretary of the Washington state law enforcement training commission or his or her designee, and one or more designees (not to exceed three) of the secretary, one of whom shall be the director of the chemical dependency program. The committee shall meet at least twice annually at the call of the secretary, or his or her designee, who shall be its chair. The committee shall provide for the coordination of, and exchange of information on, all programs relating to alcoholism and other drug addiction, and shall act as a permanent liaison among the departments engaged in activities affecting alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. The committee shall assist the secretary and director in formulating a comprehensive plan for prevention of alcoholism and other drug addiction, for treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2) In exercising its coordinating functions, the committee shall assure that:

(a) The appropriate state agencies provide or assure all necessary medical, social, treatment, and educational services for alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the prevention of alcoholism and other chemical dependency, without unnecessary duplication of services;

(b) The several state agencies cooperate in the use of facilities and in the treatment of alcoholics and other drug

addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons; and

(c) All state agencies adopt approaches to the prevention of alcoholism and other drug addiction, the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons consistent with the policy of this chapter. [1989 c 270 § 8; 1979 c 158 § 220; 1972 ex.s. c 122 § 6.]

70.96A.070 Citizens advisory council—Qualifications—Duties—Rules and policies. Pursuant to the provisions of RCW 43.20A.360, there shall be a citizens advisory council composed of not less than seven nor more than fifteen members. It is the intent of the legislature that the citizens advisory council broadly represent citizens who have been recipients of voluntary or involuntary treatment for alcoholism or other drug addiction and who have been in recovery from chemical dependency for a minimum of two years. To meet this intent, at least two-thirds of the council's members shall be former recipients of these services and not employed in an occupation relating to alcoholism or drug addiction. The remaining members shall be broadly representative of the community, shall include representation from business and industry, organized labor, the judiciary, and minority groups, chosen for their demonstrated concern with alcoholism and other drug addiction problems. Members shall be appointed by the secretary. In addition to advising the department in carrying out the purposes of this chapter, the council shall develop and propose to the secretary for his or her consideration the rules for the implementation of the chemical dependency program of the department. Rules and policies governing treatment programs shall be developed in collaboration among the council, department staff, local government, and administrators of voluntary and involuntary treatment programs. The secretary shall thereafter adopt such rules that, in his or her judgment properly implement the chemical dependency program of the department consistent with the welfare of those to be served, the legislative intent, and the public good. [1994 c 231 § 2; 1989 c 270 § 9; 1973 1st ex.s. c 155 § 1; 1972 ex.s. c 122 § 7.]

Effective date—1994 c 231: See note following RCW 70.96A.020.

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

70.96A.080 Comprehensive program for treatment—Regional facilities. (1) The department shall establish by all appropriate means, including contracting for services, a comprehensive and coordinated discrete program for the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2) The program shall include, but not necessarily be limited to:

- (a) Detoxification;
- (b) Residential treatment; and
- (c) Outpatient treatment.

(3) All appropriate public and private resources shall be coordinated with and used in the program when possible.

(4) The department may contract for the use of an approved treatment program or other individual or organization if the secretary considers this to be an effective and eco-

nomical course to follow. [1989 c 270 § 18; 1972 ex.s. c 122 § 8.]

70.96A.085 City, town, or county without facility—Contribution of liquor taxes prerequisite to use of another's facility. A city, town, or county that does not have its own facility or program for the treatment and rehabilitation of alcoholics and other drug addicts may share in the use of a facility or program maintained by another city or county so long as it contributes no less than two percent of its share of liquor taxes and profits to the support of the facility or program. [1989 c 270 § 12.]

70.96A.087 Liquor taxes and profits—City and county eligibility conditioned. To be eligible to receive its share of liquor taxes and profits, each city and county shall devote no less than two percent of its share of liquor taxes and profits to the support of a program of alcoholism and other drug addiction approved by the alcoholism and other drug addiction board authorized by RCW 70.96A.300 and the secretary. [1989 c 270 § 13.]

70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties—Evaluation of treatment of children—Treatment during pregnancy. (1) The department shall adopt rules establishing standards for approved treatment programs, the process for the review and inspection program applying to the department for certification as an approved treatment program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(6) The department periodically shall inspect approved public and private treatment programs at reasonable times and in a reasonable manner.

(7) The department shall maintain and periodically publish a current list of approved treatment programs.

(8) Each approved treatment program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment programs, and its certification revoked or suspended.

(9) The department shall use the data provided in subsection (8) of this section to evaluate each program that admits children to inpatient treatment upon application of their parents. The evaluation shall be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

(10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

(11)(a) All approved opiate substitution treatment programs that provide services to women who are pregnant are required to disseminate up-to-date and accurate health education information to all their pregnant clients concerning the possible addiction and health risks that their opiate substitution treatment may have on their baby. All pregnant clients must also be advised of the risks to both them and their baby associated with not remaining on the opiate substitute program. The information must be provided to these clients both verbally and in writing. The health education information provided to the pregnant clients must include referral options for the addicted baby.

(b) The department shall adopt rules that require all opiate treatment programs to educate all pregnant women in their program on the benefits and risks of methadone treatment to their fetus before they are provided these medications, as part of their addiction treatment. The department shall meet the requirements under this subsection within the appropriations provided for opiate treatment programs. The department, working with treatment providers and medical experts, shall develop and disseminate the educational materials to all certified opiate treatment programs. [2005 c 70 § 2; 1995 c 312 § 46; 1990 c 151 § 5. Prior: 1989 c 270 § 19; 1989 c 175 § 131; 1972 ex.s. c 122 § 9.]

Findings—Intent—2005 c 70: "The legislature finds that drug use among pregnant women is a significant and growing concern statewide. The legislature further finds that methadone, although an effective alternative to other substance use treatments, can result in babies who are exposed to methadone while in utero being born addicted and facing the painful effects of withdrawal.

It is the intent of the legislature to notify all pregnant mothers who are receiving methadone treatment of the risks and benefits methadone could have on their baby during pregnancy through birth and to inform them of the

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potential need for the newborn baby to be taken care of in a hospital setting or in a specialized supportive environment designed specifically to address newborn addiction problems." [2005 c 70 § 1.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

70.96A.095 Age of consent—Outpatient treatment of minors for chemical dependency. Any person thirteen years of age or older may give consent for himself or herself to the furnishing of outpatient treatment by a chemical dependency treatment program certified by the department. Parental authorization is required for any treatment of a minor under the age of thirteen. [1998 c 296 § 23; 1996 c 133 § 34; 1995 c 312 § 47; 1991 c 364 § 9; 1989 c 270 § 24.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

70.96A.096 Notice to parents, school contacts for referring students to inpatient treatment. School district personnel who contact a chemical dependency inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours. [1996 c 133 § 5.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

70.96A.097 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds. (1) The department shall ensure that, for any minor admitted to inpatient treatment under RCW 70.96A.245, a review is conducted by a physician or chemical dependency counselor, as defined in rule by the department, who is employed by the department or an agency under contract with the department and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the program providing the treatment. The physician or chemical dependency counselor shall conduct the review not less than seven nor more than fourteen days following the date the minor was brought to the facility under RCW 70.96A.245(1) to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis.

(2) In making a determination under subsection (1) of this section whether it is a medical necessity to release the minor from inpatient treatment, the department shall consider the opinion of the treatment provider, the safety of the minor, the likelihood the minor's chemical dependency recovery will deteriorate if released from inpatient treatment, and the wishes of the parent.

(3) If, after any review conducted by the department under this section, the department determines it is no longer a medical necessity for a minor to receive inpatient treatment, the department shall immediately notify the parents and the professional person in charge. The professional person in

charge shall release the minor to the parents within twenty-four hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor shall be released to the parent on the second judicial day following the department's determination in order to allow the parent time to file an at-risk youth petition under chapter 13.32A RCW. If the department determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal shall be grounds for the parent to file an at-risk youth petition.

(4) The department may, subject to available funds, contract with other governmental agencies for the conduct of the reviews conducted under this section and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

(5) In addition to the review required under this section, the department may periodically determine and redetermine the medical necessity of treatment for purposes of payment with public funds. [1998 c 296 § 28; 1995 c 312 § 48.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Short title—1995 c 312: See note following RCW 13.32A.010.

70.96A.100 Acceptance for approved treatment—

Rules. The secretary shall adopt and may amend and repeal rules for acceptance of persons into the approved treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. In establishing the rules, the secretary shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient treatment, unless he or she is found to require residential treatment.

(3) A person shall not be denied treatment solely because he or she has withdrawn from treatment against medical advice on a prior occasion or because he or she has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and use other appropriate treatment. [1989 c 270 § 23; 1972 ex.s. c 122 § 10.]

70.96A.110 Voluntary treatment of alcoholics or other drug addicts. (1) An alcoholic or other drug addict may apply for voluntary treatment directly to an approved treatment program. If the proposed patient is a minor or an incompetent person, he or she, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the secretary, the administrator in charge of an approved treatment program may determine who shall be admitted for treatment. If a person is refused admission to an approved treatment program, the

administrator, subject to rules adopted by the secretary, shall refer the person to another approved treatment program for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved treatment program, he or she shall be encouraged to consent to appropriate outpatient treatment. If it appears to the administrator in charge of the treatment program that the patient is an alcoholic or other drug addict who requires help, the department may arrange for assistance in obtaining supportive services and residential programs.

(4) If a patient leaves an approved public treatment program, with or against the advice of the administrator in charge of the program, the department may make reasonable provisions for his or her transportation to another program or to his or her home. If the patient has no home he or she should be assisted in obtaining shelter. If the patient is less than fourteen years of age or an incompetent person the request for discharge from an inpatient program shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he or she was the original applicant. [1990 c 151 § 7; 1989 c 270 § 25; 1972 ex.s. c 122 § 11.]

70.96A.120 Treatment programs and facilities—Admissions—Peace officer duties—Protective custody.

(1) An intoxicated person may come voluntarily to an approved treatment program for treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he or she consents to the proffered help, may be assisted to his or her home, an approved treatment program or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism, drug addiction, or intoxication and except for a person who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while under the influence of intoxicating liquor or any drug and except for a person who may wish to avail himself or herself of the provisions of RCW 46.20.308, a person who appears to be incapacitated or gravely disabled by alcohol or other drugs and who is in a public place or who has threatened, attempted, or inflicted physical harm on himself, herself, or another, shall be taken into protective custody by a peace officer or staff designated by the county and as soon as practicable, but in no event beyond eight hours brought to an approved treatment program for treatment. If no approved treatment program is readily available he or she shall be taken to an emergency medical service customarily used for incapacitated persons. The peace officer or staff designated by the county, in detaining the person and in taking him or her to an approved treatment program, is taking him or her into protective custody and shall make every reasonable effort to protect his or her health and safety. In taking the person into protective custody, the detaining peace officer or staff designated by the county may take reasonable steps including reasonable force if necessary to protect himself or herself or effect the custody. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved treatment program shall be examined by a qualified person. He or she may then be admitted as a patient or

referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment program shall arrange for his or her transportation.

(4) A person who is found to be incapacitated or gravely disabled by alcohol or other drugs at the time of his or her admission or to have become incapacitated or gravely disabled at any time after his or her admission, may not be detained at the program for more than seventy-two hours after admission as a patient, unless a petition is filed under RCW 70.96A.140, as now or hereafter amended: PROVIDED, That the treatment personnel at an approved treatment program are authorized to use such reasonable physical restraint as may be necessary to retain an incapacitated or gravely disabled person for up to seventy-two hours from the time of admission. The seventy-two hour periods specified in this section shall be computed by excluding Saturdays, Sundays, and holidays. A person may consent to remain in the program as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment program, is not referred to another health facility, and has no funds, may be taken to his or her home, if any. If he or she has no home, the approved treatment program shall provide him or her with information and assistance to access available community shelter resources.

(6) If a patient is admitted to an approved treatment program, his or her family or next of kin shall be notified as promptly as possible by the treatment program. If an adult patient who is not incapacitated requests that there be no notification, his or her request shall be respected.

(7) The peace officer, staff designated by the county, or treatment facility personnel, who act in compliance with this chapter and are performing in the course of their official duty are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment program determines that appropriate treatment is available, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment. [1991 c 290 § 6; 1990 c 151 § 8; 1989 c 271 § 306; 1987 c 439 § 13; 1977 ex.s. c 62 § 1; 1974 ex.s. c 175 § 1; 1972 ex.s. c 122 § 12.]

Severability—1989 c 271: See note following RCW 9.94A.510.

70.96A.140 Involuntary commitment. (1) When a designated chemical dependency specialist receives information alleging that a person presents a likelihood of serious harm or is gravely disabled as a result of chemical dependency, the designated chemical dependency specialist, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court, district court, or in another court permitted by court rule.

If a petition for commitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the designated chemical dependency specialist's report.

If the designated chemical dependency specialist finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to either a *county designated mental health professional or an evaluation and treatment facility as defined in RCW 71.05.020 or 71.34.020. If placement in a chemical dependency program is available and deemed appropriate, the petition shall allege that: The person is chemically dependent and presents a likelihood of serious harm or is gravely disabled by alcohol or drug addiction, or that the person has twice before in the preceding twelve months been admitted for detoxification, sobering services, or chemical dependency treatment pursuant to RCW 70.96A.110 or 70.96A.120, and is in need of a more sustained treatment program, or that the person is chemically dependent and has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within five days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning program or the department is eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or **71.34.050, in which case the hearing shall be held within seventy-two hours of the filing of the petition: PROVIDED, HOWEVER, That the above specified seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays: PROVIDED FURTHER, That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the designated chemical dependency specialist on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony, which may be telephonic, of at least one licensed physician who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on

its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is chemically dependent shall be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court appointed licensed physician. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment program. It shall not order commitment of a person unless it determines that an approved treatment program is available and able to provide adequate and appropriate treatment for him or her.

(5) A person committed under this section shall remain in the program for treatment for a period of sixty days unless sooner discharged. At the end of the sixty-day period, he or she shall be discharged automatically unless the program, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged.

If a petition for recommitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the treatment progress report.

If a person has been committed because he or she is chemically dependent and likely to inflict physical harm on another, the program shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) Upon the filing of a petition for recommitment under subsection (5) of this section, the court shall fix a date for hearing no less than two and no more than seven days after the date the petition was filed: PROVIDED, That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment program on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of

this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(7) The approved treatment program shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment program to another if transfer is medically advisable.

(8) A person committed to the custody of a program for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of a chemically dependent person committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of a chemically dependent person committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the program providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the program designated to provide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated chemical dependency specialist of original commitment, and the court of original commitment. The program designated to provide less restrictive care

may modify the conditions for continued release when the modifications are in the best interests of the patient. If the program providing less restrictive care and the designated chemical dependency specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated chemical dependency specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated chemical dependency specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive program. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions. [2001 c 13 § 3; 1995 c 312 § 49; 1993 c 362 § 1; 1991 c 364 § 10; 1990 c 151 § 3; 1989 c 271 § 307; 1987 c 439 § 14; 1977 ex.s. c 129 § 1; 1974 ex.s. c 175 § 2; 1972 ex.s. c 122 § 14.]

Reviser's note: *(1) The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

***(2) RCW 71.34.050 was recodified as RCW 71.34.710 pursuant to 2005 c 371 § 6.

Severability—2001 c 13: See note following RCW 70.96A.020.

Short title—1995 c 312: See note following RCW 13.32A.010.

Purpose—Construction—1993 c 362: "The purpose of this act is solely to provide authority for the involuntary commitment of persons suffering from chemical dependency within available funds and current programs and facilities. Nothing in this act shall be construed to require the addition of new facilities nor affect the department of social and health services' authority for the uses of existing programs and facilities authorized by law." [1993 c 362 § 2.]

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

Severability—1989 c 271: See note following RCW 9.94A.510.

70.96A.141 Joinder of petitions for commitment. A petition for commitment under this chapter may be joined with a petition for commitment under chapter 71.05 RCW. [2005 c 504 § 304.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96A.142 Evaluation by designated chemical dependency specialist—When required—Required notifications. (1) When a designated chemical dependency specialist

is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232 is to be released to the community, the designated chemical dependency specialist shall evaluate the person within seventy-two hours of release, if the person's treatment information indicates that he or she may need chemical dependency treatment.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the designated chemical dependency specialist of the violation and request an evaluation for purposes of revocation of the conditional release.

(3) When a designated chemical dependency specialist becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated chemical dependency specialist detains a person under this chapter, the designated chemical dependency specialist shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated chemical dependency specialist to provide offender supervision. [2004 c 166 § 15.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

70.96A.145 Involuntary commitment proceedings—Prosecuting attorney may represent specialist or program. The prosecuting attorney of the county in which such action is taken may, at the discretion of the prosecuting attorney, represent the designated chemical dependency specialist or treatment program in judicial proceedings under RCW 70.96A.140 for the involuntary commitment or recommitment of an individual, including any judicial proceeding where the individual sought to be committed or recommitted challenges the action. [1993 c 137 § 1.]

70.96A.148 Detention, commitment duties—Designation of county designated mental health professional. The county alcoholism and other drug addiction program coordinator may designate the county designated mental health professional to perform the detention and commitment duties described in RCW 70.96A.120 and 70.96A.140. [2001 c 13 § 4.]

Severability—2001 c 13: See note following RCW 70.96A.020.

70.96A.150 Records of alcoholics and intoxicated persons. (1) The registration and other records of treatment

programs shall remain confidential. Records may be disclosed (a) in accordance with the prior written consent of the patient with respect to whom such record is maintained, (b) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, (c) to comply with state laws mandating the reporting of suspected child abuse or neglect, or (d) when a patient commits a crime on program premises or against program personnel, or threatens to do so.

(2) Notwithstanding subsection (1) of this section, the secretary may receive information from patients' records for purposes of research into the causes and treatment of alcoholism and other drug addiction, verification of eligibility and appropriateness of reimbursement, and the evaluation of alcoholism and other drug treatment programs. Information under this subsection shall not be published in a way that discloses patients' names or otherwise discloses their identities.

(3) Nothing contained in this chapter relieves a person or firm from the requirements under federal regulations for the confidentiality of alcohol and drug abuse patient records. Obligations imposed on drug and alcohol treatment programs and protections afforded alcohol and drug abuse patients under federal regulations apply to all programs approved by the department under RCW 70.96A.090. [1990 c 151 § 1; 1989 c 162 § 1; 1972 ex.s. c 122 § 15.]

70.96A.155 Court-ordered treatment—Required notifications. When any court orders a person to receive treatment under this chapter, the order shall include a statement that if the person is, or becomes, subject to supervision by the department of corrections, the person must notify the treatment provider and the person's chemical dependency treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision. Upon a petition by a person who does not have a history of one or more violent acts, as defined in RCW 71.05.020, the court may, for good cause, find that public safety would not be enhanced by the sharing of this person's information. [2004 c 166 § 13.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

70.96A.157 Persons subject to court-ordered treatment or supervision—Documentation. (1) Treatment providers shall inquire of each person seeking treatment, at intake, whether the person is subject to court ordered mental health or chemical dependency treatment, whether civil or criminal, and document the person's response in his or her record. If the person is in treatment on July 1, 2005, and the treatment provider has not inquired whether the person is subject to court ordered mental health or chemical dependency treatment, the treatment provider shall inquire on the person's next treatment session and document the person's response in his or her record.

(2) Treatment providers shall inquire of each person seeking treatment, at intake, whether the person is subject to supervision of any kind by the department of corrections and document the person's response in his or her record. If the person is in treatment on July 1, 2005, and the treatment provider has not inquired whether the person is subject to supervision of any kind by the department of corrections, the treat-

ment provider shall inquire on the person's next treatment session and document the person's response in his or her record.

(3) For all persons who are subject to both court ordered mental health or chemical dependency treatment and supervision by the department of corrections, the treatment provider shall request an authorization to release records and notify the person that, unless expressly excluded by the court order the law requires treatment providers to share information with the department of corrections and the person's mental health treatment provider.

(4) If the treatment provider has reason to believe that a person is subject to supervision by the department of corrections but the person's record does not indicate that he or she is, the treatment provider may call any department of corrections office and provide the person's name and birth date. If the person is subject to supervision, the treatment provider shall request, and the department of corrections shall provide, the name and contact information for the person's community corrections officer. [2005 c 504 § 508.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96A.160 Visitation and communication with patients. (1) Subject to reasonable rules regarding hours of visitation which the secretary may adopt, patients in any approved treatment program shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment program may be intercepted, read, or censored. The secretary may adopt reasonable rules regarding the use of telephone by patients in approved treatment programs. [1989 c 270 § 29; 1972 ex.s. c 122 § 16.]

70.96A.170 Emergency service patrol—Establishment—Rules. (1) The state and counties, cities, and other municipalities may establish or contract for emergency service patrols which are to be under the administration of the appropriate jurisdiction. A patrol consists of persons trained to give assistance in the streets and in other public places to persons who are intoxicated. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and may transport intoxicated persons to their homes and to and from treatment programs.

(2) The secretary shall adopt rules pursuant to chapter 34.05 RCW for the establishment, training, and conduct of emergency service patrols. [1989 c 270 § 30; 1972 ex.s. c 122 § 17.]

70.96A.180 Payment for treatment—Financial ability of patients. (1) If treatment is provided by an approved treatment program and the patient has not paid or is unable to pay the charge therefor, the program is entitled to any payment (a) received by the patient or to which he may be entitled because of the services rendered, and (b) from any public

or private source available to the program because of the treatment provided to the patient.

(2) A patient in a program, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability, is liable to the program for cost of maintenance and treatment of the patient therein in accordance with rates established.

(3) The secretary shall adopt rules governing financial ability that take into consideration the income, savings, and other personal and real property of the person required to pay, and any support being furnished by him to any person he is required by law to support. [1990 c 151 § 6; 1989 c 270 § 31; 1972 ex.s. c 122 § 18.]

70.96A.190 Criminal laws limitations. (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being an alcoholic or drug addict, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) No county, municipality, or other political subdivision may interpret or apply any law of general application to circumvent the provision of subsection (1) of this section.

(3) Nothing in this chapter affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol or other psychoactive chemicals, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages or other psychoactive chemicals at stated times and places or by a particular class of persons; nor shall evidence of intoxication affect, other than as a defense, the application of any law, ordinance, resolution, or rule to conduct otherwise establishing the elements of an offense. [1989 c 270 § 32; 1972 ex.s. c 122 § 19.]

70.96A.230 Minor—When outpatient treatment provider must give notice to parents. Any provider of outpatient treatment who provides outpatient treatment to a minor thirteen years of age or older shall provide notice of the minor's request for treatment to the minor's parents if: (1) The minor signs a written consent authorizing the disclosure; or (2) the treatment program director determines that the minor lacks capacity to make a rational choice regarding consenting to disclosure. The notice shall be made within seven days of the request for treatment, excluding Saturdays, Sundays, and holidays, and shall contain the name, location, and telephone number of the facility providing treatment, and the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for treatment with the parent. [1998 c 296 § 24.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.235 Minor—Parental consent for inpatient treatment—Exception. Parental consent is required for inpatient chemical dependency treatment of a minor, unless the child meets the definition of a child in need of services in *RCW 13.32A.030(4)(c) as determined by the department:

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PROVIDED, That parental consent is required for any treatment of a minor under the age of thirteen.

This section does not apply to petitions filed under this chapter. [1998 c 296 § 25.]

*Reviser's note: RCW 13.32A.030 was amended by 2000 c 123 § 2, changing subsection (4)(c) to subsection (5)(c).

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.240 Minor—Parent not liable for payment unless consented to treatment—No right to public funds.

(1) The parent of a minor is not liable for payment of inpatient or outpatient chemical dependency treatment unless the parent has joined in the consent to the treatment.

(2) The ability of a parent to apply to a certified treatment program for the admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor. [1998 c 296 § 26.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.245 Minor—Parent may request determination whether minor has chemical dependency requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility.

(1) A parent may bring, or authorize the bringing of, his or her minor child to a certified treatment program and request that a chemical dependency assessment be conducted by a professional person to determine whether the minor is chemically dependent and in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the program.

(3) An appropriately trained professional person may evaluate whether the minor is chemically dependent. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the program, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the program based solely on his or her request. [1998 c 296 § 27.]

Purpose—1998 c 296 §§ 27 and 29: "It is the purpose of sections 27 and 29 of this act to assure the ability of parents to exercise reasonable, compassionate care and control of their minor children when there is a medical

necessity for treatment and without the requirement of filing a petition under chapter 70.96A RCW." [1998 c 296 § 33.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.250 Minor—Parent may request determination whether minor has chemical dependency requiring outpatient treatment—Consent of minor not required—Discharge of minor. (1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient chemical dependency treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a chemical dependency and is in need of outpatient treatment.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person in charge of the program may evaluate whether the minor has a chemical dependency and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under RCW 70.96A.245 shall be discharged immediately from inpatient treatment upon written request of the parent. [1998 c 296 § 29.]

Purpose—1998 c 296 §§ 27 and 29: See note following RCW 70.96A.245.

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.255 Minor—Petition to superior court for release from facility. Following the review conducted under RCW 70.96A.097, a minor child may petition the superior court for his or her release from the facility. The petition may be filed not sooner than five days following the review. The court shall release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to remain at the facility. [1998 c 296 § 30.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.260 Minor—Not released by petition under RCW 70.96A.255—Release within thirty days—Professional may initiate proceedings to stop release. If the minor is not released as a result of the petition filed under RCW 70.96A.255, he or she shall be released not later than thirty days following the later of: (1) The date of the department's determination under RCW 70.96A.097(2); or (2) the filing of a petition for judicial review under RCW 70.96A.255, unless a professional person or the designated chemical dependency specialist initiates proceedings under this chapter. [1998 c 296 § 31.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.265 Minor—Eligibility for medical assistance under chapter 74.09 RCW—Payment by department. For purposes of eligibility for medical assistance under chapter 74.09 RCW, minors in inpatient chemical dependency treatment shall be considered to be part of their parent's or legal guardian's household, unless the minor has been assessed by the department or its designee as likely to require such treatment for at least ninety consecutive days, or is in

out-of-home care in accordance with chapter 13.34 RCW, or the parents are found to not be exercising responsibility for care and control of the minor. Payment for such care by the department shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department. [1998 c 296 § 32.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.300 Counties may create alcoholism and other drug addiction board—Generally. (1) A county or combination of counties acting jointly by agreement, referred to as "county" in this chapter, may create an alcoholism and other drug addiction board. This board may also be designated as a board for other related purposes.

(2) The board shall be composed of not less than seven nor more than fifteen members, who shall be chosen for their demonstrated concern for alcoholism and other drug addiction problems. Members of the board shall be representative of the community, shall include at least one-quarter recovered alcoholics or other recovered drug addicts, and shall include minority group representation. No member may be a provider of alcoholism and other drug addiction treatment services. No more than four elected or appointed city or county officials may serve on the board at the same time. Members of the board shall serve three-year terms and hold office until their successors are appointed and qualified. They shall not be compensated for the performance of their duties as members of the board, but may be reimbursed for travel expenses.

(3) The alcoholism and other drug addiction board shall:

- (a) Conduct public hearings and other investigations to determine the needs and priorities of county citizens;

- (b) Prepare and recommend to the county legislative authority for approval, all plans, budgets, and applications by the county to the department and other state agencies on behalf of the county alcoholism and other drug addiction program;

- (c) Monitor the implementation of the alcoholism and other drug addiction plan and evaluate the performance of the alcoholism and drug addiction program at least annually;

- (d) Advise the county legislative authority and county alcoholism and other drug addiction program coordinator on matters relating to the alcoholism and other drug addiction program, including prevention and education;

- (e) Nominate individuals to the county legislative authority for the position of county alcoholism and other drug addiction program coordinator. The nominees should have training and experience in the administration of alcoholism and other drug addiction services and shall meet the minimum qualifications established by rule of the department;

- (f) Carry out other duties that the department may prescribe by rule. [1989 c 270 § 15.]

70.96A.310 County alcoholism and other drug addiction program—Chief executive officer of program to be program coordinator. (1) The chief executive officer of the county alcoholism and other drug addiction program shall be the county alcoholism and other drug addiction program coordinator. The coordinator shall:

(a) In consultation with the county alcoholism and other drug addiction board, provide general supervision over the county alcoholism and other drug addiction program;

(b) Prepare plans and applications for funds to support the alcoholism and other drug addiction program in consultation with the county alcoholism and other drug addiction board;

(c) Monitor the delivery of services to assure conformance with plans and contracts and, at the discretion of the board, but at least annually, report to the alcoholism and other drug addiction board the results of the monitoring;

(d) Provide staff support to the county alcoholism and other drug addiction board.

(2) The county alcoholism and other drug addiction program coordinator shall be appointed by the county legislative authority from nominations by the alcoholism and other drug addiction program board. The coordinator may serve on either a full-time or part-time basis. Only with the prior approval of the secretary may the coordinator be an employee of a government or private agency under contract with the department to provide alcoholism or other drug addiction services. [1989 c 270 § 16.]

70.96A.320 Alcoholism and other drug addiction program—Generally. (1) A county legislative authority, or two or more counties acting jointly, may establish an alcoholism and other drug addiction program. If two or more counties jointly establish the program, they shall designate one county to provide administrative and financial services.

(2) To be eligible for funds from the department for the support of the county alcoholism and other drug addiction program, the county legislative authority shall establish a county alcoholism and other drug addiction board under RCW 70.96A.300 and appoint a county alcoholism and other drug addiction program coordinator under RCW 70.96A.310.

(3) The county legislative authority may apply to the department for financial support for the county program of alcoholism and other drug addiction. To receive financial support, the county legislative authority shall submit a plan that meets the following conditions:

(a) It shall describe the services and activities to be provided;

(b) It shall include anticipated expenditures and revenues;

(c) It shall be prepared by the county alcoholism and other drug addiction program board and be adopted by the county legislative authority;

(d) It shall reflect maximum effective use of existing services and programs; and

(e) It shall meet other conditions that the secretary may require.

(4) The county may accept and spend gifts, grants, and fees, from public and private sources, to implement its program of alcoholism and other drug addiction.

(5) The county may subcontract for detoxification, residential treatment, or outpatient treatment with treatment programs that are approved treatment programs. The county may subcontract for other services with individuals or organizations approved by the department.

(6) To continue to be eligible for financial support from the department for the county alcoholism and other drug

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addiction program, an increase in state financial support shall not be used to supplant local funds from a source that was used to support the county alcoholism and other drug addiction program before the effective date of the increase. [1990 c 151 § 9; 1989 c 270 § 17.]

70.96A.325 Methamphetamine addiction programs—Counties authorized to seek state funding. (1) Any county that has imposed the sales and use tax authorized by RCW 82.14.460 may seek a state appropriation of up to one hundred thousand dollars annually beginning in fiscal year 2008 and ending in fiscal year 2010. The funds shall be used to provide additional support to counties for mental health or substance abuse treatment for persons with methamphetamine addiction. Local governments receiving funds under this section may not use the funds to supplant existing funding.

(2) Counties receiving funding shall: (a) Provide a financial plan for the expenditure of any potential funds prior to funds being awarded; (b) report annually to the appropriate committees of the legislature regarding the number of clients served, services provided, and a statement of expenditures; and (c) expend no more than ten percent for administrative costs or for information technology. [2006 c 339 § 101.]

Intent—2006 c 339: "It is the intent of the legislature to provide assistance for jurisdictions enforcing illegal drug laws that have historically been underserved by federally funded state narcotics task forces and are considered to be major transport areas of narcotics traffickers." [2006 c 339 § 103.]

Part headings not law—2006 c 339: "Part headings used in this act are no part of the law." [2006 c 339 § 401.]

70.96A.350 Criminal justice treatment account. (1) The criminal justice treatment account is created in the state treasury. Moneys in the account may be expended solely for: (a) Substance abuse treatment and treatment support services for offenders with an addiction or a substance abuse problem that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; (b) the provision of drug and alcohol treatment services and treatment support services for nonviolent offenders within a drug court program; and (c) during the 2007-2009 biennium, operation of the integrated crisis response and intensive case management pilots contracted with the department of social and health services division of alcohol and substance abuse. Moneys in the account may be spent only after appropriation.

(2) For purposes of this section:

(a) "Treatment" means services that are critical to a participant's successful completion of his or her substance abuse treatment program, but does not include the following services: Housing other than that provided as part of an inpatient substance abuse treatment program, vocational training, and mental health counseling; and

(b) "Treatment support" means transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to ensure a participant's ability to attend outpatient treatment sessions.

(3) Revenues to the criminal justice treatment account consist of: (a) Funds transferred to the account pursuant to

this section; and (b) any other revenues appropriated to or deposited in the account.

(4)(a) For the fiscal biennium beginning July 1, 2003, the state treasurer shall transfer eight million nine hundred fifty thousand dollars from the general fund into the criminal justice treatment account, divided into eight equal quarterly payments. For the fiscal year beginning July 1, 2005, and each subsequent fiscal year, the state treasurer shall transfer eight million two hundred fifty thousand dollars from the general fund to the criminal justice treatment account, divided into four equal quarterly payments. For the fiscal year beginning July 1, 2006, and each subsequent fiscal year, the amount transferred shall be increased on an annual basis by the implicit price deflator as published by the federal bureau of labor statistics.

(b) For the fiscal biennium beginning July 1, 2003, and each biennium thereafter, the state treasurer shall transfer two million nine hundred eighty-four thousand dollars from the general fund into the violence reduction and drug enforcement account, divided into eight quarterly payments. The amounts transferred pursuant to this subsection (4)(b) shall be used solely for providing drug and alcohol treatment services to offenders confined in a state correctional facility who are assessed with an addiction or a substance abuse problem that if not treated would result in addiction.

(c) In each odd-numbered year, the legislature shall appropriate the amount transferred to the criminal justice treatment account in (a) of this subsection to the division of alcohol and substance abuse for the purposes of subsection (5) of this section.

(5) Moneys appropriated to the division of alcohol and substance abuse from the criminal justice treatment account shall be distributed as specified in this subsection. The department shall serve as the fiscal agent for purposes of distribution. Until July 1, 2004, the department may not use moneys appropriated from the criminal justice treatment account for administrative expenses and shall distribute all amounts appropriated under subsection (4)(c) of this section in accordance with this subsection. Beginning in July 1, 2004, the department may retain up to three percent of the amount appropriated under subsection (4)(c) of this section for its administrative costs.

(a) Seventy percent of amounts appropriated to the division from the account shall be distributed to counties pursuant to the distribution formula adopted under this section. The division of alcohol and substance abuse, in consultation with the department of corrections, the sentencing guidelines commission, the Washington state association of counties, the Washington state association of drug court professionals, the superior court judges' association, the Washington association of prosecuting attorneys, representatives of the criminal defense bar, representatives of substance abuse treatment providers, and any other person deemed by the division to be necessary, shall establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County or regional plans submitted for the expenditure of formula funds must be approved by the panel established in (b) of this subsection.

(b) Thirty percent of the amounts appropriated to the division from the account shall be distributed as grants for purposes of treating offenders against whom charges are filed

by a county prosecuting attorney. The division shall appoint a panel of representatives from the Washington association of prosecuting attorneys, the Washington association of sheriffs and police chiefs, the superior court judges' association, the Washington state association of counties, the Washington defender's association or the Washington association of criminal defense lawyers, the department of corrections, the Washington state association of drug court professionals, substance abuse treatment providers, and the division. The panel shall review county or regional plans for funding under (a) of this subsection and grants approved under this subsection. The panel shall attempt to ensure that treatment as funded by the grants is available to offenders statewide.

(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court shall jointly submit a plan, approved by the county legislative authority or authorities, to the panel established in subsection (5)(b) of this section, for disposition of all the funds provided from the criminal justice treatment account within that county. The funds shall be used solely to provide approved alcohol and substance abuse treatment pursuant to RCW 70.96A.090 and treatment support services. No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent for treatment support services.

(7) Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment under this section.

(8) Moneys allocated under this section shall be used to supplement, not supplant, other federal, state, and local funds used for substance abuse treatment.

(9) Counties must meet the criteria established in RCW 2.28.170(3)(b). [2008 c 329 § 918; 2003 c 379 § 11; 2002 c 290 § 4.]

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Effective date—2002 c 290 §§ 1, 4-6, 12, 13, 26, and 27: "Sections 1, 4 through 6, 12, 13, 26, and 27 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 1, 2002]." [2002 c 290 § 32.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Severability—2002 c 290: See RCW 9.94A.924.

70.96A.400 Opiate substitution treatment—Declaration of regulation by state. The state of Washington declares that there is no fundamental right to opiate substitution treatment. The state of Washington further declares that while opiate substitution drugs used in the treatment of opiate dependency are addictive substances, that they nevertheless have several legal, important, and justified uses and that one of their appropriate and legal uses is, in conjunction with other required therapeutic procedures, in the treatment of persons addicted to or habituated to opioids. Opiate substitution

treatment should only be used for participants who are deemed appropriate to need this level of intervention and should not be the first treatment intervention for all opiate addicts.

Because opiate substitution drugs, used in the treatment of opiate dependency are addictive and are listed as a schedule II controlled substance in chapter 69.50 RCW, the state of Washington has the legal obligation and right to regulate the use of opiate substitution treatment. The state of Washington declares its authority to control and regulate carefully, in consultation with counties and cities, all clinical uses of opiate substitution drugs used in the treatment of opiate addiction.

Further, the state declares that the primary goal of opiate substitution treatment is total abstinence from chemical dependency for the individuals who participate in the treatment program. The state recognizes that a small percentage of persons who participate in opiate substitution treatment programs require treatment for an extended period of time. Opiate substitution treatment programs shall provide a comprehensive transition program to eliminate chemical dependency, including opiate and opiate substitute addiction of program participants. [2001 c 242 § 1; 1995 c 321 § 1; 1989 c 270 § 20.]

70.96A.410 Opiate substitution treatment—Program certification by department, department duties—Definition of opiate substitution treatment. (1) For purposes of this section, "area" means the county in which an applicant proposes to locate a certified program and counties adjacent, or near to, the county in which the program is proposed to be located.

When making a decision on an application for certification of a program, the department shall:

(a) Consult with the county legislative authorities in the area in which an applicant proposes to locate a program and the city legislative authority in any city in which an applicant proposes to locate a program;

(b) Certify only programs that will be sited in accordance with the appropriate county or city land use ordinances. Counties and cities may require conditional or special use permits with reasonable conditions for the siting of programs. Pursuant to RCW 36.70A.200, no local comprehensive plan or development regulation may preclude the siting of essential public facilities;

(c) Not discriminate in its certification decision on the basis of the corporate structure of the applicant;

(d) Consider the size of the population in need of treatment in the area in which the program would be located and certify only applicants whose programs meet the necessary treatment needs of that population;

(e) Demonstrate a need in the community for opiate substitution treatment and not certify more program slots than justified by the need in that community. No program shall exceed three hundred fifty participants unless specifically authorized by the county in which the program is certified;

(f) Consider the availability of other certified programs near the area in which the applicant proposes to locate the program;

(g) Consider the transportation systems that would provide service to the program and whether the systems will pro-

vide reasonable opportunities to access the program for persons in need of treatment;

(h) Consider whether the applicant has, or has demonstrated in the past, the capability to provide the appropriate services to assist the persons who utilize the program in meeting goals established by the legislature, including abstinence from opiates and opiate substitutes, obtaining mental health treatment, improving economic independence, and reducing adverse consequences associated with illegal use of controlled substances. The department shall prioritize certification to applicants who have demonstrated such capability;

(i) Hold at least one public hearing in the county in which the facility is proposed to be located and one hearing in the area in which the facility is proposed to be located. The hearing shall be held at a time and location that are most likely to permit the largest number of interested persons to attend and present testimony. The department shall notify all appropriate media outlets of the time, date, and location of the hearing at least three weeks in advance of the hearing.

(2) A program applying for certification from the department and a program applying for a contract from a state agency that has been denied the certification or contract shall be provided with a written notice specifying the rationale and reasons for the denial.

(3) For the purpose of this chapter, opiate substitution treatment means:

(a) Dispensing an opiate substitution drug approved by the federal drug administration for the treatment of opiate addiction; and

(b) Providing a comprehensive range of medical and rehabilitative services. [2001 c 242 § 2; 1995 c 321 § 2; 1989 c 270 § 21.]

70.96A.420 Statewide treatment and operating standards for opiate substitution programs—Evaluation and report. (1) The department, in consultation with opiate substitution treatment service providers and counties and cities, shall establish statewide treatment standards for certified opiate substitution treatment programs. The department shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter.

(2) The department, in consultation with opiate substitution treatment programs and counties, shall establish statewide operating standards for certified opiate substitution treatment programs. The department shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and counties to monitor certified and licensed opiate substitution treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located.

(3) The department shall establish criteria for evaluating the compliance of opiate substitution treatment programs with the goals and standards established under this chapter. As a condition of certification, opiate substitution programs shall submit an annual report to the department and county

legislative authority, including data as specified by the department necessary for outcome analysis. The department shall analyze and evaluate the data submitted by each treatment program and take corrective action where necessary to ensure compliance with the goals and standards enumerated under this chapter. [2003 c 207 § 6; 2001 c 242 § 3; 1998 c 245 § 135; 1995 c 321 § 3; 1989 c 270 § 22.]

70.96A.430 Inability to contribute to cost no bar to admission—Department may limit admissions. The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism.

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the department. [1989 c 271 § 308; 1959 c 85 § 15. Formerly RCW 70.96.150.]

Reviser's note: This section was also repealed by 1989 c 270 § 35, without cognizance of its amendment by 1989 c 271 § 308; and subsequently recodified pursuant to 1993 c 131 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Severability—1989 c 271: See note following RCW 9.94A.510.

70.96A.500 Fetal alcohol screening and assessment services. The department shall contract with the University of Washington fetal alcohol syndrome clinic to provide fetal alcohol exposure screening and assessment services. The University indirect charges shall not exceed ten percent of the total contract amount. The contract shall require the University of Washington fetal alcohol syndrome clinic to provide the following services:

(1) Training for health care staff in community-based fetal alcohol exposure clinics to ensure the accurate diagnosis of individuals with fetal alcohol exposure and the development and implementation of appropriate service referral plans;

(2) Development of written or visual educational materials for the individuals diagnosed with fetal alcohol exposure and their families or caregivers;

(3) Systematic information retrieval from each community clinic to (a) maintain diagnostic accuracy and reliability across all community clinics, (b) facilitate the development of effective and efficient screening tools for population-based identification of individuals with fetal alcohol exposure, (c) facilitate identification of the most clinically efficacious and cost-effective educational, social, vocational, and health service interventions for individuals with fetal alcohol exposure;

(4) Based on available funds, establishment of a network of community-based fetal alcohol exposure clinics across the state to meet the demand for fetal alcohol exposure diagnostic and referral services; and

(5) Preparation of an annual report for submission to the department of health, the department of social and health services, the department of corrections, and the office of the

superintendent of public instruction which includes the information retrieved under subsection (3) of this section. [1998 c 245 § 136; 1995 c 54 § 2.]

Findings—Purpose—1995 c 54: "The legislature finds that fetal alcohol exposure is among the leading known causes of mental retardation in the children of our state. The legislature further finds that individuals with undiagnosed fetal alcohol exposure suffer substantially from secondary disabilities such as child abuse and neglect, separation from families, multiple foster placements, depression, aggression, school failure, juvenile detention, and job instability. These secondary disabilities come at a high cost to the individuals, their family, and society. The legislature finds that these problems can be reduced substantially by early diagnosis and receipt of appropriate, effective intervention.

The purpose of this act is to support current public and private efforts directed at the early identification of and intervention into the problems associated with fetal alcohol exposure through the creation of a fetal alcohol exposure clinical network." [1995 c 54 § 1.]

70.96A.510 Interagency agreement on fetal alcohol exposure programs. The department of social and health services, the department of health, the department of corrections, and the office of the superintendent of public instruction shall execute an interagency agreement to ensure the coordination of identification, prevention, and intervention programs for children who have fetal alcohol exposure, and for women who are at high risk of having children with fetal alcohol exposure.

The interagency agreement shall provide a process for community advocacy groups to participate in the review and development of identification, prevention, and intervention programs administered or contracted for by the agencies executing this agreement. [1995 c 54 § 3.]

Findings—Purpose—1995 c 54: See note following RCW 70.96A.500.

70.96A.520 Chemical dependency treatment expenditures—Prioritization. The department shall prioritize expenditures for treatment provided under RCW 13.40.165. The department shall provide funds for inpatient and outpatient treatment providers that are the most successful, using the standards developed by the University of Washington under section 27, chapter 338, Laws of 1997. The department may consider variations between the nature of the programs provided and clients served but must provide funds first for those programs that demonstrate the greatest success in treatment within categories of treatment and the nature of the persons receiving treatment. [2003 c 207 § 7; 1997 c 338 § 28.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

70.96A.800 Chemically dependent persons—Intensive case management pilot projects. (1) Subject to funds appropriated for this specific purpose, the secretary shall select and contract with counties to provide intensive case management for chemically dependent persons with histories of high utilization of crisis services at two sites. In selecting the two sites, the secretary shall endeavor to site one in an urban county, and one in a rural county; and to site them in counties other than those selected pursuant to RCW 70.96B.020, to the extent necessary to facilitate evaluation of

pilot project results. Subject to funds appropriated for this specific purpose, the secretary may contract with additional counties to provide intensive case management.

(2) The contracted sites shall implement the pilot programs by providing intensive case management to persons with a primary chemical dependency diagnosis or dual primary chemical dependency and mental health diagnoses, through the employment of chemical dependency case managers. The chemical dependency case managers shall:

(a) Be trained in and use the integrated, comprehensive screening and assessment process adopted under RCW 70.96C.010;

(b) Reduce the use of crisis medical, chemical dependency and mental health services, including but not limited to, emergency room admissions, hospitalizations, detoxification programs, inpatient psychiatric admissions, involuntary treatment petitions, emergency medical services, and ambulance services;

(c) Reduce the use of emergency first responder services including police, fire, emergency medical, and ambulance services;

(d) Reduce the number of criminal justice interventions including arrests, violations of conditions of supervision, bookings, jail days, prison sanction day for violations, court appearances, and prosecutor and defense costs;

(e) Where appropriate and available, work with therapeutic courts including drug courts and mental health courts to maximize the outcomes for the individual and reduce the likelihood of reoffense;

(f) Coordinate with local offices of the economic services administration to assist the person in accessing and remaining enrolled in those programs to which the person may be entitled;

(g) Where appropriate and available, coordinate with primary care and other programs operated through the federal government including federally qualified health centers, Indian health programs, and veterans' health programs for which the person is eligible to reduce duplication of services and conflicts in case approach;

(h) Where appropriate, advocate for the client's needs to assist the person in achieving and maintaining stability and progress toward recovery;

(i) Document the numbers of persons with co-occurring mental and substance abuse disorders and the point of determination of the co-occurring disorder by quadrant of intensity of need; and

(j) Where a program participant is under supervision by the department of corrections, collaborate with the department of corrections to maximize treatment outcomes and reduce the likelihood of reoffense.

(3) The pilot programs established by this section shall begin providing services by March 1, 2006. [2008 c 320 § 1; 2005 c 504 § 220.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96A.905 Uniform application of chapter—Training for county-designated mental health professionals.

(2008 Ed.)

The department shall ensure that the provisions of this chapter are applied by the counties in a consistent and uniform manner. The department shall also ensure that, to the extent possible within available funds, the county-designated chemical dependency specialists are specifically trained in adolescent chemical dependency issues, the chemical dependency commitment laws, and the criteria for commitment. [1992 c 205 § 306.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

70.96A.910 Application—Construction—1972 ex.s. c 122. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it. [1972 ex.s. c 122 § 22.]

70.96A.915 Department allocation of funds—Construction. The department is authorized to allocate appropriated funds in the manner that it determines best meets the purposes of this chapter. Nothing in this chapter shall be construed to entitle any individual to services authorized in this chapter, or to require the department or its contractors to reallocate funds in order to ensure that services are available to any eligible person upon demand. [1989 c 271 § 309.]

Severability—1989 c 271: See note following RCW 9.94A.510.

70.96A.920 Severability—1972 ex.s. c 122. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1972 ex.s. c 122 § 20.]

70.96A.930 Section, subsection headings not part of law. Section or subsection headings as used in this chapter do not constitute any part of the law. [1972 ex.s. c 122 § 27.]

Chapter 70.96B RCW

INTEGRATED CRISIS RESPONSE AND INVOLUNTARY TREATMENT—PILOT PROGRAMS

Sections

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 70.96B.800 Evaluation of pilot programs—Reports.

Court files and records closed—Exceptions: RCW 71.05.620.

70.96B.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician that a person should be examined or treated as a patient in a hospital, an evaluation and treatment facility, or other inpatient facility, or a decision by a professional person in charge or his or her designee that a person should be detained as a patient for evaluation and treatment in a secure detoxification facility or other certified chemical dependency provider.

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department as meeting standards adopted under chapter 70.96A RCW.

(4) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(5) "Chemical dependency" means:

- (a) Alcoholism;
- (b) Drug addiction; or
- (c) Dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(6) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(7) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

(8) "Conditional release" means a revocable modification of a commitment that may be revoked upon violation of any of its terms.

(9) "Custody" means involuntary detention under either chapter 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.

(10) "Department" means the department of social and health services.

(11) "Designated chemical dependency specialist" or "specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and this chapter, and qualified to do so by meeting standards adopted by the department.

(12) "Designated crisis responder" means a person designated by the county or regional support network to perform the duties specified in this chapter.

(13) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(14) "Detention" or "detain" means the lawful confinement of a person under this chapter, or chapter 70.96A or 71.05 RCW.

(15) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with individuals with developmental disabilities and is a psychiatrist, psychologist, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(16) "Developmental disability" means that condition defined in RCW 71A.10.020.

(17) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

(18) "Evaluation and treatment facility" means any facility that can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and that is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility that is part of, or operated by, the department or any federal agency does not require certification. No correctional institution or facility, or jail, may be an evaluation and treatment facility within the meaning of this chapter.

(19) "Facility" means either an evaluation and treatment facility or a secure detoxification facility.

(20) "Gravely disabled" means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(21) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or chapter 70.96A or 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

(22) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.

(23) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(24) "Judicial commitment" means a commitment by a court under this chapter.

(25) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(26) "Likelihood of serious harm" means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts.

(27) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

(28) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

(29) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(30) "Person in charge" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

(31) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved treatment program, that is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill and/or chemically dependent.

(32) "Professional person" means a mental health professional or chemical dependency professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter.

(33) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(34) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved treatment program that is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill and/or chemically dependent, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments.

(36) "Registration records" means all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(37) "Release" means legal termination of the commitment under chapter 70.96A or 71.05 RCW or this chapter.

(38) "Secretary" means the secretary of the department or the secretary's designee.

(39) "Secure detoxification facility" means a facility operated by either a public or private agency or by the program of an agency that serves the purpose of providing evaluation and assessment, and acute and/or subacute detoxification services for intoxicated persons and includes security measures sufficient to protect the patients, staff, and community.

(40) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(41) "Treatment records" means registration records and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(42) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2008 c 320 § 3; 2005 c 504 § 202.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.020 Selection of areas for pilot programs—Pilot program requirements. (1) The secretary, after consulting with the Washington state association of counties, shall select and contract with regional support networks or counties to provide two integrated crisis response and involuntary treatment pilot programs for adults and shall allocate resources for both integrated services and secure detoxification services in the pilot areas. In selecting the two regional support networks or counties, the secretary shall endeavor to site one in an urban and one in a rural regional support network or county; and to site them in counties other than those selected pursuant to RCW 70.96A.800, to the extent necessary to facilitate evaluation of pilot project results.

(2) The regional support networks or counties shall implement the pilot programs by providing integrated crisis response and involuntary treatment to persons with a chemical dependency, a mental disorder, or both, consistent with this chapter. The pilot programs shall:

(a) Combine the crisis responder functions of a designated mental health professional under chapter 71.05 RCW and a designated chemical dependency specialist under chapter 70.96A RCW by establishing a new designated crisis responder who is authorized to conduct investigations and detain persons up to seventy-two hours to the proper facility;

(b) Provide training to the crisis responders as required by the department;

(c) Provide sufficient staff and resources to ensure availability of an adequate number of crisis responders twenty-four hours a day, seven days a week;

(d) Provide the administrative and court-related staff, resources, and processes necessary to facilitate the legal requirements of the initial detention and the commitment hearings for persons with a chemical dependency;

(e) Participate in the evaluation and report to assess the outcomes of the pilot programs including providing data and information as requested;

(f) Provide the other services necessary to the implementation of the pilot programs, consistent with this chapter as determined by the secretary in contract; and

(g) Collaborate with the department of corrections where persons detained or committed are also subject to supervision by the department of corrections.

(3) The pilot programs established by this section shall begin providing services by March 1, 2006. [2005 c 504 § 203.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.030 Designated crisis responder—Qualifications. To qualify as a designated crisis responder, a person must have received chemical dependency training as determined by the department and be a:

(1) Psychiatrist, psychologist, psychiatric nurse, or social worker;

(2) Person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university and who have, in addition, at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the direction of a mental health professional;

(3) Person who meets the waiver criteria of RCW 71.24.260, which waiver was granted before 1986;

(4) Person who had an approved waiver to perform the duties of a mental health professional that was requested by the regional support network and granted by the department before July 1, 2001; or

(5) Person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the department consistent with rules adopted by the secretary. [2005 c 504 § 204.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.040 Powers of designated crisis responder. In addition to the provisions of this chapter, a designated crisis responder has all the powers and duties of a designated mental health professional as well as the powers and duties of a designated chemical dependency specialist under RCW 70.96A.120. [2005 c 504 § 205.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

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Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.045 Emergency custody—Procedure. (1) If a designated crisis responder receives information alleging that a person, as the result of:

(a) A mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take the person, or cause by oral or written order the person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in this chapter; or

(b) Chemical dependency, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take the person, or cause by oral or written order the person to be taken into emergency custody in a secure detoxification facility for not more than seventy-two hours as described in this chapter.

(2) The evaluation and treatment facility, the secure detoxification facility, or other certified chemical dependency provider shall then evaluate the person's condition and admit, detain, transfer, or discharge such person in accordance with this chapter. The facility shall notify in writing the court and the designated crisis responder of the date and time of the initial detention of each person involuntarily detained so that a probable cause hearing will be held no later than seventy-two hours after detention.

(3) A peace officer may take or cause the person to be taken into custody and immediately delivered to an evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency treatment provider: (a) Pursuant to this section; or (b) when he or she has reasonable cause to believe that such person, as a result of a mental disorder or chemical dependency, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled. An individual brought to a facility by a peace officer may be held for up to twelve hours: PROVIDED, That the individual is examined by a designated crisis responder within three hours of arrival. Within twelve hours of arrival the designated crisis responder must determine whether the individual meets detention criteria. If the individual is detained, the designated mental health professional shall file a petition for detention or supplemental petition as appropriate and commence service on the designated attorney for the detained person.

(4) Nothing in this chapter limits the power of a peace officer to take a person into custody and immediately deliver the person to the emergency department of a local hospital or to a detoxification facility. [2007 c 120 § 2.]

Effective date—2007 c 120: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2007]." [2007 c 120 § 3.]

(2008 Ed.)

70.96B.050 Petition for initial detention—Order to detain for evaluation and treatment period—Procedure.

(1) When a designated crisis responder receives information alleging that a person, as a result of a mental disorder, chemical dependency disorder, or both, presents a likelihood of serious harm or is gravely disabled, the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at either an evaluation and treatment facility, a detoxification facility, or other certified chemical dependency provider.

(2)(a) An order to detain to an evaluation and treatment facility, a detoxification facility, or other certified chemical dependency provider for not more than a seventy-two hour evaluation and treatment period may be issued by a judge upon request of a designated crisis responder: (i) Whenever it appears to the satisfaction of a judge of the superior court, district court, or other court permitted by court rule, that there is probable cause to support the petition, and (ii) that the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury or sworn telephonic testimony, may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated crisis responder shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order to appear, together with a notice of rights and a petition for initial detention. After service on the person, the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility or secure detoxification facility and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider. If requested by the detained person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may be continued subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours. The person may be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other person accompanying the person may be present during the admission evaluation. The facility may

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exclude the person if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder may notify a peace officer to take the person or cause the person to be taken into custody and placed in an evaluation and treatment facility, a secure detoxification facility, or other certified chemical dependency provider. At the time the person is taken into custody there shall commence to be served on the person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of detention, a notice of rights, and a petition for initial detention. [2008 c 320 § 5; 2007 c 120 § 1; 2005 c 504 § 206.]

Effective date—2007 c 120: See note following RCW 70.96B.045.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.060 Exemption from liability. (1) A person or public or private entity employing a person is not civilly or criminally liable for performing duties under this chapter if the duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel. [2005 c 504 § 207.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.070 Detention period for evaluation and treatment. If the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider admits the person, it may detain the person for evaluation and treatment for a period not to exceed seventy-two hours from the time of acceptance. The computation of the seventy-two hour period excludes Saturdays, Sundays, and holidays. [2005 c 504 § 208.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.080 Detention for evaluation and treatment of mental disorder—Chapter 71.05 RCW applies. Whenever any person is detained for evaluation and treatment for a mental disorder under RCW 70.96B.050, chapter 71.05 RCW applies. [2005 c 504 § 209.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.090 Procedures for additional chemical dependency treatment. (1) A person detained for seventy-two hour evaluation and treatment under RCW 70.96B.050 or 70.96A.120 may be detained for not more than fourteen additional days of involuntary chemical dependency treatment if there are beds available at the secure detoxification facility and the following conditions are met:

(a) The professional person in charge of the agency or facility or the person's designee providing evaluation and treatment services in a secure detoxification facility has assessed the person's condition and finds that the condition is caused by chemical dependency and either results in a likelihood of serious harm or in the detained person being gravely disabled, and the professional person or his or her designee is prepared to testify those conditions are met;

(b) The person has been advised of the need for voluntary treatment and the professional person in charge of the agency or facility or his or her designee has evidence that he or she has not in good faith volunteered for treatment; and

(c) The professional person in charge of the agency or facility or the person's designee has filed a petition for fourteen-day involuntary detention with the superior court, district court, or other court permitted by court rule. The petition must be signed by the chemical dependency professional who has examined the person.

(2) The petition under subsection (1)(c) of this section shall be accompanied by a certificate of a licensed physician who has examined the person, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning program or the department is eligible to be the certifying physician.

(3) The petition shall state facts that support the finding that the person, as a result of chemical dependency, presents a likelihood of serious harm or is gravely disabled, and that there are no less restrictive alternatives to detention in the best interest of the person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate.

(4) A copy of the petition shall be served on the detained person, his or her attorney, and his or her guardian or conservator, if any, before the probable cause hearing.

(5)(a) The court shall inform the person whose commitment is sought of his or her right to contest the petition, be represented by counsel at every stage of any proceedings relating to his or her commitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs

of such legal service; otherwise such legal service shall be at public expense. The person whose commitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall appoint a reasonably available licensed physician designated by the person.

(b) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that the person, as the result of chemical dependency, presents a likelihood of serious harm or is gravely disabled and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interest of such person or others, the court shall order that the person be detained for involuntary chemical dependency treatment not to exceed fourteen days in a secure detoxification facility. [2005 c 504 § 210.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.100 Detention for involuntary chemical dependency treatment—Petition for less restrictive treatment—Appearance before court—Representation—Hearing—Less restrictive order—Failure to adhere to terms of less restrictive order. (1) A person detained for fourteen days of involuntary chemical dependency treatment under RCW 70.96B.090 or subsection (6) of this section shall be released from involuntary treatment at the expiration of the period of commitment unless the professional staff of the agency or facility files a petition for an additional period of involuntary treatment under RCW 70.96A.140, or files a petition for sixty days less restrictive treatment under this section naming the detained person as a respondent. Costs associated with the obtainment or revocation of an order for less restrictive treatment and subsequent involuntary commitment shall be provided for within current funding.

(2) A petition for less restrictive treatment must be filed at least three days before expiration of the fourteen-day period of intensive treatment, and comport with the rules contained in RCW 70.96B.090(2). The petition shall state facts that support the finding that the respondent, as a result of a chemical dependency, presents a likelihood of serious harm or is gravely disabled, and that continued treatment pursuant to a less restrictive order is in the best interest of the respondent or others. At the time of filing such a petition, the clerk shall set a time for the respondent to come before the court on the next judicial day after the day of filing unless such appearance is waived by the respondent's attorney.

(3) At the time set for appearance the respondent must be brought before the court, unless such appearance has been waived and the court shall advise the respondent of his or her right to be represented by an attorney. If the respondent is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent the respondent. The court shall, if requested, appoint a reasonably available licensed physician, psychologist, or psychiatrist, designated by the respondent to examine and testify on behalf of the respondent.

(4) The court shall conduct a hearing on the petition for sixty days less restrictive treatment on or before the last day of the confinement period. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The respondent shall be present at such proceeding. The rules of evidence shall apply, and the respondent shall have the right to present evidence on his or her behalf, to cross-examine witnesses who testify against him or her, to remain silent, and to view and copy all petitions and reports in the court file. The physician-patient privilege or the psychologist-client privilege shall be deemed waived in accordance with the provisions under RCW 71.05.360(9). Involuntary treatment shall continue while a petition for less restrictive treatment is pending under this section.

(5) The court may impose a sixty-day less restrictive order if the evidence shows that the respondent, as a result of a chemical dependency, presents a likelihood of serious harm or is gravely disabled, and that continued treatment pursuant to a less restrictive order is in the best interest of the respondent or others. The less restrictive order may impose treatment conditions and other conditions which are in the best interest of the respondent and others. A copy of the less restrictive order shall be given to the respondent, the designated crisis responder, and any program designated to provide less restrictive treatment. A program designated to provide less restrictive treatment and willing to supervise the conditions of the less restrictive order may modify the conditions for continued release when the modification is in the best interests of the respondent, but must notify the designated crisis responder and the court of such modification.

(6) If a program approved by the court and willing to supervise the conditions of the less restrictive order or the designated crisis responder determines that the respondent is failing to adhere to the terms of the less restrictive order or that substantial deterioration in the respondent's functioning has occurred, then the designated crisis responder shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the respondent should be returned to more restrictive care. The designated crisis responder may cause the respondent to be immediately taken into custody of the secure detoxification facility pending the hearing if the alleged noncompliance causes the respondent to present a likelihood of serious harm. The designated crisis responder shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The respondent shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released respondent did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the respondent's functioning has occurred and whether the conditions of release should be modified or the respondent should be returned to a more restrictive setting. The hearing may be waived by the respondent and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. If the court finds in favor of the petitioner, or the respondent waives a hearing, the court may order the respondent to be committed to a secure detoxifica-

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tion facility for fourteen days of involuntary chemical dependency treatment, or may order the respondent to be returned to less restrictive treatment on the same or modified conditions. [2008 c 320 § 6; 2005 c 504 § 211.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.110 Involuntary chemical dependency treatment proceedings—Prosecuting attorney shall represent petitioner. The prosecuting attorney of the county in which an action under this chapter is taken must represent the petitioner in judicial proceedings under this chapter for the involuntary chemical dependency treatment of a person, including any judicial proceeding where the person sought to be treated for chemical dependency challenges the action. [2005 c 504 § 212.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.120 Rights of involuntarily detained persons. (1) Every person involuntarily detained or committed under this chapter as a result of a mental disorder is entitled to all the rights set forth in this chapter and in chapter 71.05 RCW, and retains all rights not denied him or her under this chapter or chapter 71.05 RCW.

(2) Every person involuntarily detained or committed under this chapter as a result of a chemical dependency is entitled to all the rights set forth in this chapter and chapter 70.96A RCW, and retains all rights not denied him or her under this chapter or chapter 70.96A RCW. [2005 c 504 § 213.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.130 Evaluation by designated crisis responder—When required—Required notifications. (1) When a designated crisis responder is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232 is to be released to the community, the designated crisis responder shall evaluate the person within seventy-two hours of release.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the designated crisis responder of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

(3) When a designated crisis responder becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated cri-

sis responder detains a person under this chapter, the designated crisis responder shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated crisis responder to provide offender supervision. [2005 c 504 § 214.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.140 Secretary may adopt rules. The secretary may adopt rules to implement this chapter. [2005 c 504 § 215.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.150 Application of RCW 71.05.550. The provisions of *RCW 71.05.550 apply to this chapter. [2005 c 504 § 216.]

***Reviser's note:** RCW 71.05.550 was repealed by 2006 c 333 § 401, effective July 1, 2006.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96B.800 Evaluation of pilot programs—Reports.

(1) The Washington state institute for public policy shall evaluate the pilot programs and make preliminary reports to appropriate committees of the legislature by December 1, 2007, and June 30, 2008, and a final report by June 30, 2010.

(2) The evaluation of the pilot programs shall include:

(a) Whether the designated crisis responder pilot program:

(i) Has increased efficiency of evaluation and treatment of persons involuntarily detained for seventy-two hours;

(ii) Is cost-effective;

(iii) Results in better outcomes for persons involuntarily detained;

(iv) Increased the effectiveness of the crisis response system in the pilot catchment areas;

(b) The effectiveness of providing a single chapter in the Revised Code of Washington to address initial detention of persons with mental disorders or chemical dependency, in crisis response situations and the likelihood of effectiveness of providing a single, comprehensive involuntary treatment act.

(3) The reports shall consider the impact of the pilot programs on the existing mental health system and on the persons served by the system. [2008 c 320 § 2; 2005 c 504 § 217.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Chapter 70.96C RCW

SCREENING AND ASSESSMENT OF CHEMICAL DEPENDENCY AND MENTAL DISORDERS

Sections

70.96C.010 Integrated, comprehensive screening and assessment process for chemical dependency and mental disorders.

70.96C.020 Department of corrections—Use of screening and assessment process.

70.96C.010 Integrated, comprehensive screening and assessment process for chemical dependency and mental disorders.

(1) The department of social and health services, in consultation with the members of the team charged with developing the state plan for co-occurring mental and substance abuse disorders, shall adopt, not later than January 1, 2006, an integrated and comprehensive screening and assessment process for chemical dependency and mental disorders and co-occurring chemical dependency and mental disorders.

(a) The process adopted shall include, at a minimum:

(i) An initial screening tool that can be used by intake personnel system-wide and which will identify the most common types of co-occurring disorders;

(ii) An assessment process for those cases in which assessment is indicated that provides an appropriate degree of assessment for most situations, which can be expanded for complex situations;

(iii) Identification of triggers in the screening that indicate the need to begin an assessment;

(iv) Identification of triggers after or outside the screening that indicate a need to begin or resume an assessment;

(v) The components of an assessment process and a protocol for determining whether part or all of the assessment is necessary, and at what point; and

(vi) Emphasis that the process adopted under this section is to replace and not to duplicate existing intake, screening, and assessment tools and processes.

(b) The department shall consider existing models, including those already adopted by other states, and to the extent possible, adopt an established, proven model.

(c) The integrated, comprehensive screening and assessment process shall be implemented statewide by all chemical dependency and mental health treatment providers as well as all designated mental health professionals, designated chemical dependency specialists, and designated crisis responders not later than January 1, 2007.

(2) The department shall provide adequate training to effect statewide implementation by the dates designated in this section and shall report the rates of co-occurring disorders and the stage of screening or assessment at which the co-occurring disorder was identified to the appropriate committees of the legislature.

(3) The department shall establish contractual penalties to contracted treatment providers, the regional support networks, and their contracted providers for failure to implement the integrated screening and assessment process by July 1, 2007. [2005 c 504 § 601.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96C.020 Department of corrections—Use of screening and assessment process. The department of corrections shall, to the extent that resources are available for this purpose, utilize the integrated, comprehensive screening and assessment process for chemical dependency and mental disorders developed under RCW 70.96C.010. [2005 c 504 § 602.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Chapter 70.97 RCW

ENHANCED SERVICES FACILITIES

Sections

70.97.010	Definitions.
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70.97.090	Facilities exempted.
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70.97.210	Standards for fire protection.
70.97.220	Exemption from liability.
70.97.230	Rules for implementation of chapter.

70.97.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(2) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(3) "Chemical dependency" means alcoholism, drug addiction, or dependence on alcohol and one or more other

psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

(4) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(5) "Commitment" means the determination by a court that an individual should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

(6) "Conditional release" means a modification of a commitment that may be revoked upon violation of any of its terms.

(7) "Custody" means involuntary detention under chapter 71.05 or 70.96A RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.

(8) "Department" means the department of social and health services.

(9) "Designated responder" means a designated mental health professional, a designated chemical dependency specialist, or a designated crisis responder as those terms are defined in chapter 70.96A, 71.05, or 70.96B RCW.

(10) "Detention" or "detain" means the lawful confinement of an individual under chapter 70.96A or 71.05 RCW.

(11) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

(12) "Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues.

(13) "Expanded community services program" means a nonsecure program of enhanced behavioral and residential support provided to long-term and residential care providers serving specifically eligible clients who would otherwise be at risk for hospitalization at state hospital geriatric units.

(14) "Facility" means an enhanced services facility.

(15) "Gravely disabled" means a condition in which an individual, as a result of a mental disorder, as a result of the use of alcohol or other psychoactive chemicals, or both:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(16) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or chapter 70.96A or 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

(17) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(18) "Likelihood of serious harm" means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.

(19) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(20) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

(21) "Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

(22) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(23) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(24) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

(25) "Release" means legal termination of the commitment under chapter 70.96A or 71.05 RCW.

(26) "Resident" means a person admitted to an enhanced services facility.

(27) "Secretary" means the secretary of the department or the secretary's designee.

(28) "Significant change" means:

(a) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(b) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for release or for treatment in a less intensive or less secure setting.

(29) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(30) "Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or

chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to persons with mental disorders, chemical dependency disorders, or both, and their families.

(31) "Treatment records" include registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by an individual providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(32) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2005 c 504 § 403.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.020 Advance directives. A facility shall honor an advance directive that was validly executed pursuant to chapter 70.122 RCW and a mental health advance directive that was validly executed pursuant to chapter 71.32 RCW. [2005 c 504 § 404.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.030 Admission criteria. A person, eighteen years old or older, may be admitted to an enhanced services facility if he or she meets the criteria in subsections (1) through (3) of this section:

(1) The person requires: (a) Daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or (b) assistance with three or more activities of daily living; and

(2) The person has: (a) A mental disorder, chemical dependency disorder, or both; (b) an organic or traumatic brain injury; or (c) a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services; [and]

(3) The person has two or more of the following:

(a) Self-endangering behaviors that are frequent or difficult to manage;

(b) Aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage;

(c) Intrusive behaviors that put residents or staff at risk;

(d) Complex medication needs and those needs include psychotropic medications;

(e) A history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facil-

ities based on the person's behaviors, history, or security needs;

(f) A history of frequent or protracted mental health hospitalizations;

(g) A history of offenses against a person or felony offenses that created substantial damage to property. [2005 c 504 § 405.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.040 Rights of residents. (1)(a) Every person who is a resident of an enhanced services facility shall be entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and shall retain all rights not denied him or her under these chapters.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, chemical dependency disorder, or both, under this chapter, or chapter 71.05 or 70.96A RCW, or any prior laws of this state dealing with mental illness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) At the time of his or her treatment planning meeting, every resident of an enhanced services facility shall be given a written statement setting forth the substance of this section. The department shall by rule develop a statement and process for informing residents of their rights in a manner that is likely to be understood by the resident.

(2) Every resident of an enhanced services facility shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services.

(5) The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under chapter 10.77, 70.96A, or 71.05 RCW, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

(6) Insofar as danger to the person or others is not created, each resident of an enhanced services facility shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

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(b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.215 or 71.05.217, or the performance of electroconvulsant therapy, or surgery, except emergency life-saving surgery, unless ordered by a court under RCW 71.05.217;

(h) To discuss and actively participate in treatment plans and decisions with professional persons;

(i) Not to have psychosurgery performed on him or her under any circumstances;

(j) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue; and

(k) To complain about rights violations or conditions and request the assistance of a mental health ombudsman or representative of Washington protection and advocacy. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

(7) Nothing contained in this chapter shall prohibit a resident from petitioning by writ of habeas corpus for release.

(8) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

(9) A person has a right to refuse placement, except where subject to commitment, in an enhanced services facility. No person shall be denied other department services solely on the grounds that he or she has made such a refusal.

(10) A person has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and shall be given notice of the right to appeal in a format that is accessible to the person with instructions regarding what to do if the person wants to appeal. [2005 c 504 § 406.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.050 Right to refuse antipsychotic medication.

A person who is gravely disabled or presents a likelihood of serious harm as a result of a mental or chemical dependency disorder or co-occurring mental and chemical dependency disorders has a right to refuse antipsychotic medication. Antipsychotic medication may be administered over the person's objections only pursuant to RCW 71.05.215 or 71.05.217. [2005 c 504 § 407.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.060 Capacity—Security—Licensing—Application of state and local rules. (1)(a) The department shall not license an enhanced services facility that serves any residents under sixty-five years of age for a capacity to exceed sixteen residents.

(b) The department may contract for services for the operation of enhanced services facilities only to the extent that funds are specifically provided for that purpose.

(2) The facility shall provide an appropriate level of security for the characteristics, behaviors, and legal status of the residents.

(3) An enhanced services facility may hold only one license but, to the extent permitted under state and federal law and medicaid requirements, a facility may be located in the same building as another licensed facility, provided that:

(a) The enhanced services facility is in a location that is totally separate and discrete from the other licensed facility; and

(b) The two facilities maintain separate staffing, unless an exception to this is permitted by the department in rule.

(4) Nursing homes under chapter 18.51 RCW, boarding homes under chapter 18.20 RCW, or adult family homes under chapter 70.128 RCW, that become licensed as facilities under this chapter shall be deemed to meet the applicable state and local rules, regulations, permits, and code requirements. All other facilities are required to meet all applicable state and local rules, regulations, permits, and code requirements. [2005 c 504 § 408.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.070 Comprehensive assessments—Individualized treatment plan. (1) The enhanced services facility shall complete a comprehensive assessment for each resident within fourteen days of admission, and the assessments shall be repeated upon a significant change in the resident's condition or, at a minimum, every one hundred eighty days if there is no significant change in condition.

(2) The enhanced services facility shall develop an individualized treatment plan for each resident based on the comprehensive assessment and any other information in the person's record. The plan shall be updated as necessary, and shall include a plan for appropriate transfer or discharge and reintegration into the community. Where the person is under the supervision of the department of corrections, the facility shall collaborate with the department of corrections to maximize treatment outcomes and reduce the likelihood of reoffense.

(3) The plan shall maximize the opportunities for independence, recovery, employment, the resident's participation in treatment decisions, and collaboration with peer-supported services, and provide for care and treatment in the least restrictive manner appropriate to the individual resident, and,

where relevant, to any court orders with which the resident must comply. [2005 c 504 § 409.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.080 Staffing levels—Staff credentials and training—Background checks. (1) An enhanced services facility must have sufficient numbers of staff with the appropriate credentials and training to provide residents with the appropriate care and treatment:

- (a) Mental health treatment;
- (b) Medication services;
- (c) Assistance with the activities of daily living;
- (d) Medical or rehabilitative treatment;
- (e) Dietary services;
- (f) Security; and
- (g) Chemical dependency treatment.

(2) Where an enhanced services facility specializes in medically fragile persons with mental disorders, the on-site staff must include at least one licensed nurse twenty-four hours per day. The nurse must be a registered nurse for at least sixteen hours per day. If the nurse is not a registered nurse, a registered nurse or a doctor must be on-call during the remaining eight hours.

(3) Any employee or other individual who will have unsupervised access to vulnerable adults must successfully pass a background inquiry check. [2005 c 504 § 410.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.090 Facilities exempted. This chapter does not apply to the following residential facilities:

- (1) Nursing homes licensed under chapter 18.51 RCW;
- (2) Boarding homes licensed under chapter 18.20 RCW;
- (3) Adult family homes licensed under chapter 70.128 RCW;
- (4) Facilities approved and certified under chapter 71A.22 RCW;
- (5) Residential treatment facilities licensed under chapter 71.12 RCW; and
- (6) Hospitals licensed under chapter 70.41 RCW. [2005 c 504 § 411.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.100 Licensing requirements—Information available to public, residents, families. (1) The department shall establish licensing rules for enhanced services facilities to serve the populations defined in this chapter.

(2) No person or public or private agency may operate or maintain an enhanced services facility without a license, which must be renewed annually.

(3) A licensee shall have the following readily accessible and available for review by the department, residents, families of residents, and the public:

(a) Its license to operate and a copy of the department's most recent inspection report and any recent complaint investigation reports issued by the department;

(b) Its written policies and procedures for all treatment, care, and services provided directly or indirectly by the facility; and

(c) The department's toll-free complaint number, which shall also be posted in a clearly visible place and manner.

(4) Enhanced services facilities shall maintain a grievance procedure that meets the requirements of rules established by the department.

(5) No facility shall discriminate or retaliate in any manner against a resident or employee because the resident, employee, or any other person made a complaint or provided information to the department, the long-term care ombudsman, Washington protection and advocacy system, or a mental health ombudsperson.

(6) Each enhanced services facility will post in a prominent place in a common area a notice by the Washington protection and advocacy system providing contact information. [2005 c 504 § 412.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.110 Enforcement authority—Penalties, sanctions. (1) In any case in which the department finds that a licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee failed or refused to comply with the requirements of this chapter or the rules established under them, the department may take any or all of the following actions:

(a) Suspend, revoke, or refuse to issue or renew a license;

(b) Order stop placement; or

(c) Assess civil monetary penalties.

(2) The department may suspend, revoke, or refuse to renew a license, assess civil monetary penalties, or both, in any case in which it finds that the licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee:

(a) Operated a facility without a license or under a revoked or suspended license;

(b) Knowingly or with reason to know made a false statement of a material fact in the license application or any data attached thereto, or in any matter under investigation by the department;

(c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the facility;

(d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter;

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any

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violation of any of the provisions of this chapter or of the rules adopted under it; or

(f) Failed to pay any civil monetary penalty assessed by the department under this chapter within ten days after the assessment becomes final.

(3)(a) Civil penalties collected under this chapter shall be deposited into a special fund administered by the department.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day the facility is or was out of compliance. Civil monetary penalties shall not exceed three thousand dollars per day. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(4) The department may use the civil penalty monetary fund for the protection of the health or property of residents of facilities found to be deficient including:

(a) Payment for the cost of relocation of residents to other facilities;

(b) Payment to maintain operation of a facility pending correction of deficiencies or closure; and

(c) Reimbursement of a resident for personal funds or property loss.

(5)(a) The department may issue a stop placement order on a facility, effective upon oral or written notice, when the department determines:

(i) The facility no longer substantially meets the requirements of this chapter; and

(ii) The deficiency or deficiencies in the facility:

(A) Jeopardizes the health and safety of the residents; or

(B) Seriously limits the facility's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the facility from a hospital, residential treatment facility, or crisis intervention facility when the department determines the readmission would be in the best interest of the individual seeking readmission.

(6) If the department determines that an emergency exists and resident health and safety is immediately jeopardized as a result of a facility's failure or refusal to comply with this chapter, the department may summarily suspend the facility's license and order the immediate closure of the facility, or the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of the residents is immediately jeopardized as a result of a facility's failure or refusal to comply with requirements of this chapter, the department may appoint temporary management to:

(a) Oversee the operation of the facility; and

(b) Ensure the health and safety of the facility's residents while:

(i) Orderly closure of the facility occurs; or

(ii) The deficiencies necessitating temporary management are corrected. [2005 c 504 § 413.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.120 Enforcement orders—Hearings. (1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested.

(2) All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or summary license suspension shall be effective immediately upon notice, pending any hearing.

(3) Subject to the requirements of subsection (2) of this section, all hearings under this chapter and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter 34.05 RCW. [2005 c 504 § 414.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.130 Unlicensed operation—Application of consumer protection act. Operation of a facility without a license in violation of this chapter and discrimination against medicaid recipients is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an enhanced services facility without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2005 c 504 § 415.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.140 Unlicensed operation—Criminal penalty. A person operating or maintaining a facility without a license under this chapter is guilty of a misdemeanor and each day of a continuing violation after conviction shall be considered a separate offense. [2005 c 504 § 416.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.150 Unlicensed operation—Injunction or other remedies. Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of a facility without a license issued under this chapter. [2005 c 504 § 417.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

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Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.160 Inspections. (1) The department shall make or cause to be made at least one inspection of each facility prior to licensure and an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Any duly authorized officer, employee, or agent of the department may enter and inspect any facility at any time to determine that the facility is in compliance with this chapter and applicable rules, and to enforce any provision of this chapter. Complaint inspections shall be unannounced and conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection unless authorized or required by federal law.

(3) During inspections, the facility must give the department access to areas, materials, and equipment used to provide care or support to residents, including resident and staff records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department has the authority to privately interview the provider, staff, residents, and other individuals familiar with resident care and treatment.

(4) Any public employee giving advance notice of an inspection in violation of this section shall be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(5) The department shall prepare a written report describing the violations found during an inspection, and shall provide a copy of the inspection report to the facility.

(6) The facility shall develop a written plan of correction for any violations identified by the department and provide a plan of correction to the department within ten working days from the receipt of the inspection report. [2005 c 504 § 418.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.170 Persons eligible for admittance. The facility shall only admit individuals:

(1) Who are over the age of eighteen;

(2) Who meet the resident eligibility requirements described in RCW 70.97.030; and

(3) Whose needs the facility can safely and appropriately meet through qualified and trained staff, services, equipment, security, and building design. [2005 c 504 § 419.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.180 Services of qualified professional. If the facility does not employ a qualified professional able to furnish needed services, the facility must have a written contract with a qualified professional or agency outside the facility to furnish the needed services. [2005 c 504 § 420.]

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Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.190 Notice of change of ownership or management. At least sixty days before the effective date of any change of ownership, or change of management of a facility, the current operating entity must provide written notification about the proposed change separately and in writing, to the department, each resident of the facility, or the resident's guardian or representative. [2005 c 504 § 421.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.200 Recordkeeping—Compliance with state, federal regulations—Health care information releases. The facility shall:

(1) Maintain adequate resident records to enable the provision of necessary treatment, care, and services and to respond appropriately in emergency situations;

(2) Comply with all state and federal requirements related to documentation, confidentiality, and information sharing, including chapters 10.77, 70.02, 70.24, 70.96A, and 71.05 RCW; and

(3) Where possible, obtain signed releases of information designating the department, the facility, and the department of corrections where the person is under its supervision, as recipients of health care information. [2005 c 504 § 422.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.210 Standards for fire protection. (1) Standards for fire protection and the enforcement thereof, with respect to all facilities licensed under this chapter, are the responsibility of the chief of the Washington state patrol, through the director of fire protection, who must adopt recognized standards as applicable to facilities for the protection of life against the cause and spread of fire and fire hazards. If the facility to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, the director of fire protection must submit to the department a written report approving the facility with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall conduct an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Inspections of facilities by local authorities must be consistent with the requirements adopted by the chief of the Washington state patrol, through the director of fire protection. Findings of a serious nature must be coordinated with the department and the chief of the Washington state patrol, through the director of fire protection, for determination of

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appropriate actions to ensure a safe environment for residents. The chief of the Washington state patrol, through the director of fire protection, has exclusive authority to determine appropriate corrective action under this section. [2005 c 504 § 423.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.220 Exemption from liability. No facility providing care and treatment for individuals placed in a facility, or agency licensing or placing residents in a facility, acting in the course of its duties, shall be civilly or criminally liable for performing its duties under this chapter, provided that such duties were performed in good faith and without gross negligence. [2005 c 504 § 424.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.230 Rules for implementation of chapter. (1) The secretary shall adopt rules to implement this chapter.

(2) Such rules shall at the minimum: (a) Promote safe treatment and necessary care of individuals residing in the facility and provide for safe and clean conditions; (b) establish licensee qualifications, licensing and enforcement, and license fees sufficient to cover the cost of licensing and enforcement. [2005 c 504 § 425.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Chapter 70.98 RCW

NUCLEAR ENERGY AND RADIATION

Sections

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Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Nuclear, thermal power facilities, joint city, public utility district, electrical companies development: Chapter 54.44 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Radioactive waste act: Chapter 43.200 RCW.

70.98.010 Declaration of policy. It is the policy of the state of Washington in furtherance of its responsibility to protect the public health and safety and to encourage, insofar as consistent with this responsibility, the industrial and economic growth of the state and to institute and maintain a regulatory and inspection program for sources and uses of ionizing radiation so as to provide for (1) compatibility with the standards and regulatory programs of the federal government, (2) a single, effective system of regulation within the state, and (3) a system consonant insofar as possible with those of other states. [1975-'76 2nd ex.s. c 108 § 12; 1961 c 207 § 1.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.020 Purpose. It is the purpose of this chapter to effectuate the policies set forth in RCW 70.98.010 as now or hereafter amended by providing for:

(1) A program of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials. [1975-'76 2nd ex.s. c 108 § 13; 1965 c 88 § 1; 1961 c 207 § 2.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.030 Definitions. (1) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or subatomic particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(3)(a) "General license" means a license effective pursuant to rules promulgated by the state radiation control agency, without the filing of an application, to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, byproduct, source, special nuclear materials, or other

radioactive material occurring naturally or produced artificially.

(b) "Specific license" means a license, issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

(5) "Source material" means (a) uranium, thorium, or any other material which is determined by the United States Nuclear Regulatory Commission or its successor pursuant to the provisions of section 61 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 209) to be source material; or (b) ores containing one or more of the foregoing materials, in such concentration as the commission may by regulation determine from time to time.

(6) "Special nuclear material" means (a) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or its successor, pursuant to the provisions of section 51 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2071), determines to be special nuclear material, but does not include source material; or (b) any material artificially enriched by any of the foregoing, but does not include source material.

(7) "Registration" means registration with the state department of health by any person possessing a source of ionizing radiation in accordance with rules adopted by the department of health.

(8) "Radiation source" means any type of device or substance which is capable of producing or emitting ionizing radiation. [1991 c 3 § 355; 1983 1st ex.s. c 19 § 9; 1979 c 141 § 125; 1965 c 88 § 2; 1961 c 207 § 3.]

Construction—Conflict with federal requirements—Severability—1983 1st ex.s. c 19: See RCW 43.200.900 through 43.200.902.

70.98.050 State radiation control agency. (1) The department of health is designated as the state radiation control agency, hereinafter referred to as the agency, and shall be the state agency having sole responsibility for administration of the regulatory, licensing, and radiation control provisions of this chapter.

(2) The secretary of health shall be director of the agency, hereinafter referred to as the secretary, who shall perform the functions vested in the agency pursuant to the provisions of this chapter.

(3) The agency shall appoint a state radiological control officer, and in accordance with the laws of the state, fix his compensation and prescribe his powers and duties.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of ionizing radiation;

(b) Develop a statewide radiological baseline beginning with the establishment of a baseline for the Hanford reservation;

(c) Implement an independent statewide program to monitor ionizing radiation emissions from radiation sources within the state;

(d) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials;

(e) Conduct environmental radiation monitoring programs which will determine the presence and significance of radiation in the environment and which will verify the adequacy and accuracy of environmental radiation monitoring programs conducted by the federal government at its installations in Washington and by radioactive materials licensees at their installations;

(f) Formulate, adopt, promulgate, and repeal codes, rules and regulations relating to control of sources of ionizing radiation;

(g) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation;

(h) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(i) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation, including the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation;

(j) Collect and disseminate information relating to control of sources of ionizing radiation; including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(iii) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon;

(k) Collect and disseminate information relating to non-ionizing radiation, including:

(i) Maintaining a state clearinghouse of information pertaining to sources and effects of nonionizing radiation with an emphasis on electric and magnetic fields;

(ii) Maintaining current information on the status and results of studies pertaining to health effects resulting from exposure to nonionizing radiation with an emphasis on studies pertaining to electric and magnetic fields;

(iii) Serving as the lead state agency on matters pertaining to electric and magnetic fields and periodically informing state agencies of relevant information pertaining to nonionizing radiation;

(2008 Ed.)

(l) In connection with any adjudicative proceeding as defined by RCW 34.05.010 or any other administrative proceedings as provided for in this chapter, have the power to issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records or documents.

(5) In order to avoid duplication of efforts, the agency may acquire the data requested under this section from public and private entities that possess this information. [1990 c 173 § 2; 1989 c 175 § 132; 1985 c 383 § 1; 1985 c 372 § 1; 1971 ex.s. c 189 § 10; 1970 ex.s. c 18 § 16; 1965 c 88 § 3; 1961 c 207 § 5.]

Finding—1990 c 173: "The legislature finds that concern has been raised over possible health effects resulting from exposure to nonionizing radiation, and specifically exposure to electric and magnetic fields. The legislature further finds that there is no clear responsibility in state government for following this issue and that this responsibility is best suited for the department of health." [1990 c 173 § 1.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1985 c 372: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 372 § 5.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

70.98.080 Rules and regulations—Licensing requirements and procedure—Notice of license application—Objections—Notice upon granting of license—Registration of sources of ionizing radiation—Exemptions from registration or licensing. (1) The agency shall provide by rule or regulation for general or specific licensing of byproduct, source, special nuclear materials, or devices or equipment utilizing such materials, or other radioactive material occurring naturally or produced artificially. Such rule or regulation shall provide for amendment, suspension, or revocation of licenses. Such rule or regulation shall provide that:

(a) Each application for a specific license shall be in writing and shall state such information as the agency, by rule or regulation, may determine to be necessary to decide the technical, insurance, and financial qualifications, or any other qualification of the applicant as the agency may deem reasonable and necessary to protect the occupational and public health and safety. The agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the agency deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. In no event shall the agency grant a specific license to any applicant who has never possessed a specific license issued by a recognized state or federal authority until the agency has conducted an inspection which insures that the applicant can meet the rules, regulations and standards adopted pursuant to this chapter. All applications and statements shall be signed by the applicant or licensee. The agency may require any applications or statements to be made under oath or affirmation;

(b) Each license shall be in such form and contain such terms and conditions as the agency may by rule or regulation prescribe;

(c) No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this chapter.

(2) Before the agency issues a license to an applicant under this section, it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns. The incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the agency within twenty days after date of transmittal of such notice, written objections against the applicant or against the activity for which the license is sought, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the agency may in its discretion hold a formal hearing under chapter 34.05 RCW. Upon the granting of a license under this section the agency shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

This subsection shall not apply to activities conducted within the boundaries of the Hanford reservation.

(3) The agency may require registration of all sources of ionizing radiation.

(4) The agency may exempt certain sources of ionizing radiation or kinds of uses or users from the registration or licensing requirements set forth in this section when the agency makes a finding after approval of the technical advisory board that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(5) In promulgating rules and regulations pursuant to this chapter the agency shall, insofar as practical, strive to avoid requiring dual licensing, and shall provide for such recognition of other state or federal licenses as the agency shall deem desirable, subject to such registration requirements as the agency may prescribe. [1984 c 96 § 1; 1965 c 88 § 5; 1961 c 207 § 8.]

70.98.085 Suspension and reinstatement of site use permits—Surveillance fee. (1) The agency is empowered to suspend and reinstate site use permits consistent with current regulatory practices and in coordination with the department of ecology, for generators, packagers, or brokers using the Hanford low-level radioactive waste disposal facility.

(2) The agency shall collect a surveillance fee as an added charge on each cubic foot of low level radioactive waste disposed of at the disposal site in this state which shall be set at a level that is sufficient to fund completely the radiation control activities of the agency directly related to the disposal site, including but not limited to the management,

licensing, monitoring, and regulation of the site. The surveillance fee shall not exceed five percent in 1990, six percent in 1991, and seven percent in 1992 of the basic minimum fee charged by an operator of a low-level radioactive waste disposal site in this state. The basic minimum fee consists of the disposal fee for the site operator, the fee for the perpetual care and maintenance fund administered by the state, the fee for the state closure fund, and the tax collected pursuant to chapter 82.04 RCW. Site use permit fees and surcharges collected under chapter 43.200 RCW are not part of the basic minimum fee. The fee shall also provide funds to the Washington state patrol for costs incurred from inspection of low-level radioactive waste shipments entering this state. Disbursements for this purpose shall be by authorization of the secretary of the department of health or the secretary's designee.

The agency may adopt such rules as are necessary to carry out its responsibilities under this section. [1990 c 21 § 7; 1989 c 106 § 1; 1986 c 2 § 2; 1985 c 383 § 3.]

Issuance of site use permits: RCW 43.200.080.

70.98.090 Inspection. The agency or its duly authorized representative shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder. [1985 c 372 § 2; 1961 c 207 § 9.]

Severability—1985 c 372: See note following RCW 70.98.050.

70.98.095 Financial assurance—Noncompliance. (1) The radiation control agency may require any person who applies for, or holds, a license under this chapter to demonstrate that the person has financial assurance sufficient to assure that liability incurred as a result of licensed operations and activities can be fully satisfied. Financial assurance may be in the form of insurance, cash deposits, surety bonds, corporate guarantees, letters of credit, or other financial instruments or guarantees determined by the agency to be acceptable financial assurance. The agency may require financial assurance in an amount determined by the secretary pursuant to RCW 70.98.098.

(2) The radiation control agency shall refuse to issue a license or permit or suspend the license or permit of any person required by this section to demonstrate financial assurance who fails to demonstrate compliance with this section. The license or permit shall not be issued or reinstated until the person demonstrates compliance with this section.

(3) The radiation control agency shall require (a) that any person required to demonstrate financial assurance, maintain with the agency current copies of any insurance policies, certificates of insurance, letters of credit, surety bonds, or any other documents used to comply with this section, (b) that the agency be notified of any changes in the financial assurance or financial condition of the person, and (c) that the state be named as an insured party on any insurance policy used to comply with this section. [1992 c 61 § 3; 1990 c 82 § 4; 1986 c 191 § 3.]

Construction—Severability—1986 c 191: See RCW 43.200.905 and 43.200.906.

70.98.098 Financial assurance—Generally. (1) In making the determination of the appropriate level of financial assurance, the secretary shall consider: (a) The report prepared by the department of ecology pursuant to RCW 43.200.200; (b) the potential cost of decontamination, treatment, disposal, decommissioning, and cleanup of facilities or equipment; (c) federal cleanup and decommissioning requirements; and (d) the legal defense cost, if any, that might be paid from the required financial assurance.

(2) The secretary may establish different levels of required financial assurance for various classes of permit or license holders.

(3) The secretary shall establish by rule the instruments or mechanisms by which a person may demonstrate financial assurance as required by RCW 70.98.095.

(4) To the extent that money in the site closure account together with the amount of money identified for repayment to the site closure account pursuant to RCW 43.200.080 equals or exceeds the cost estimate approved by the department of health for closure and decommissioning of the Hanford low-level radioactive waste disposal facility, the money in the site closure account together with the amount of money identified for repayment to the site closure account shall constitute adequate financial assurance for purposes of the department of health financial assurance requirements under RCW 70.98.095. [2003 1st sp.s. c 21 § 2; 1992 c 61 § 4; 1990 c 82 § 3.]

70.98.100 Records. (1) The agency shall require each person who possesses or uses a source of ionizing radiation to maintain necessary records relating to its receipt, use, storage, transfer, or disposal and such other records as the agency may require which will permit the determination of the extent of occupational and public exposure from the radiation source. Copies of these records shall be submitted to the agency on request. These requirements are subject to such exemptions as may be provided by rules.

(2) The agency may by rule and regulation establish standards requiring that personnel monitoring be provided for any employee potentially exposed to ionizing radiation and may provide for the reporting to any employee of his radiation exposure record. [1961 c 207 § 10.]

70.98.110 Federal-state agreements—Authorized—Effect as to federal licenses. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state pursuant to this chapter.

(2) Any person who, on the effective date of an agreement under subsection (1) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this chapter which shall expire either ninety days after the receipt from the state radiation control agency of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier. [1965 c 88 § 6; 1961 c 207 § 11.]

(2008 Ed.)

70.98.120 Inspection agreements and training programs. (1) The agency is authorized to enter into an agreement or agreements with the federal government, other states, or interstate agencies, whereby this state will perform on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter. [1961 c 207 § 12.]

70.98.122 Department of ecology to seek federal funding for environmental radiation monitoring. The department of ecology shall seek federal funding, such as is available under the clean air act (42 U.S.C. Sec. 1857 et seq.) and the nuclear waste policy act (42 U.S.C. Sec. 10101 et seq.) to carry out the purposes of *RCW 70.98.050(4)(c). [1985 c 372 § 3.]

**Reviser's note:* The subparagraph "(c)" in this reference has been redesignated "(c)[(e)]" in the published version of RCW 70.98.050.

Severability—1985 c 372: See note following RCW 70.98.050.

70.98.125 Federal assistance to be sought for high-level radioactive waste program. (1) The agency shall seek federal financial assistance as authorized by the nuclear waste policy act of 1982, P.L. 97-425 section 116(c), for activities related to the high-level radioactive waste program in the state of Washington. The activities for which federal funding is sought shall include, but are not limited to, the development of a radiological baseline for the Hanford reservation; the implementation of a program to monitor ionizing radiation emissions on the Hanford reservation; the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation on the Hanford reservation.

(2) In the event the federal government refuses to grant financial assistance for the activities under subsection (1) of this section, the agency is directed to investigate potential legal action. [1985 c 383 § 2.]

70.98.130 Administrative procedure. In any proceeding under this chapter for the issuance or modification or repeal of rules relating to control of sources of ionizing radiation, the agency shall comply with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

Notwithstanding any other provision of this chapter, whenever the agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, the agency may, in accordance with RCW 34.05.350 without notice or hearing, adopt a rule reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. As specified in RCW 34.05.350, such rules are effective immediately. [1989 c 175 § 133; 1961 c 207 § 13.]

Effective date—1989 c 175: See note following RCW 34.05.010.

70.98.140 Injunction proceedings. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the attorney general upon the request of the agency, after notice to such person and opportunity to comply, may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the agency that such person has engaged in, or is about to engage in, any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. [1961 c 207 § 14.]

70.98.150 Prohibited uses. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless licensed by or registered with, or exempted by the agency in accordance with the provisions of this chapter. [1965 c 88 § 7; 1961 c 207 § 15.]

70.98.160 Impounding of materials. The agency shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder. [1961 c 207 § 16.]

70.98.170 Prohibition—Fluoroscopic X-ray shoe-fitting devices. The operation or maintenance of any X-ray, fluoroscopic, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet is prohibited. This prohibition does not apply to any licensed physician, surgeon, *podiatrist, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of such persons. [1973 c 77 § 27; 1961 c 207 § 17.]

*Reviser's note: The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

70.98.180 Exemptions. This chapter shall not apply to the following sources or conditions:

(1) Radiation machines during process of manufacture, or in storage or transit: PROVIDED, That this exclusion shall not apply to functional testing of such machines.

(2) Any radioactive material while being transported in conformity with regulations adopted by any federal agency having jurisdiction therein, and specifically applicable to the transportation of such radioactive materials.

(3) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the Atomic Energy Commission, or any successor thereto. [1965 c 88 § 8; 1961 c 207 § 18.]

70.98.190 Professional uses. Nothing in this chapter shall be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the immediate direction of a

licensed practitioner of the healing arts acting within the scope of his professional license. [1961 c 207 § 19.]

70.98.200 Penalties. Any person who violates any of the provisions of this chapter or rules, regulations, or orders in effect pursuant thereto shall be guilty of a gross misdemeanor. [1961 c 207 § 20.]

70.98.900 Severability—1961 c 207. If any part, or parts, of this act shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part or parts can then be administered for the declared purposes of this act. [1961 c 207 § 21.]

70.98.910 Effective date—1961 c 207. The provisions of this act relating to the control of byproduct, source and special nuclear materials shall become effective on the effective date of the agreement between the federal government and this state as authorized in RCW 70.98.110. All other provisions of this act shall become effective on the 30th day of June, 1961. [1961 c 207 § 23.]

70.98.920 Section headings not part of law. Section headings as used in this chapter do not constitute any part of the law. [1961 c 207 § 25.]

Chapter 70.99 RCW

RADIOACTIVE WASTE STORAGE AND TRANSPORTATION ACT OF 1980

Sections

70.99.010	Finding.
70.99.020	Definitions.
70.99.030	Storage of radioactive waste from outside the state prohibited—Exceptions.
70.99.040	Transportation of radioactive waste from outside the state for storage within the state prohibited—Exception.
70.99.050	Violations—Penalties—Injunctions—Jurisdiction and venue—Fees and costs.
70.99.060	Interstate compact for regional storage.
70.99.900	Construction—1981 c 1.
70.99.905	Severability—1981 c 1.
70.99.910	Short title.

Nuclear energy and radiation: Chapter 70.98 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Uranium and thorium mill tailings—Licensing and perpetual care: Chapter 70.121 RCW.

70.99.010 Finding. The people of the state of Washington find that:

(1) Radioactive wastes are highly dangerous, in that releases of radioactive materials and emissions to the environment are inimical to the health and welfare of the people of the state of Washington, and contribute to the occurrences of harmful diseases, including excessive cancer and leukemia. The dangers posed by the transportation and presence of radioactive wastes are increased further by the long time periods that the wastes remain radioactive and highly dangerous;

(2) Transporting, handling, storing, or otherwise caring for radioactive waste presents a hazard to the health, safety,

and welfare of the individual citizens of the state of Washington because of the ever-present risk that an accident or incident will occur while the wastes are being cared for;

(3) The likelihood that an accident will occur in this state involving the release of radioactive wastes to the environment becomes greater as the volume of wastes transported, handled, stored, or otherwise cared for in this state increases;

(4) The effects of unplanned releases of radioactive wastes into the environment, especially into the air and water of the state, are potentially both widespread and harmful to the health, safety, and welfare of the citizens of this state.

The burdens and hazards posed by increasing the volume of radioactive wastes transported, handled, stored, or otherwise cared for in this state by the importation of such wastes from outside this state is not a hazard the state government may reasonably ask its citizens to bear. The people of the state of Washington believe that the principles of federalism do not require the sacrifice of the health, safety, and welfare of the people of one state for the convenience of other states or nations. [1981 c 1 § 1 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Radioactive waste" means unwanted radioactive material, including radioactive residues produced as a result of electric power generation or other reactor operation.

(2) "Medical waste" means radioactive waste from all therapy, diagnosis, or research in medical fields and radioactive waste which results from the production and manufacture of radioactive material used for therapy, diagnosis, or research in medical fields, except that "medical waste" does not include spent fuel or waste from the fuel of an isotope production reactor.

(3) "Radioactive waste generated or otherwise produced outside the geographic boundaries of the state of Washington" means radioactive waste which was located outside the state of Washington at the time of removal from a reactor vessel. [1981 c 1 § 2 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.030 Storage of radioactive waste from outside the state prohibited—Exceptions. Notwithstanding any law, order, or regulation to the contrary, after July 1, 1981, no area within the geographic boundaries of the state of Washington may be used by any person or entity as a temporary, interim, or permanent storage site for radioactive waste, except medical waste, generated or otherwise produced outside the geographic boundaries of the state of Washington. This section does not apply to radioactive waste stored within the state of Washington prior to July 1, 1981. [1981 c 1 § 3 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.040 Transportation of radioactive waste from outside the state for storage within the state prohibited—Exception. Notwithstanding any law, order, or regulation to the contrary, after July 1, 1981, no person or entity may transport radioactive waste, except medical waste, generated or otherwise produced outside the geographic boundaries of the state of Washington to any site within the geographic bound-

aries of the state of Washington for temporary, interim, or permanent storage. [1981 c 1 § 4 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.050 Violations—Penalties—Injunctions—Jurisdiction and venue—Fees and costs. (1) A violation of or failure to comply with the provisions of RCW 70.99.030 or 70.99.040 is a gross misdemeanor.

(2) Any person or entity that violates or fails to comply with the provisions of RCW 70.99.030 or 70.99.040 is subject to a civil penalty of one thousand dollars for each violation or failure to comply.

(3) Each day upon which a violation occurs constitutes a separate violation for the purposes of subsections (1) and (2) of this section.

(4) Any person or entity violating this chapter may be enjoined from continuing the violation. The attorney general or any person residing in the state of Washington may bring an action to enjoin violations of this chapter, on his or her own behalf and on the behalf of all persons similarly situated. Such action may be maintained in the person's own name or in the name of the state of Washington. No bond may be required as a condition to obtaining any injunctive relief. The superior courts have jurisdiction over actions brought under this section, and venue shall lie in the county of the plaintiff's residence, in the county in which the violation is alleged to occur, or in Thurston county. In addition to other relief, the court in its discretion may award attorney's and expert witness fees and costs of the suit to a party who demonstrates that a violation of this chapter has occurred. [1981 c 1 § 5 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.060 Interstate compact for regional storage. Notwithstanding the other provisions of this chapter, the state of Washington may enter into an interstate compact, which will become effective upon ratification by a majority of both houses of the United States Congress, to provide for the regional storage of radioactive wastes. [1981 c 1 § 6 (Initiative Measure No. 383, approved November 4, 1980).]

Northwest Interstate Compact on Low-Level Radioactive Waste Management: Chapter 43.145 RCW.

70.99.900 Construction—1981 c 1. This chapter shall be liberally construed to protect the health, safety, and welfare of the individual citizens of the state of Washington. [1981 c 1 § 7 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.905 Severability—1981 c 1. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 1 § 8 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.910 Short title. This act may be known as the Radioactive Waste Storage and Transportation Act of 1980. [1981 c 1 § 9 (Initiative Measure No. 383, approved November 4, 1980).]

Chapter 70.100 RCW

EYE PROTECTION—PUBLIC AND PRIVATE EDUCATIONAL INSTITUTIONS

Sections

- 70.100.010 "Eye protection areas" defined.
 70.100.020 Wearing of eye protection devices required—Furnishing of—Costs.
 70.100.030 Standard requirement for eye protection devices.
 70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions.

70.100.010 "Eye protection areas" defined. As used in this chapter:

"Eye protection areas" means areas within vocational or industrial arts shops, science or other school laboratories, or schools within state institutional facilities as designated by the state superintendent of public instruction in which activities take place involving:

- (1) Hot molten metals or other molten materials;
- (2) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;
- (3) Heat treatment, tempering or kiln firing of any metal or other materials;
- (4) Gas or electric arc welding, or other forms of welding processes;
- (5) Corrosive, caustic, or explosive materials;
- (6) Custodial or other service activity potentially hazardous to the eye: PROVIDED, That nothing in this chapter shall supersede regulations heretofore or hereafter established by the department of labor and industries respecting such activity; or
- (7) Any other activity or operation involving mechanical or manual work in any area that is potentially hazardous to the eye. [1969 ex.s. c 179 § 1.]

70.100.020 Wearing of eye protection devices required—Furnishing of—Costs. Every person shall wear eye protection devices when participating in, observing, or performing any function in connection with any courses or activities taking place in eye protection areas of any private or public school, college, university, or other public or private educational institution in this state, as designated by the superintendent of public instruction. The governing board or authority of any public school shall furnish the eye protection devices prescribed in RCW 70.100.030 without cost to all teachers and students in grades K-12 engaged in activities potentially dangerous to the human eye, and the governing body of each institution of higher education and vocational technical institute shall furnish such eye protection devices free or at cost to all teachers and students similarly engaged at the institutions of higher education and vocational technical institutes. Eye protection devices shall be furnished on a loan basis to all visitors observing activities hazardous to the eye. [1969 ex.s. c 179 § 2.]

70.100.030 Standard requirement for eye protection devices. Eye protection devices, which shall include plano safety spectacles, plastic face shields or goggles, shall comply with the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z87.1-1968 or later revisions thereof. [1969 ex.s. c 179 § 3.]

70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions. The superintendent of public instruction, after consulting with the department of labor and industries, and the division of vocational education shall prepare and circulate to each public and private educational institution in this state within six months of the date of passage of this chapter, a manual containing instructions and recommendations for the guidance of such institutions in implementing the eye safety provisions of this chapter. [1969 ex.s. c 179 § 4.]

Chapter 70.102 RCW

HAZARDOUS SUBSTANCE INFORMATION

Sections

- 70.102.010 Definitions.
 70.102.020 Hazardous substance information and education office—Duties.

70.102.010 Definitions. Unless the context clearly indicates otherwise, the definitions in this section shall apply throughout this chapter.

- (1) "Agency" means any state agency or local government entity.
- (2) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed by the department.
- (3) "Department" means the department of ecology.
- (4) "Director" means the director of the department.
- (5) "Hazardous substances" or "hazardous materials" means those substances or materials identified as such under regulations adopted pursuant to the federal hazardous materials transportation act, the toxic substances control act, the resource recovery and conservation act, the comprehensive environmental response compensation and liability act, the federal insecticide, fungicide, and rodenticide act, the occupational safety and health act hazardous communications standards, and the state hazardous waste act.

(6) "Moderate risk waste" means any waste that exhibits any of the properties of dangerous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation and any household wastes that are generated from the disposal of substances identified by the department as hazardous household substances. [1985 c 410 § 2.]

70.102.020 Hazardous substance information and education office—Duties. There is hereby created the hazardous substance information and education office. Through this office the department shall:

- (1) Facilitate access to existing information on hazardous substances within a community;
- (2) Request and obtain information about hazardous substances at specified locations and facilities from agencies that regulate those locations and facilities. The department shall review, approve, and provide confidentiality as provided by statute. Upon request of the department, each agency shall provide the information within forty-five days;
- (3) At the request of citizens or public health or public safety organizations, compile existing information about haz-

ardous substance use at specified locations and facilities. This information shall include but not be limited to:

- (a) Point and nonpoint air and water emissions;
 - (b) Extremely hazardous, moderate risk wastes and dangerous wastes as defined in chapter 70.105 RCW produced, used, stored, transported from, or disposed of by any facility;
 - (c) A list of the hazardous substances present at a given site and data on their acute and chronic health and environmental effects;
 - (d) Data on governmental pesticide use at a given site;
 - (e) Data on commercial pesticide use at a given site if such data is only given to individuals who are chemically sensitive; and
 - (f) Compliance history of any facility.
- (4) Provide education to the public on the proper production, use, storage, and disposal of hazardous substances, including but not limited to:
- (a) A technical resource center on hazardous substance management for industry and the public;
 - (b) Programs, in cooperation with local government, to educate generators of moderate risk waste, and provide information regarding the potential hazards to human health and the environment resulting from improper use and disposal of the waste and proper methods of handling, reducing, recycling, and disposing of the waste;
 - (c) Public information and education relating to the safe handling and disposal of hazardous household substances; and
 - (d) Guidelines to aid counties in developing and implementing a hazardous household substances program.

Requests for information from the hazardous substance information and education office may be made by letter or by a toll-free telephone line, if one is established by the department. Requests shall be responded to in accordance with chapter 42.56 RCW.

This section shall not require any agency to compile information that is not required by existing laws or rules. [2005 c 274 § 339; 1985 c 410 § 1.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Worker and community right to know fund, use to provide hazardous substance information under chapter 70.102 RCW: RCW 49.70.175.

Chapter 70.103 RCW LEAD-BASED PAINT

Sections

70.103.010	Finding.
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70.103.080	Certification required to perform lead-based paint activities—Certificate revocation—Penalties.
70.103.090	Chapter contingent on federal action.

70.103.010 Finding. (1) The legislature finds that lead hazards associated with lead-based paint represent a significant and preventable environmental health problem. Lead-based paint is the most widespread of the various sources of lead exposure to the public. Census data show that one mil-

lion five hundred sixty thousand homes in Washington state were built prior to 1978 when the sale of residential lead-based paint was banned. These are homes that are believed to contain some lead-based paint.

Lead negatively affects every system of the body. It is harmful to individuals of all ages and is especially harmful to children, fetuses, and adults of childbearing age. The effects of lead on a child's cognitive, behavioral, and developmental abilities may necessitate large expenditures of public funds for health care and special education. The irreversible damage to children and subsequent expenditures could be avoided if exposure to lead is reduced.

(2) The federal government regulates lead poisoning and lead hazard reduction through:

- (a)(i) The lead-based paint poisoning prevention act;
- (ii) The lead contamination control act;
- (iii) The safe drinking water act;
- (iv) The resource conservation and recovery act of 1976; and
- (v) The residential lead-based paint hazard reduction act of 1992; and
- (b) Implementing regulations of:
 - (i) The environmental protection agency;
 - (ii) The department of housing and urban development;
 - (iii) The occupational safety and health administration; and
 - (iv) The centers for disease control and prevention.

(3) In 1992, congress passed the federal residential lead-based paint hazard reduction act, which allows states to provide for the accreditation of lead-based paint activities programs, the certification of persons completing such training programs, and the licensing of lead-based paint activities contractors under standards developed by the United States environmental protection agency.

(4) The legislature recognizes the state's need to protect the public from exposure to lead hazards. A qualified and properly trained workforce is needed to assist in the prevention, detection, reduction, and elimination of hazards associated with lead-based paint. The purpose of training workers, supervisors, inspectors, risk assessors, and project designers engaged in lead-based paint activities is to protect building occupants, particularly children ages six years and younger from potential lead-based paint hazards and exposures both during and after lead-based paint activities. Qualified and properly trained individuals and firms will help to ensure lead-based paint activities are conducted in a way that protects the health of the citizens of Washington state and safeguards the environment. The state lead-based paint activities program requires that all lead-based paint activities be performed by certified personnel trained by an accredited program, and that all lead-based paint activities meet minimum work practice standards established by the department of community, trade, and economic development. Therefore, the lead-based paint activities accreditation, training, and certification program shall be established in accordance with this chapter. The lead-based paint activities accreditation, training, and certification program shall be administered by the department of community, trade, and economic development and shall be used as a means to assure the protection of the general public from exposure to lead hazards.

(5) For the welfare of the people of the state of Washington, this chapter establishes a lead-based paint activities program within the department of community, trade, and economic development to protect the general public from exposure to lead hazards and to ensure the availability of a trained and qualified workforce to identify and address lead-based paint hazards. The legislature recognizes the department of community, trade, and economic development is not a regulatory agency and may delegate enforcement responsibilities under chapter 322, Laws of 2003 to local governments or private entities. [2003 c 322 § 1.]

70.103.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards.

(a) Abatement includes, but is not limited to:

(i) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(ii) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(b) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in (a)(i) and (ii) of this subsection;

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified firms or individuals, unless such projects are covered by (c) of this subsection;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by (c) of this subsection; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accredited training program" means a training program that has been accredited by the department to provide training for individuals engaged in lead-based paint activities.

(3) "Certified inspector" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct inspections.

(4) "Certified abatement worker" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to perform abatements.

(5) "Certified firm" includes a company, partnership, corporation, sole proprietorship, association, agency, or other business entity that meets all the qualifications established by the department and performs lead-based paint activities to which the department has issued a certificate.

(6) "Certified project designer" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to prepare abatement project designs, occupant protection plans, and abatement reports.

(7) "Certified risk assessor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct risk assessments and sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

(8) "Certified supervisor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

(9) "Department" means the Washington state department of community, trade, and economic development.

(10) "Director" means the director of the Washington state department of community, trade, and economic development.

(11) "Federal laws and rules" means:

(a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et seq.) and the rules adopted by the United States environmental protection agency under that law for authorization of state programs;

(b) Any regulations or requirements adopted by the United States department of housing and urban development regarding eligibility for grants to states and local governments; and

(c) Any other requirements adopted by a federal agency with jurisdiction over lead-based paint hazards.

(12) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

(13) "Lead-based paint activity" includes inspection, testing, risk assessment, lead-based paint hazard reduction project design or planning, or abatement of lead-based paint hazards.

(14) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or

impact surfaces that would result in adverse human health effects as identified by the administrator of the United States environmental protection agency under the toxic substances control act, section 403.

(15) "State program" means a state administered lead-based paint activities certification and training program that meets the federal environmental protection agency requirements.

(16) "Person" includes an individual, corporation, firm, partnership, or association, an Indian tribe, state, or political subdivision of a state, and a state department or agency.

(17) "Risk assessment" means:

(a) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and

(b) The provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards. [2003 c 322 § 2.]

70.103.030 Certification and training—Local governments—Rules. (1) The department shall administer and enforce a state program for worker training and certification, and training program accreditation, which shall include those program elements necessary to assume responsibility for federal requirements for a program as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745, Subparts L and Q (1996), and Title X of the housing and community development act of 1992 (P.L. 102-550). The department may delegate or enter into a memorandum of understanding with local governments or private entities for implementation of components of the state program.

(2) The department is authorized to adopt rules that are consistent with federal requirements to implement a state program. Rules adopted under this section shall:

(a) Establish minimum accreditation requirements for lead-based paint activities for training providers;

(b) Establish work practice standards for conduct of lead-based paint activities;

(c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;

(d) Require the use of certified personnel in all lead-based paint activities;

(e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;

(f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;

(g) Provide for decertification, deaccreditation, and financial assurance for a person certified by or a training provider accredited by the department; and

(h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) The department may accept federal funds for the administration of the program.

(4) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992

(42 U.S.C. Sec. 4851 et seq.), and Title X of the housing and community development act of 1992 (P.L. 102-550).

(5) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70.105D RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(6) The department shall collect a fee in the amount of twenty-five dollars for certification and recertification of lead paint firms, inspectors, project developers, risk assessors, supervisors, and abatement workers.

(7) The department shall collect a fee in the amount of two hundred dollars for the accreditation of lead paint training programs. [2003 c 322 § 3.]

70.103.040 Certification and accreditation—Rules.

(1) The department shall establish a program for certification of persons involved in lead-based paint activities and for accreditation of training providers in compliance with federal laws and rules.

(2) Rules adopted under this section shall:

(a) Establish minimum accreditation requirements for lead-based paint activities for training providers;

(b) Establish work practice standards for conduct of lead-based paint activities;

(c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;

(d) Require the use of certified personnel in any lead-based paint hazard reduction activity;

(e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;

(f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;

(g) Provide for decertification, deaccreditation, and financial assurance for a person certified or accredited by the department; and

(h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745 (1996), Subparts L and Q, and Title X of the housing and community development act of 1992 (P.L. 102-550).

(4) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70.105D RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than

corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(5) The department may accept federal funds for the administration of the program. [2003 c 322 § 4.]

70.103.050 Rules—Report. The department shall adopt rules to:

(1) Establish procedures and requirements for the accreditation of lead-based paint activities training programs including, but not limited to, the following:

- (a) Training curriculum;
- (b) Training hours;
- (c) Hands-on training;
- (d) Trainee competency and proficiency;
- (e) Training program quality control;
- (f) Procedures for the reaccreditation of training programs;
- (g) Procedures for the oversight of training programs; and

(h) Procedures for the suspension, revocation, or modification of training program accreditations, or acceptance of training offered by an accredited training provider in another state or Indian tribe authorized by the environmental protection agency;

(2) Establish procedures for the purposes of certification, for the acceptance of training offered by an accredited training provider in a state or Indian tribe authorized by the environmental protection agency;

(3) Certify individuals involved in lead-based paint activities to ensure that certified individuals are trained by an accredited training program and possess appropriate educational or experience qualifications for certification;

(4) Establish procedures for recertification;

(5) Require the conduct of lead-based paint activities in accordance with work practice standards;

(6) Establish procedures for the suspension, revocation, or modification of certifications;

(7) Establish requirements for the administration of third-party certification exams;

(8) Use laboratories accredited under the environmental protection agency's national lead laboratory accreditation program;

(9) Establish work practice standards for the conduct of lead-based paint activities for:

- (a) Inspection for presence of lead-based paint;
- (b) Risk assessment; and
- (c) Abatement;

(10) Establish an enforcement response policy that shall include:

(a) Warning letters, notices of noncompliance, notices of violation, or the equivalent;

(b) Administrative or civil actions, including penalty authority, including accreditation or certification suspension, revocation, or modification; and

(c) Authority to apply criminal sanctions or other criminal authority using existing state laws as applicable.

The department shall prepare and submit a biennial report to the legislature regarding the program's status, its costs, and the number of persons certified by the program. [2003 c 322 § 5.]

70.103.060 Lead paint account. The lead paint account is created in the state treasury. All receipts from RCW 70.103.030 shall be deposited into the account. Monies in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of this chapter. [2003 c 322 § 6.]

70.103.070 Inspections. (1)(a) The director or the director's designee is authorized to inspect at reasonable times and, when feasible, with at least twenty-four hours prior notification:

(i) Premises or facilities where those engaged in training for lead-based paint activities conduct business; and

(ii) The business records of, and take samples at, the businesses accredited or certified under this chapter to conduct lead-based paint training or activities.

(b) Any accredited training program or any firm or individual certified under this chapter that denies access to the department for the purposes of (a) of this subsection is subject to deaccreditation or decertification under RCW 70.103.040.

(2) The director or the director's designee is authorized to inspect premises or facilities, with the consent of the owner or owner's agent, where violations may occur concerning lead-based paint activities, as defined under RCW 70.103.020, at reasonable times and, when feasible, with at least forty-eight hours prior notification of the inspection.

(3) Prior to receipt of federal lead-based paint abatement funding, all premise or facility owners shall be notified by any entity that receives and disburses the federal funds that an inspection may be conducted. If a premise or facility owner does not wish to have an inspection conducted, that owner is not eligible to receive lead-based paint abatement funding. [2003 c 322 § 7.]

70.103.080 Certification required to perform lead-based paint activities—Certificate revocation—Penalties.

(1) The department is designated as the official agency of this state for purposes of cooperating with, and implementing the state lead-based paint activities program under the jurisdiction of the United States environmental protection agency.

(2) No individual or firm can perform, offer, or claim to perform lead-based paint activities without certification from the department to conduct these activities.

(3) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted under this chapter. No person whose certificate is revoked under this chapter shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation. A certificate may be denied, suspended, or revoked on any of the following grounds:

(a) A risk assessor, inspector, contractor, project designer, or worker violates work practice standards established by the United States environmental protection agency or the United States department of housing and urban development governing work practices and procedures; or

(b) The certificate was obtained by error, misrepresentation, or fraud.

(4) Any person convicted of violating any of the provisions of this chapter is guilty of a misdemeanor. A conviction

is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a violation conviction for purposes of certification forfeiture under this chapter. Violations of this chapter include:

- (a) Failure to comply with any requirement of this chapter;
- (b) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required;
- (c) Obtaining certification through fraud or misrepresentation;
- (d) Failure to obtain certification from the department and performing work requiring certification at a job site; or
- (e) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification. [2003 c 322 § 8.]

70.103.090 Chapter contingent on federal action. (1) The department's duties under chapter 322, Laws of 2003 are subject to authorization of the state program from the federal government within two years of July 27, 2003. Chapter 322, Laws of 2003 expires if the federal environmental protection agency does not authorize a state program within two years of July 27, 2003.

(2) The department's duties under chapter 322, Laws of 2003 are subject to the availability of sufficient funding from the federal government for this purpose. The director or his or her designee shall seek funding of the department's efforts under this chapter from the federal government. By October 15th of each year, the director shall determine if sufficient federal funding has been provided or guaranteed by the federal government. If the director determines sufficient funding has not been provided, the department shall cease efforts under this chapter due to the lack of federal funding. [2003 c 322 § 9.]

Reviser's note: The federal environmental protection agency authorized Washington's program which was established June 10, 2004.

Chapter 70.104 RCW

PESTICIDES—HEALTH HAZARDS

Sections

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Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

(2008 Ed.)

70.104.010 Declaration. The department of health has responsibility to protect and enhance the public health and welfare. As a consequence, it must be concerned with both natural and artificial environmental factors which may adversely affect the public health and welfare. Dangers to the public health and welfare related to the use of pesticides require specific legislative recognition of departmental authority and responsibility in this area. [1991 c 3 § 356; 1971 ex.s. c 41 § 1.]

70.104.020 "Pesticide" defined. For the purposes of this chapter pesticide means, but is not limited to:

- (1) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director of agriculture may declare to be a pest; or
- (2) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; or
- (3) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used; or
- (4) Any fungicide, rodenticide, herbicide, insecticide, and nematocide. [1971 ex.s. c 41 § 2.]

70.104.030 Powers and duties of department of health. (1) The department of health shall investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the case or suspected case of pesticide poisoning.

In order to adequately investigate such cases, the department shall have the power to:

(a) Take all necessary samples and human or animal tissue specimens for diagnostic purposes: PROVIDED, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent;

(b) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of pesticide poisoning.

(2) The department shall, by rule adopted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, with due notice and a hearing for the adoption of permanent rules, establish procedures for the prevention of any recurrence of poisoning and the department shall immediately notify the department of agriculture, the department of labor and industries, and other appropriate agencies of the results of its investigation for such action as the other departments or agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency. [1991 c 3 § 357; 1989 c 380 § 71; 1971 ex.s. c 41 § 3.]

Effective date—1989 c 380 §§ 69, 71-73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.040 Pesticide emergencies—Authority of department of agriculture not infringed upon. (1) In any case where an emergency relating to pesticides occurs that represents a hazard to the public due to toxicity of the material, the quantities involved or the environment in which the incident takes place, such emergencies including but not limited to fires, spillage, and accidental contamination, the person or agent of such person having actual or constructive control of the pesticides involved shall immediately notify the department of health by telephone or the fastest available method.

(2) Upon notification or discovery of any pesticide emergency the department of health shall:

(a) Make such orders and take such actions as are appropriate to assume control of the property and to dispose of hazardous substances, prevent further contamination, and restore any property involved to a nonhazardous condition. In the event of failure of any individual to obey and carry out orders pursuant to this section, the department shall have all power and authority to accomplish those things necessary to carry out such order. Any expenses incurred by the department as a result of intentional failure of any individual to obey its lawful orders shall be charged as a debt against such individual.

(3) In any case where the department of health has assumed control of property pursuant to this chapter, such property shall not be reoccupied or used until such time as written notification of its release for use is received from the secretary of the department or his or her designee. Such action shall take into consideration the economic hardship, if any, caused by having the department assume control of property, and release shall be accomplished as expeditiously as possible. Nothing in this chapter shall prevent a farmer from continuing to process his or her crops and/or animals provided that the processing does not endanger the public health.

(4) The department shall recognize the pesticide industry's responsibility and active role in minimizing the effect of pesticide emergencies and shall provide for maximum utilization of these services.

(5) Nothing in this chapter shall be construed in any way to infringe upon or negate the authority and responsibility of the department of agriculture in its application and enforcement of the Washington Pesticide Control Act, chapter 15.58 RCW and the Washington Pesticide Application Act, chapter 17.21 RCW. The department of health shall work closely with the department of agriculture in the enforcement of this chapter and shall keep it appropriately advised. [1991 c 3 § 358; 1983 c 3 § 178; 1971 ex.s. c 41 § 4.]

70.104.050 Investigation of human exposure to pesticides. The department of health shall investigate human exposure to pesticides, and in order to carry out such investigations shall have authority to secure and analyze appropriate specimens of human tissue and samples representing sources of possible exposure. [1991 c 3 § 359; 1971 ex.s. c 41 § 5.]

70.104.055 Pesticide poisonings—Reports. (1) Any attending physician or other health care provider recognized as primarily responsible for the diagnosis and treatment of a patient or, in the absence of a primary health care provider, the health care provider initiating diagnostic testing or therapy for a patient shall report a case or suspected case of pesticide poisoning to the department of health in the manner prescribed by, and within the reasonable time periods established by, rules of the state board of health. Time periods established by the board shall range from immediate reporting to reporting within seven days depending on the severity of the case or suspected case of pesticide poisoning. The reporting requirements shall be patterned after other board rules establishing requirements for reporting of diseases or conditions. Confidentiality requirements shall be the same as the confidentiality requirements established for other reportable diseases or conditions. The information to be reported may include information from relevant pesticide application records and shall include information required under board rules. Reports shall be made on forms provided to health care providers by the department of health. For purposes of any oral reporting, the department of health shall make available a toll-free telephone number.

(2) Within a reasonable time period as established by board rules, the department of health shall investigate the report of a case or suspected case of pesticide poisoning to document the incident. The department shall report the results of the investigation to the health care provider submitting the original report.

(3) Cases or suspected cases of pesticide poisoning shall be reported by the department of health to the pesticide reporting and tracking review panel within the time periods established by state board of health rules.

(4) Upon request of the primary health care provider, pesticide applicators or employers shall provide a copy of records of pesticide applications which may have affected the health of the provider's patient. This information is to be used only for the purposes of providing health care services to the patient.

(5) Any failure of the primary health care provider to make the reports required under this section may be cause for the department of health to submit information about such nonreporting to the applicable disciplining authority for the provider under RCW 18.130.040.

(6) No cause of action shall arise as the result of: (a) The failure to report under this section; or (b) any report submitted to the department of health under this section.

(7) For the purposes of this section, a suspected case of pesticide poisoning is a case in which the diagnosis is thought more likely than not to be pesticide poisoning. [1992 c 173 § 4; 1991 c 3 § 360; 1989 c 380 § 72.]

Effective dates—1992 c 173: See note following RCW 17.21.100.

Effective date—1989 c 380 §§ 69, 71-73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.057 Pesticide poisonings—Medical education program. The department of health, after seeking advice from the state board of health, local health officers, and state and local medical associations, shall develop a program of medical education to alert physicians and other health care

providers to the symptoms, diagnosis, treatment, and reporting of pesticide poisonings. [1991 c 3 § 361; 1989 c 380 § 73.]

Effective date—1989 c 380 §§ 69, 71-73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.060 Technical assistance, consultations and services to physicians and agencies authorized. In order effectively to prevent human illness due to pesticides and to carry out the requirements of this chapter, the department of health is authorized to provide technical assistance and consultation regarding health effects of pesticides to physicians and other agencies, and is authorized to operate an analytical chemical laboratory and may provide analytical and laboratory services to physicians and other agencies to determine pesticide levels in human and other tissues, and appropriate environmental samples. [1991 c 3 § 362; 1971 ex.s. c 41 § 6.]

70.104.070 Pesticide incident reporting and tracking review panel—Intent. The legislature finds that heightened concern regarding health and environmental impacts from pesticide use and misuse has resulted in an increased demand for full-scale health investigations, assessment of resource damages, and health effects information. Increased reporting, comprehensive unbiased investigation capability, and enhanced community education efforts are required to maintain this state's responsibilities to provide for public health and safety.

It is the intent of the legislature that the various state agencies responsible for pesticide regulation coordinate their activities in a timely manner to ensure adequate monitoring of pesticide use and protection of workers and the public from the effects of pesticide misuse. [1989 c 380 § 67.]

Severability—1989 c 380: See RCW 15.58.942.

70.104.080 Pesticide panel—Generally. (1) There is hereby created a pesticide incident reporting and tracking review panel consisting of the following members:

(a) The directors, secretaries, or designees of the departments of labor and industries, agriculture, natural resources, fish and wildlife, and ecology;

(b) The secretary of the department of health or his or her designee, who shall serve as the coordinating agency for the review panel;

(c) The chair of the department of environmental health of the University of Washington, or his or her designee;

(d) The pesticide coordinator and specialist of the cooperative extension at Washington State University or his or her designee;

(e) A representative of the Washington poison control center network;

(f) A practicing toxicologist and a member of the general public, who shall each be appointed by the governor for terms of two years and may be appointed for a maximum of four terms at the discretion of the governor. The governor may remove either member prior to the expiration of his or her term of appointment for cause. Upon the death, resignation, or removal for cause of a member of the review panel, the governor shall fill such vacancy, within thirty days of its cre-

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ation, for the remainder of the term in the manner herein prescribed for appointment to the review panel.

(2) The review panel shall be chaired by the secretary of the department of health, or the secretary's designee. The members of the review panel shall meet at least monthly at a time and place specified by the chair, or at the call of a majority of the review panel. [1994 c 264 § 41; 1991 c 3 § 363; 1989 c 380 § 68.]

Severability—1989 c 380: See RCW 15.58.942.

70.104.090 Pesticide panel—Responsibilities. The responsibilities of the review panel shall include, but not be limited to:

(1) Establishing guidelines for centralizing the receipt of information relating to actual or alleged health and environmental incidents involving pesticides;

(2) Reviewing and making recommendations for procedures for investigation of pesticide incidents, which shall be implemented by the appropriate agency unless a written statement providing the reasons for not adopting the recommendations is provided to the review panel;

(3) Monitoring the time periods required for response to reports of pesticide incidents by the departments of agriculture, health, and labor and industries;

(4) At the request of the chair or any panel member, reviewing pesticide incidents of unusual complexity or those that cannot be resolved;

(5) Identifying inadequacies in state and/or federal law that result in insufficient protection of public health and safety, with specific attention to advising the appropriate agencies on the adequacy of pesticide reentry intervals established by the federal environmental protection agency and registered pesticide labels to protect the health and safety of farmworkers. The panel shall establish a priority list for reviewing reentry intervals, which considers the following criteria:

(a) Whether the pesticide is being widely used in labor-intensive agriculture in Washington;

(b) Whether another state has established a reentry interval for the pesticide that is longer than the existing federal reentry interval;

(c) The toxicity category of the pesticide under federal law;

(d) Whether the pesticide has been identified by a federal or state agency or through a scientific review as presenting a risk of cancer, birth defects, genetic damage, neurological effects, blood disorders, sterility, menstrual dysfunction, organ damage, or other chronic or subchronic effects; and

(e) Whether reports or complaints of ill effects from the pesticide have been filed following worker entry into fields to which the pesticide has been applied; and

(6) Reviewing and approving an annual report prepared by the department of health to the governor, agency heads, and members of the legislature, with the same available to the public. The report shall include, at a minimum:

(a) A summary of the year's activities;

(b) A synopsis of the cases reviewed;

(c) A separate descriptive listing of each case in which adverse health or environmental effects due to pesticides were found to occur;

- (d) A tabulation of the data from each case;
- (e) An assessment of the effects of pesticide exposure in the workplace;
- (f) The identification of trends, issues, and needs; and
- (g) Any recommendations for improved pesticide use practices. [1991 c 3 § 364; 1989 c 380 § 69.]

Effective date—1989 c 380 §§ 69, 71-73: "Sections 69 and 71 through 73 of this act shall take effect on January 1, 1990." [1989 c 380 § 90.]

Severability—1989 c 380: See RCW 15.58.942.

70.104.100 Industrial insurance statutes not affected.

Nothing in RCW 70.104.070 through 70.104.090 shall be construed to affect in any manner the administration of Title 51 RCW by the department of labor and industries. [1989 c 380 § 70.]

Severability—1989 c 380: See RCW 15.58.942.

Chapter 70.105 RCW

HAZARDOUS WASTE MANAGEMENT

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70.105.005 Legislative declaration. The legislature hereby finds and declares:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. At the same time, the quality of life of the people of the state is in part based upon a large variety of goods produced by the economy of the state. The complex industrial processes that produce these goods also generate waste byproducts, some of which are hazardous to the public health and the environment if improperly managed.

(2) Safe and responsible management of hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety.

(3) The availability of safe, effective, economical, and environmentally sound facilities for the management of hazardous waste is essential to protect public health and the environment and to preserve the economic strength of the state.

(4) Strong and effective enforcement of federal and state hazardous waste laws and regulations is essential to protect the public health and the environment and to meet the public's concerns regarding the acceptance of needed new hazardous waste management facilities.

(5) Negotiation, mediation, and similar conflict resolution techniques are useful in resolving concerns over the local impacts of siting hazardous waste management facilities.

(6) Safe and responsible management of hazardous waste requires an effective planning process that involves local and state governments, the public, and industry.

(7) Public acceptance and successful siting of needed new hazardous waste management facilities depends on several factors, including:

(a) Public confidence in the safety of the facilities;

(b) Assurance that the hazardous waste management priorities established in this chapter are being carried out to the maximum degree practical;

(c) Recognition that all state citizens benefit from certain products whose manufacture results in the generation of hazardous byproducts, and that all state citizens must, therefore, share in the responsibility for finding safe and effective means to manage this hazardous waste; and

(d) Provision of adequate opportunities for citizens to meet with facility operators and resolve concerns about local hazardous waste management facilities.

(8) Due to the controversial and regional nature of facilities for the disposal and incineration of hazardous waste, the facilities have had difficulty in obtaining necessary local approvals. The legislature finds that there is a statewide interest in assuring that such facilities can be sited.

It is therefore the intent of the legislature to preempt local government's authority to approve, deny, or otherwise regulate disposal and incineration facilities, and to vest in the department of ecology the sole authority among state, regional, and local agencies to approve, deny, and regulate preempted facilities, as defined in this chapter.

In addition, it is the intent of the legislature that such complete preemptive authority also be vested in the department for treatment and storage facilities, in addition to disposal and incineration facilities, if a local government fails to carry out its responsibilities established in RCW 70.105.225.

It is further the intent of the legislature that no local ordinance, permit requirement, other requirement, or decision shall prohibit on the basis of land use considerations the construction of a hazardous waste management facility within any zone designated and approved in accordance with this chapter, provided that the proposed site for the facility is consistent with applicable state siting criteria.

(9) With the exception of the disposal site authorized for acquisition under this chapter, the private sector has had the primary role in providing hazardous waste management facilities and services in the state. It is the intent of the legislature that this role be encouraged and continue into the future to the extent feasible. Whether privately or publicly owned and operated, hazardous waste management facilities and services should be subject to strict governmental regulation as provided under this chapter.

(10) Wastes that are exempt or excluded from full regulation under this chapter due to their small quantity or household origin have the potential to pose significant risk to public health and the environment if not properly managed. It is the intent of the legislature that the specific risks posed by such waste be investigated and assessed and that programs be carried out as necessary to manage the waste appropriately. In addition, the legislature finds that, because local conditions vary substantially in regard to the quantities, risks, and management opportunities available for such wastes, local government is the appropriate level of government to plan for and carry out programs to manage moderate-risk waste, with assistance and coordination provided by the department. [1985 c 448 § 2.]

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Severability—1985 c 448: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 448 § 19.]

70.105.007 Purpose. The purpose of this chapter is to establish a comprehensive statewide framework for the planning, regulation, control, and management of hazardous waste which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of the state. To this end it is the purpose of this chapter:

(1) To provide broad powers of regulation to the department of ecology relating to management of hazardous wastes and releases of hazardous substances;

(2) To promote waste reduction and to encourage other improvements in waste management practices;

(3) To promote cooperation between state and local governments by assigning responsibilities for planning for hazardous wastes to the state and planning for moderate-risk waste to local government;

(4) To provide for prevention of problems related to improper management of hazardous substances before such problems occur; and

(5) To assure that needed hazardous waste management facilities may be sited in the state, and to ensure the safe operation of the facilities. [1985 c 448 § 3.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.010 Definitions. The words and phrases defined in this section shall have the meanings indicated when used in this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or the director's designee.

(3) "Disposal site" means a geographical site in or upon which hazardous wastes are disposed of in accordance with the provisions of this chapter.

(4) "Dispose or disposal" means the discarding or abandoning of hazardous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned.

(5) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

(6) "Extremely hazardous waste" means any dangerous waste which

(a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form

(i) presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife, and

(ii) is highly toxic to man or wildlife

(b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment.

(7) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(8) "Pesticide" shall have the meaning of the term as defined in RCW 15.58.030 as now or hereafter amended.

(9) "Solid waste advisory committee" means the same advisory committee as per RCW 70.95.040 through 70.95.070.

(10) "Designated zone facility" means any facility that requires an interim or final status permit under rules adopted under this chapter and that is not a preempted facility as defined in this section.

(11) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for recycling, storing, treating, incinerating, or disposing of hazardous waste.

(12) "Preempted facility" means any facility that includes as a significant part of its activities any of the following operations: (a) Landfill, (b) incineration, (c) land treatment, (d) surface impoundment to be closed as a landfill, or (e) waste pile to be closed as a landfill.

(13) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed under RCW 70.105.220.

(14) "Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter.

(15) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.

(16) "Local government" means a city, town, or county.

(17) "Moderate-risk waste" means (a) any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation, and (b) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances.

(18) "Service charge" means an assessment imposed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component. Service charges shall also apply to facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. [1989 c 376 § 1; 1987 c 488 § 1; 1985 c 448 § 1; 1975-'76 2nd ex.s. c 101 § 1.]

Severability—1989 c 376: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 376 § 4.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.020 Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies. The department after notice and public hearing shall:

(1) Adopt regulations designating as extremely hazardous wastes subject to the provisions of this chapter those substances which exhibit characteristics consistent with the definition provided in RCW 70.105.010(6);

(2) Adopt and may revise when appropriate, minimum standards and regulations for disposal of extremely hazardous wastes to protect against hazards to the public, and to the environment. Before adoption of such standards and regulations, the department shall consult with appropriate agencies of interested local governments and secure technical assistance from the department of agriculture, the department of social and health services, the department of fish and wildlife, the department of natural resources, the department of labor and industries, and the department of community, trade, and economic development, through the director of fire protection. [1994 c 264 § 42; 1988 c 36 § 28; 1986 c 266 § 119; 1975-'76 2nd ex.s. c 101 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.105.025 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 23.]

Purpose—1997 c 381: See RCW 43.21K.005.

70.105.030 List and information to be furnished by depositor of hazardous waste—Rules and regulations. (1) After the effective date of the regulations adopted by the department designating extremely hazardous wastes, any person planning to dispose of extremely hazardous waste as designated by the department shall provide the operator of the disposal site with a list setting forth the extremely hazardous wastes for disposal, the amount of such wastes, the general chemical and mineral composition of such waste listed by approximate maximum and minimum percentages, and the origin of any such waste. Such list, when appropriate, shall include information on antidotes, first aid, or safety measures to be taken in case of accidental contact with the particular extremely hazardous waste being disposed.

(2) The department shall adopt and enforce all rules and regulations including the form and content of the list, necessary and appropriate to accomplish the purposes of subsection (1) of this section. [1975-'76 2nd ex.s. c 101 § 3.]

70.105.035 Solid wastes—Conditionally exempt from chapter. Solid wastes that designate as dangerous waste or extremely hazardous waste but do not designate as hazardous waste under federal law are conditionally exempt from the requirements of this chapter, if:

(1) The waste is generated pursuant to a consent decree issued under chapter 70.105D RCW;

(2) The consent decree characterizes the solid waste and specifies management practices and a department-approved treatment or disposal location;

(3) The management practices are consistent with RCW 70.105.150 and are protective of human health and the environment as determined by the department of ecology; and

(4) Waste treated or disposed of on-site will be managed in a manner determined by the department to be as protective of human health and the environment as clean-up standards pursuant to chapter 70.105D RCW.

This section shall not be interpreted to limit the ability of the department to apply any requirement of this chapter through a consent decree issued under chapter 70.105D RCW, if the department determines these requirements to be appropriate. Neither shall this section be interpreted to limit the application of this chapter to a cleanup conducted under the federal comprehensive environmental response, compensation, and liability act (42 U.S.C. Sec. 9601 et seq., as amended). [1994 c 254 § 5.]

70.105.040 Disposal site or facility—Acquisition—Disposal fee schedule. (1) The department through the department of general administration, is authorized to acquire interests in real property from the federal government on the Hanford Reservation by gift, purchase, lease, or other means, to be used for the purpose of developing, operating, and maintaining an extremely hazardous waste disposal site or facility by the department, either directly or by agreement with public or private persons or entities: PROVIDED, That lands acquired under this section shall not be inconsistent with a local comprehensive plan approved prior to January 1, 1976: AND PROVIDED FURTHER, That no lands acquired under this section shall be subject to land use regulation by a local government.

(2) The department may establish an appropriate fee schedule for use of such disposal facilities to offset the cost of administration of this chapter and the cost of development, operation, maintenance, and perpetual management of the disposal site. If operated by a private entity, the disposal fee may be such as to provide a reasonable profit. [1975-'76 2nd ex.s. c 101 § 4.]

70.105.050 Disposal at other than approved site prohibited—Disposal of radioactive wastes. (1) No person shall dispose of designated extremely hazardous wastes at any disposal site in the state other than the disposal site established and approved for such purpose under provisions of this chapter, except:

(a) When such wastes are going to a processing facility which will result in the waste being reclaimed, treated, detoxified, neutralized, or otherwise processed to remove its harmful properties or characteristics; or

(b) When such wastes are managed on-site as part of a remedial action conducted by the department or by potentially liable persons under a consent decree issued by the department pursuant to chapter 70.105D RCW.

(2) Extremely hazardous wastes that contain radioactive components may be disposed at a radioactive waste disposal site that is (a) owned by the United States department of energy or a licensee of the nuclear regulatory commission and (b) permitted by the department and operated in compliance with the provisions of this chapter. However, prior to disposal, or as a part of disposal, all reasonable methods of

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treatment, detoxification, neutralization, or other waste management methodologies designed to mitigate hazards associated with these wastes shall be employed, as required by applicable federal and state laws and regulations. [1994 c 254 § 6; 1987 c 488 § 4; 1975-'76 2nd ex.s. c 101 § 5.]

70.105.060 Review of rules, regulations, criteria and fee schedules. All rules, regulations, criteria, and fee schedules adopted by the department to implement the provisions of this chapter shall be reviewed by the solid waste advisory committee for the purpose of recommending revisions, additions, or modifications thereto as provided for the review of solid waste regulations and standards pursuant to chapter 70.95 RCW. [1975-'76 2nd ex.s. c 101 § 6.]

70.105.070 Criteria for receiving waste at disposal site. The department may elect to receive dangerous waste at the site provided under this chapter, provided

(1) it is upon request of the owner, producer, or person having custody of the waste, and

(2) upon the payment of a fee to cover disposal

(3) it can be reasonably demonstrated that there is no other disposal sites in the state that will handle such dangerous waste, and

(4) the site is designed to handle such a request or can be modified to the extent necessary to adequately dispose of the waste, or

(5) if a demonstrable emergency and potential threat to the public health and safety exists. [1975-'76 2nd ex.s. c 101 § 7.]

70.105.080 Violations—Civil penalties. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, every person who fails to comply with any provision of this chapter or of the rules adopted thereunder shall be subjected to a penalty in an amount of not more than ten thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed pursuant to the procedures in RCW 43.21B.300. [1995 c 403 § 631; 1987 c 109 § 12; 1983 c 172 § 2; 1975-'76 2nd ex.s. c 101 § 8.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1983 c 172: See note following RCW 70.105.097.

70.105.085 Violations—Criminal penalties. (1) Any person who knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance in violation of this chapter is guilty of: (a) A class B felony punishable according to chapter 9A.20 RCW if the person knows at the time

that the conduct constituting the violation places another person in imminent danger of death or serious bodily injury; or (b) a class C felony punishable according to chapter 9A.20 RCW if the person knows that the conduct constituting the violation places any property of another person or any natural resources owned by the state of Washington or any of its local governments in imminent danger of harm.

(2) As used in this section: (a) "Imminent danger" means that there is a substantial likelihood that harm will be experienced within a reasonable period of time should the danger not be eliminated; and (b) "knowingly" refers to an awareness of facts, not awareness of law. [2003 c 53 § 357; 1989 c 2 § 15 (Initiative Measure No. 97, approved November 8, 1988).]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2: See RCW 70.105D.900 through 70.105D.921, respectively.

70.105.090 Violations—Gross misdemeanor. In addition to the penalties imposed pursuant to RCW 70.105.080, any person who violates any provisions of this chapter, or of the rules implementing this chapter, and any person who knowingly aids or abets another in conducting any violation of any provisions of this chapter, or of the rules implementing this chapter, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than ten thousand dollars, and/or by imprisonment in the county jail for not more than one year, for each separate violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct offense. [1984 c 237 § 1; 1983 c 172 § 3; 1975-'76 2nd ex.s. c 101 § 9.]

Severability—1983 c 172: See note following RCW 70.105.097.

70.105.095 Violations—Orders—Penalty for non-compliance—Appeal. (1) Whenever on the basis on any information the department determines that a person has violated or is about to violate any provision of this chapter, the department may issue an order requiring compliance either immediately or within a specified period of time. The order shall be delivered by registered mail or personally to the person against whom the order is directed.

(2) Any person who fails to take corrective action as specified in a compliance order shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance. In addition, the department may suspend or revoke any permits and/or certificates issued under the provisions of this chapter to a person who fails to comply with an order directed against him.

(3) Any order may be appealed pursuant to RCW 43.21B.310. [1987 c 109 § 16; 1983 c 172 § 4.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1983 c 172: See note following RCW 70.105.097.

70.105.097 Action for damages resulting from violation—Attorneys' fees. A person injured as a result of a violation of this chapter or the rules adopted thereunder may bring an action in superior court for the recovery of the dam-

ages. A conviction or imposition of a penalty under this chapter is not a prerequisite to an action under this section.

The court may award reasonable attorneys' fees to a prevailing injured party in an action under this section. [1983 c 172 § 1.]

Severability—1983 c 172: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 172 § 5.]

70.105.100 Powers and duties of department. The department in performing its duties under this chapter may:

(1) Conduct studies and coordinate research programs pertaining to extremely hazardous waste management;

(2) Render technical assistance to generators of dangerous and extremely hazardous wastes and to state and local agencies in the planning and operation of hazardous waste programs;

(3) Encourage and provide technical assistance to waste generators to form and operate a "waste exchange" for the purpose of finding users for dangerous and extremely hazardous wastes that would otherwise be disposed of: PROVIDED, That such technical assistance shall not violate the confidentiality of manufacturing processes; and

(4) Provide for appropriate surveillance and monitoring of extremely hazardous waste disposal practices in the state. [1975-'76 2nd ex.s. c 101 § 10.]

70.105.105 Duty of department to regulate PCB waste. The department of ecology shall regulate under chapter 70.105 RCW, wastes generated from the salvaging, rebuilding, or discarding of transformers or capacitors that have been sold or otherwise transferred for salvage or disposal after the completion or termination of their useful lives and which contain polychlorinated biphenyls (PCB's) and whose disposal is not regulated under 40 CFR part 761. Nothing in this section shall prohibit such wastes from being incinerated or disposed of at facilities permitted to manage PCB wastes under 40 CFR part 761. [1985 c 65 § 1.]

70.105.109 Regulation of wastes with radioactive and hazardous components. The department of ecology may regulate all hazardous wastes, including those composed of both radioactive and hazardous components, to the extent it is not preempted by federal law. [1987 c 488 § 2.]

70.105.110 Regulation of dangerous wastes associated with energy facilities. (1) Nothing in this chapter shall alter, amend, or supersede the provisions of chapter 80.50 RCW, except that, notwithstanding any provision of chapter 80.50 RCW, regulation of dangerous wastes associated with energy facilities from generation to disposal shall be solely by the department pursuant to chapter 70.105 RCW. In the implementation of said section, the department shall consult and cooperate with the energy facility site evaluation council and, in order to reduce duplication of effort and to provide necessary coordination of monitoring and on-site inspection programs at energy facility sites, any on-site inspection by the department that may be required for the purposes of this chapter shall be performed pursuant to an interagency coordination agreement with the council.

(2) To facilitate the implementation of this chapter, the energy facility site evaluation council may require certificate holders to remove from their energy facility sites any dangerous wastes, controlled by this chapter, within ninety days of their generation. [1987 c 488 § 3; 1984 c 237 § 3; 1975-'76 2nd ex.s. c 101 § 11.]

70.105.111 Radioactive wastes—Authority of department of social and health services. Nothing in this chapter diminishes the authority of the department of social and health services to regulate the radioactive portion of mixed wastes pursuant to chapter 70.98 RCW. [1987 c 488 § 5.]

70.105.112 Application of chapter to special incinerator ash. This chapter does not apply to special incinerator ash regulated under chapter 70.138 RCW except that, for purposes of RCW 4.22.070(3)(a), special incinerator ash shall be considered hazardous waste. [1987 c 528 § 9.]

Severability—1987 c 528: See RCW 70.138.902.

70.105.116 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 17.]

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105.120 Authority of attorney general. At the request of the department, the attorney general is authorized to bring such injunctive, declaratory, or other actions to enforce any requirement of this chapter. [1980 c 144 § 2.]

70.105.130 Department's powers as designated agency under federal act. (1) The department is designated as the state agency for implementing the federal resource conservation and recovery act (42 U.S.C. Sec. 6901 et seq.).

(2) The power granted to the department by this section is the authority to:

(a) Establish a permit system for owners or operators of facilities which treat, store, or dispose of dangerous wastes: PROVIDED, That spent containers of pesticides or herbicides which have been used in normal farm operations and which are not extremely hazardous wastes, shall not be subject to the permit system;

(b) Establish standards for the safe transport, treatment, storage, and disposal of dangerous wastes as may be necessary to protect human health and the environment;

(c) Establish, to implement this section:

(i) A manifest system to track dangerous wastes;

(ii) Reporting, monitoring, recordkeeping, labeling, sampling requirements; and

(iii) Owner, operator, and transporter responsibility;

(d) Enter at reasonable times establishments regulated under this section for the purposes of inspection, monitoring, and sampling; and

(e) Adopt rules necessary to implement this section. [1980 c 144 § 1.]

70.105.135 Copies of notification forms or annual reports to officials responsible for fire protection. Any person who generates, treats, stores, disposes, or otherwise handles dangerous or extremely hazardous wastes shall provide copies of any notification forms, or annual reports that are required pursuant to RCW 70.105.130 to the fire departments or fire districts that service the areas in which the wastes are handled upon the request of the fire departments or fire districts. In areas that are not serviced by a fire department or fire district, the forms or reports shall be provided to the sheriff or other county official designated pursuant to *RCW 48.48.060 upon the request of the sheriff or other county official. This section shall not apply to the transportation of hazardous wastes. [1986 c 82 § 1.]

***Reviser's note:** RCW 48.48.060 was recodified as RCW 43.44.050 pursuant to 2006 c 25 § 13.

70.105.140 Rules implemented under RCW 70.105.130—Review. Rules implementing RCW 70.105.130 shall be submitted to the house and senate committees on ecology for review prior to being adopted in accordance with chapter 34.05 RCW. [1980 c 144 § 3.]

70.105.145 Department's authority to participate in and administer federal act. Notwithstanding any other provision of chapter 70.105 RCW, the department of ecology is empowered to participate fully in and is empowered to administer all aspects of the programs of the federal Resource Conservation and Recovery Act, as it exists on June 7, 1984, (42 U.S.C. Sec. 6901 et seq.), contemplated for participation and administration by a state under that act. [1984 c 237 § 2; 1983 c 270 § 2.]

Severability—1983 c 270: See note following RCW 90.48.260.

70.105.150 Declaration—Management of hazardous waste—Priorities—Definitions. The legislature hereby declares that:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. Management and regulation of hazardous waste disposal should encourage practices which result in the least amount of waste being produced. Towards that end, the legislature finds that the following priorities in the management of hazardous waste are necessary and should be followed in order of descending priority as applicable:

(a) Waste reduction;

(b) Waste recycling;

(c) Physical, chemical, and biological treatment;

(d) Incineration;

(e) Solidification/stabilization treatment;

(f) Landfill.

(2) As used in this section:

(a) "Waste reduction" means reducing waste so that hazardous byproducts are not produced;

(b) "Waste recycling" means reusing waste materials and extracting valuable materials from a waste stream;

(c) "Physical, chemical, and biological treatment" means processing the waste to render it completely innocuous, produce a recyclable byproduct, reduce toxicity, or substantially reduce the volume of material requiring disposal;

(d) "Incineration" means reducing the volume or toxicity of wastes by use of an enclosed device using controlled flame combustion;

(e) "Solidification/stabilization treatment" means the use of encapsulation techniques to solidify wastes and make them less permeable or leachable; and

(f) "Landfill" means a disposal facility, or part of a facility, at which waste is placed in or on land and which is not a land treatment facility, surface impoundment, or injection well. [1983 1st ex.s. c 70 § 1.]

70.105.160 Waste management study—Public hearings—Adoption or modification of rules. The department shall conduct a study to determine the best management practices for categories of waste for the priority waste management methods established in RCW 70.105.150, with due consideration in the course of the study to sound environmental management and available technology. As an element of the study, the department shall review methods that will help achieve the priority of RCW 70.105.150(1)(a), waste reduction. Before issuing any proposed rules, the department shall conduct public hearings regarding the best management practices for the various waste categories studied by the department. After conducting the study, the department shall prepare new rules or modify existing rules as appropriate to promote implementation of the priorities established in RCW 70.105.150 for management practices which assure use of sound environmental management techniques and available technology. The preliminary study shall be completed by July 1, 1986, and the rules shall be adopted by July 1, 1987. The solid waste advisory committee shall review the studies and the new or modified rules.

The studies shall be updated at least once every five years. The funding for these studies shall be from the hazardous waste control and elimination account, subject to legislative appropriation. [1998 c 245 § 110; 1984 c 254 § 2; 1983 1st ex.s. c 70 § 2.]

Severability—1984 c 254: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 254 § 3.]

70.105.165 Disposal of dangerous wastes at commercial off-site land disposal facilities—Limitations. (1) Independent of the processing or issuance of any or all federal, state, and local permits for disposal of dangerous wastes, no disposal of dangerous wastes at a commercial off-site land disposal facility may be undertaken prior to July 1, 1986, unless:

(a) The disposal results from actions taken under *RCW 70.105A.060 (2) and (3), or results from other emergency situations; or

(b) Studies undertaken by the department under RCW 70.105.160 to determine the best management practices for various waste categories under the priority waste management methods established in RCW 70.105.150 are completed for the particular wastes or waste categories to be disposed of and any regulatory revisions deemed necessary by the department are proposed and do not prohibit land disposal of such wastes; or

(c) Final regulations have been adopted by the department that allow for such disposal.

(2) Construction of facilities used solely for the purpose of disposal of wastes that have not met the requirements of subsection (1) of this section shall not be undertaken by any developer of a dangerous waste disposal facility.

(3) The department shall prioritize the studies of waste categories undertaken under RCW 70.105.160 to provide initial consideration of those categories most likely to be suitable for land disposal. Any regulatory changes deemed necessary by the department shall be proposed and subjected to the rule-making process by category as the study of each waste category is completed. All of the study shall be completed, and implementing regulations proposed, by July 1, 1986.

(4) Any final permit issued by the department before the adoption of rules promulgated as a result of the study conducted under RCW 70.105.160 shall be modified as necessary to be consistent with such rules. [1984 c 254 § 1.]

***Reviser's note:** RCW 70.105A.060 was repealed by 1990 c 114 § 21.

Severability—1984 c 254: See note following RCW 70.105.160.

70.105.170 Waste management—Consultative services—Technical assistance—Confidentiality. Consistent with the purposes of RCW 70.105.150 and 70.105.160, the department is authorized to promote the priority waste management methods listed in RCW 70.105.150 by establishing or assisting in the establishment of: (1) Consultative services which, in conjunction with any business or industry requesting such service, study and recommend alternative waste management practices; and (2) technical assistance, such as a toll-free telephone service, to persons interested in waste management alternatives. Any person receiving such service or assistance may, in accordance with state law, request confidential treatment of information about their manufacturing or business practices. [1983 1st ex.s. c 70 § 3.]

70.105.180 Disposition of fines and penalties—Earnings. All fines and penalties collected under this chapter shall be deposited in the hazardous waste control and elimination account, which is hereby created in the state treasury. Moneys in the account collected from fines and penalties shall be expended exclusively by the department of ecology for the purposes of chapter 70, Laws of 1983 1st ex. sess., subject to legislative appropriation. Other sources of funds deposited in this account may also be used for the purposes of chapter 70, Laws of 1983 1st ex. sess. All earnings of investments of balances in the hazardous waste control and elimination account shall be credited to the general fund. [1985 c 57 § 70; 1983 1st ex.s. c 70 § 4.]

Effective date—1985 c 57: See note following RCW 18.04.105.

70.105.200 Hazardous waste management plan. (1)

The department shall develop, and shall update at least once every five years, a state hazardous waste management plan. The plan shall include, but shall not be limited to, the following elements:

(a) A state inventory and assessment of the capacity of existing facilities to treat, store, dispose, or otherwise manage hazardous waste;

(b) A forecast of future hazardous waste generation;

(c) A description of the plan or program required by RCW 70.105.160 to promote the waste management priorities established in RCW 70.105.150;

(d) Siting criteria as appropriate for hazardous waste management facilities, including such criteria as may be appropriate for the designation of eligible zones for designated zone facilities. However, these criteria shall not prevent the continued operation, at or below the present level of waste management activity, of existing facilities on the basis of their location in areas other than those designated as eligible zones pursuant to RCW 70.105.225;

(e) Siting policies as deemed appropriate by the department; and

(f) A plan or program to provide appropriate public information and education relating to hazardous waste management. The department shall ensure to the maximum degree practical that these plans or programs are coordinated with public education programs carried out by local government under RCW 70.105.220.

(2) The department shall seek, encourage, and assist participation in the development, revision, and implementation of the state hazardous waste management plan by interested citizens, local government, business and industry, environmental groups, and other entities as appropriate.

(3) Siting criteria shall be completed by December 31, 1986. Other plan components listed in subsection (1) of this section shall be completed by June 30, 1987.

(4) The department shall incorporate into the state hazardous waste management plan those elements of the local hazardous waste management plans that it deems necessary to assure effective and coordinated programs throughout the state. [1985 c 448 § 4.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.210 Hazardous waste management facilities—Department to develop criteria for siting. By May 31, 1990, the department shall develop and adopt criteria for the siting of hazardous waste management facilities. These criteria will be part of the state hazardous waste management plan as described in RCW 70.105.200. To the extent practical, these criteria shall be designed to minimize the short-term and long-term risks and costs that may result from hazardous waste management facilities. These criteria may vary by type of facilities and may consider natural site characteristics and engineered protection. Criteria may be established for:

- (1) Geology;
- (2) Surface and groundwater hydrology;
- (3) Soils;
- (4) Flooding;
- (5) Climatic factors;
- (6) Unique or endangered flora and fauna;

(7) Transportation routes;

(8) Site access;

(9) Buffer zones;

(10) Availability of utilities and public services;

(11) Compatibility with existing uses of land;

(12) Shorelines and wetlands;

(13) Sole-source aquifers;

(14) Natural hazards; and

(15) Other factors as determined by the department.

[1989 1st ex.s. c 13 § 2; 1985 c 448 § 5.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.215 Department to adopt rules for permits for hazardous substances treatment facilities. The legislature recognizes the need for new, modified, or expanded facilities to treat, incinerate, or otherwise process or dispose of hazardous substances safely. In order to encourage the development of such facilities, the department shall adopt rules as necessary regarding the permitting of such facilities to ensure the most expeditious permit processing possible consistent with the substantive requirements of applicable law. If owners and operators are not the same entity, the operator shall be the permit applicant and responsible for the development of the permit application and all accompanying materials, as long as the owner also signs the application and certifies its ownership of the real property described in the application, and acknowledges its awareness of the contents of the application and receipt of a copy thereof. [1986 c 210 § 3.]

70.105.217 Local government regulatory authority to prohibit or condition. Nothing in this chapter shall alter or affect the regulatory authority of a county, city, or jurisdictional health district to condition or prohibit the acceptance of hazardous waste in a county or city landfill. [1994 c 254 § 7.]

70.105.220 Local governments to prepare local hazardous waste plans—Basis—Elements required. (1) Each local government, or combination of contiguous local governments, is directed to prepare a local hazardous waste plan which shall be based on state guidelines and include the following elements:

(a) A plan or program to manage moderate-risk wastes that are generated or otherwise present within the jurisdiction. This element shall include an assessment of the quantities, types, generators, and fate of moderate-risk wastes in the jurisdiction. The purpose of this element is to develop a system of managing moderate-risk waste, appropriate to each local area, to ensure protection of the environment and public health;

(b) A plan or program to provide for ongoing public involvement and public education in regard to the management of moderate-risk waste. This element shall provide information regarding:

(i) The potential hazards to human health and the environment resulting from improper use and disposal of the waste; and

(ii) Proper methods of handling, reducing, recycling, and disposing of the waste;

(c) An inventory of all existing generators of hazardous waste and facilities managing hazardous waste within the

jurisdiction. This inventory shall be based on data provided by the department;

(d) A description of the public involvement process used in developing the plan;

(e) A description of the eligible zones designated in accordance with RCW 70.105.225. However, the requirement to designate eligible zones shall not be considered part of the local hazardous waste planning requirements; and

(f) Other elements as deemed appropriate by local government.

(2) To the maximum extent practicable, the local hazardous waste plan shall be coordinated with other hazardous materials-related plans and policies in the jurisdiction.

(3) Local governments shall coordinate with those persons involved in providing privately owned hazardous and moderate-risk waste facilities and services as follows: If a local government determines that a moderate-risk waste will be or is adequately managed by one or more privately owned facilities or services at a reasonable price, the local government shall take actions to encourage the use of that private facility or service. Actions taken by a local government under this subsection may include, but are not limited to, restricting or prohibiting the land disposal of a moderate-risk waste at any transfer station or land disposal facility within its jurisdiction.

(4)(a) The department shall prepare guidelines for the development of local hazardous waste plans. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986. The guidelines shall include a list of substances identified as hazardous household substances.

(b) In preparing the guidelines under (a) of this subsection, the department shall review and assess information on pilot projects that have been conducted for moderate-risk waste management. The department shall encourage additional pilot projects as needed to provide information to improve and update the guidelines.

(5) The department shall consult with retailers, trade associations, public interest groups, and appropriate units of local government to encourage the development of voluntary public education programs on the proper handling of hazardous household substances.

(6) Local hazardous waste plans shall be completed and submitted to the department no later than June 30, 1990. Local governments may from time to time amend the local plan.

(7) Each local government, or combination of contiguous local governments, shall submit its local hazardous waste plan or amendments thereto to the department. The department shall approve or disapprove local hazardous waste plans or amendments by December 31, 1990, or within ninety days of submission, whichever is later. The department shall approve a local hazardous waste plan if it determines that the plan is consistent with this chapter and the guidelines under subsection (4) of this section. If approval is denied, the department shall submit its objections to the local government within ninety days of submission. However, for plans submitted between January 1, 1990, and June 30, 1990, the department shall have one hundred eighty days to submit its objections. No local government is eligible for grants under RCW 70.105.235 for implementing a local hazardous waste

plan unless the plan for that jurisdiction has been approved by the department.

(8) Each local government, or combination of contiguous local governments, shall implement the local hazardous waste plan for its jurisdiction by December 31, 1991.

(9) The department may waive the specific requirements of this section for any local government if such local government demonstrates to the satisfaction of the department that the objectives of the planning requirements have been met. [1992 c 17 § 1; 1986 c 210 § 1; 1985 c 448 § 6.]

Severability—1985 c 448: See note following RCW 70.105.005.

Used oil recycling element: RCW 70.951.020.

70.105.221 Local governments to prepare local hazardous waste plans—Used oil recycling element. Local governments and combinations of local governments shall amend their local hazardous waste plans required under RCW 70.105.220 to comply with RCW 70.951.020. [1991 c 319 § 312.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.105.225 Local governments to designate zones—Departmental guidelines—Approval of local government zone designations or amendments—Exemption. (1) Each local government, or combination of contiguous local governments, is directed to: (a) Demonstrate to the satisfaction of the department that existing zoning allows designated zone facilities as permitted uses; or (b) designate land use zones within its jurisdiction in which designated zone facilities are permitted uses. The zone designations shall be consistent with the state siting criteria adopted in accordance with RCW 70.105.210, except as may be approved by the department in accordance with subsection (6) of this section.

(2) Local governments shall not prohibit the processing or handling of hazardous waste in zones in which the processing or handling of hazardous substances is not prohibited. This subsection does not apply in residential zones.

(3) The department shall prepare guidelines, as appropriate, for the designation of zones under this section. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986.

(4) The initial designation of zones shall be completed or revised, and submitted to the department within eighteen months after the enactment of siting criteria in accordance with RCW 70.105.210. Local governments that do not comply with this submittal deadline shall be subject to the preemptive provisions of RCW 70.105.240(4) until such time as zone designations are completed and approved by the department. Local governments may from time to time amend their designated zones.

(5) Local governments without land use zoning provisions shall designate eligible geographic areas within their jurisdiction, based on siting criteria adopted in accordance with RCW 70.105.210. The area designation shall be subject to the same requirements as if they were zone designations.

(6) Each local government, or combination of contiguous local governments, shall submit its designation of zones or amendments thereto to the department. The department shall approve or disapprove zone designations or amend-

ments within ninety days of submission. The department shall approve eligible zone designations if it determines that the proposed zone designations are consistent with this chapter, the applicable siting criteria, and guidelines for developing designated zones: PROVIDED, That the department shall consider local zoning in place as of January 1, 1985, or other special situations or conditions which may exist in the jurisdiction. If approval is denied, the department shall state within ninety days from the date of submission the facts upon which that decision is based and shall submit the statement to the local government together with any other comments or recommendations it deems appropriate. The local government shall have ninety days after it receives the statement from the department to make modifications designed to eliminate the inconsistencies and resubmit the designation to the department for approval. Any designations shall take effect when approved by the department.

(7) The department may exempt a local government from the requirements of this section if:

(a) Regulated quantities of hazardous waste have not been generated within the jurisdiction during the two calendar years immediately preceding the calendar year during which the exemption is requested; and

(b) The local government can demonstrate to the satisfaction of the department that no significant portion of land within the jurisdiction can meet the siting criteria adopted in accordance with RCW 70.105.210. [1989 1st ex.s. c 13 § 1; 1985 c 448 § 7.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.230 Local governments to submit letter of intent to identify or designate zones and submit management plans—Department to prepare plan in event of failure to act. (1) Each local government is directed to submit to the director of the department by October 31, 1987, a letter of intent stating that it intends to (a) identify, or designate if necessary, eligible zones for designated zone facilities no later than June 30, 1988, and (b) submit a complete local hazardous waste management plan to the department no later than June 30, 1990. The letters shall also indicate whether these requirements will be completed in conjunction with other local governments.

(2) If any local government fails to submit a letter as provided in subsection (1)(b) of this section, or fails to adopt a local hazardous waste plan for its jurisdiction in accordance with the time schedule provided in this chapter, or fails to secure approval from the department for its local hazardous waste plan in accordance with the time schedule provided in this chapter, the department shall prepare a hazardous waste plan for the local jurisdiction. [1985 c 448 § 8.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.235 Grants to local governments for plan preparation, implementation, and designation of zones—Matching funds—Qualifications. (1) Subject to legislative appropriations, the department may make and administer grants to local governments for (a) preparing and updating local hazardous waste plans, (b) implementing approved local hazardous waste plans, and (c) designating eligible

zones for designated zone facilities as required under this chapter.

(2) Local governments shall match the funds provided by the department for planning or designating zones with an amount not less than twenty-five percent of the estimated cost of the work to be performed. Local governments may meet their share of costs with cash or contributed services. Local governments, or combination of contiguous local governments, conducting pilot projects pursuant to RCW 70.105.220(4) may subtract the cost of those pilot projects conducted for hazardous household substances from their share of the cost. If a pilot project has been conducted for all moderate-risk wastes, only the portion of the cost that applies to hazardous household substances shall be subtracted. The matching funds requirement under this subsection shall be waived for local governments, or combination of contiguous local governments, that complete and submit their local hazardous waste plans under RCW 70.105.220(6) prior to June 30, 1988.

(3) Recipients of grants shall meet such qualifications and follow such procedures in applying for and using grants as may be established by the department. [1986 c 210 § 2; 1985 c 448 § 9.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.240 State preemption—Department sole authority—Local requirements superseded—State authority over designated zone facilities. (1) As of July 28, 1985, the state preempts the field of state, regional, or local permitting and regulating of all preempted facilities as defined in this chapter. The department of ecology is designated the sole decision-making authority with respect to permitting and regulating such facilities and no other state agency, department, division, bureau, commission, or board, or any local or regional political subdivision of the state, shall have any permitting or regulatory authority with respect to such facilities including, but not limited to, the location, construction, and operation of such facilities. Permits issued by the department shall be in lieu of any and all permits, approvals, certifications, or conditions of any other state, regional, or local governmental authority which would otherwise apply.

(2) The department shall ensure that any permits issued under this chapter invoking the preemption authority of this section meet the substantive requirements of existing state laws and regulations to the extent such laws and regulations are not inconsistent or in conflict with any of the provisions of this chapter. In the event that any of the provisions of this chapter, or any of the regulations promulgated hereunder, are in conflict with any other state law or regulations, such other law or regulations shall be deemed superseded for purposes of this chapter.

(3) As of July 28, 1985, any ordinances, regulations, requirements, or restrictions of regional or local governmental authorities regarding the location, construction, or operation of preempted facilities shall be deemed superseded. However, in issuing permits under this section, the department shall consider local fire and building codes and condition such permits as appropriate in compliance therewith.

(4) Effective July 1, 1988, the department shall have the same preemptive authority as defined in subsections (1) through (3) of this section in regard to any designated zone facility that may be proposed in any jurisdiction where the designation of eligible zones pursuant to RCW 70.105.225 has not been completed and approved by the department. Unless otherwise preempted by this subsection, designated zone facilities shall be subject to all applicable state and local laws, regulations, plans, and other requirements. [1985 c 448 § 10.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.245 Department may require notice of intent for management facility permit. The department may adopt rules to require any person who intends to file an application for a permit for a hazardous waste management facility to file a notice of intent with the department prior to submitting the application. [1985 c 448 § 11.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.250 Appeals to pollution control hearings board. Any disputes between the department and the governing bodies of local governments in regard to the local planning requirements under RCW 70.105.220 and the designation of zones under RCW 70.105.225 may be appealed by the department or the governing body of the local government to the pollution control hearings board established under chapter 43.21B RCW. [1985 c 448 § 12.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.255 Department to provide technical assistance with local plans. The department shall provide technical assistance to local governments in the preparation, review, revision, and implementation of local hazardous waste plans. [1985 c 448 § 13.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.260 Department to assist conflict resolution activities related to siting facilities—Agreements may constitute conditions for permit. (1) In order to promote identification, discussion, negotiation, and resolution of issues related to siting of hazardous waste management facilities, the department:

(a) Shall compile and maintain information on the use and availability of conflict resolution techniques and make this information available to industries, state and local government officials, and other citizens;

(b) Shall encourage and assist in facilitating conflict resolution activities, as appropriate, between facility proponents, host communities, and other interested persons;

(c) May adopt rules specifying procedures for facility proponents, host communities, and citizens to follow in providing opportunities for conflict resolution activities, including the use of dispute resolution centers established pursuant to chapter 7.75 RCW; and

(d) May expend funds to support such conflict resolution activities, and may adopt rules as appropriate to govern the support.

(2) Any agreements reached under the processes described in subsection (1) of this section and deemed valid

by the department may be written as conditions binding on a permit issued under this chapter. [1985 c 448 § 14.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.270 Requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) not mandatory without legislative appropriation. The requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) shall not become mandatory until funding is appropriated by the legislature. [1985 c 448 § 15.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.280 Service charges. (1) The department may assess reasonable service charges against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component or which are undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. Service charges may not exceed the costs to the department in carrying out the duties of this section.

(2) Program elements or activities for which service charges may be assessed include:

(a) Office, staff, and staff support for the purposes of facility or unit permit development, review, and issuance; and

(b) Actions taken to determine and ensure compliance with the state's hazardous waste management act.

(3) Moneys collected through the imposition of such service charges shall be deposited in the state toxics control account.

(4) The department shall adopt rules necessary to implement this section. Facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component shall not be subject to service charges prior to such rule making. Facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal shall not be subject to service charges prior to such rule making. [1989 c 376 § 2.]

Severability—1989 c 376: See note following RCW 70.105.010.

70.105.300 Metals mining and milling operations permits—Inspections by department of ecology. If a metals mining and milling operation is issued a permit pursuant to this chapter, then it will be subject to special inspection requirements. The department of ecology shall inspect these mining operations at least quarterly in order to ensure that the operation is in compliance with the conditions of any permit issued to it pursuant to this chapter. The department shall conduct additional inspections during the construction phase of the mining operation in order to ensure compliance with this chapter. [1994 c 232 § 19.]

Severability—1994 c 232: See RCW 78.56.900.

Effective date—1994 c 232 §§ 6-8 and 18-22: See RCW 78.56.902.

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

70.105.900 Short title—1985 c 448. This chapter shall be known and may be cited as the hazardous waste management act. [1985 c 448 § 16.]

Severability—1985 c 448: See note following RCW 70.105.005.

**Chapter 70.105A RCW
HAZARDOUS WASTE FEES**

Sections

70.105A.035 Revision of fees to provide a waste reduction and recycling incentive.

Hazardous waste management: Chapter 70.105 RCW.

70.105A.035 Revision of fees to provide a waste reduction and recycling incentive. The legislature is encouraged to revise the hazardous waste fees prescribed in *RCW 70.105A.030 in a manner which provides an incentive for waste reduction and recycling. If prior to March 1, 1989, *RCW 70.105A.030 as it existed on August 1, 1987, has not been amended in a manner which specifically provides an incentive for hazardous waste reduction and recycling, then (1) the requirement to pay the fees prescribed in that section is eliminated solely for fees due and payable on June 30, 1989; and (2) the department of ecology shall prepare, and submit to the legislature by January 1, 1990, a proposed revision designed to provide an incentive for hazardous waste reduction and recycling. [1989 c 2 § 16 (Initiative Measure No. 97, approved November 8, 1988).]

***Reviser's note:** RCW 70.105A.030 was repealed by 1990 c 114 § 21.

Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2: See RCW 70.105D.900 through 70.105D.921, respectively.

**Chapter 70.105D RCW
HAZARDOUS WASTE CLEANUP—
MODEL TOXICS CONTROL ACT**

Sections

70.105D.010 Declaration of policy.
70.105D.020 Definitions.
70.105D.030 Department's powers and duties.
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70.105D.070 Toxics control accounts (as amended by 2008 c 328).
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70.105D.090 Remedial actions—Exemption from procedural requirements.
70.105D.100 Grants to local governments—Statement of environmental benefits—Development of outcome-focused performance measures.
70.105D.110 Releases of hazardous substances—Notice—Exemptions.
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70.105D.130 Cleanup settlement account—Reporting requirements.
70.105D.900 Short title—1989 c 2.
70.105D.905 Captions—1989 c 2.
70.105D.910 Construction—1989 c 2.
70.105D.915 Existing agreements—1989 c 2.
70.105D.920 Effective date—1989 c 2.
70.105D.921 Severability—1989 c 2.

(2008 Ed.)

70.105D.010 Declaration of policy. (1) Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.

(2) A healthful environment is now threatened by the irresponsible use and disposal of hazardous substances. There are hundreds of hazardous waste sites in this state, and more will be created if current waste practices continue. Hazardous waste sites threaten the state's water resources, including those used for public drinking water. Many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and environment. The costs of eliminating these threats in many cases are beyond the financial means of our local governments and ratepayers. The main purpose of chapter 2, Laws of 1989 is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.

(3) Many farmers and small business owners who have followed the law with respect to their uses of pesticides and other chemicals nonetheless may face devastating economic consequences because their uses have contaminated the environment or the water supplies of their neighbors. With a source of funds, the state may assist these farmers and business owners, as well as those persons who sustain damages, such as the loss of their drinking water supplies, as a result of the contamination.

(4) It is in the public's interest to efficiently use our finite land base, to integrate our land use planning policies with our clean-up policies, and to clean up and reuse contaminated industrial properties in order to minimize industrial development pressures on undeveloped land and to make clean land available for future social use.

(5) Because it is often difficult or impossible to allocate responsibility among persons liable for hazardous waste sites and because it is essential that sites be cleaned up well and expeditiously, each responsible person should be liable jointly and severally.

(6) Because releases of hazardous substances can adversely affect the health and welfare of the public, the environment, and property values, it is in the public interest that affected communities be notified of where releases of hazardous substances have occurred and what is being done to clean them up. [2002 c 288 § 1; 1994 c 254 § 1; 1989 c 2 § 1 (Initiative Measure No. 97, approved November 8, 1988).]

Severability—2002 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 288 § 5.]

70.105D.020 Definitions. (1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant

not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology or the director's designee.

(4) "Environmental covenant" has the same meaning as defined in RCW 64.70.020.

(5) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(6) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(7)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (17)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(8) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(9) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(10) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(11) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(12) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(13) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease

financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(14) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(15) "Institutional controls" means measures undertaken to limit or prohibit activities that may interfere with the integrity of a remedial action or result in exposure to or migration of hazardous substances at a site. "Institutional controls" include environmental covenants.

(16) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(17) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (18)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (17)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release. The exemption in this subsection (17)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW

70.105D.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (17)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (17)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the groundwater from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated groundwater that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of groundwater does not disqualify a person from the exemption in this subsection (17)(b)(iv).

(18) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a

facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(19) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(20) "Policing activities" means actions the holder takes to ensure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(21) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(22) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (17)(b)(ii) of this section.

(23) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years

shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(24) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(25) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(26) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(27) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(28) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower. [2007 c 104 § 18; 2005 c 191 § 1; 1998 c 6 § 1; 1997 c 406 § 2; 1995 c 70 § 1; 1994 c 254 § 2; 1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988).]

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Findings—Intent—1997 c 406: "The legislature finds that:

(1) Engrossed Substitute House Bill No. 1810 enacted during the 1995 legislative session [1995 c 359] authorized establishment of the model toxics (2008 Ed.)

control act policy advisory committee, a twenty-two member committee representing a broad range of interests including the legislature, agriculture, large and small business, environmental organizations, and local and state government. The committee was charged with the task of providing advice to the legislature and the department of ecology to more effectively implement the model toxics control act, chapter 70.105D RCW.

(2) The committee members committed considerable time and effort to their charge, meeting twenty-six times during 1995 and 1996 to discuss and decide issues. In addition, the committee created four subcommittees that met over sixty times during this same period. There were also numerous working subgroups and drafting committees formed on an ad hoc basis to support the committee's work. Many members of the public also attended these meetings and were provided opportunities to contribute to the committee deliberations.

(3) The policy advisory committee completed its work and submitted a final report to the department of ecology and the legislature on December 15, 1996. That report contains numerous recommendations for statutory changes that were agreed to by consensus of the committee members or obtained broad support of most of the committee members. Chapter 406, Laws of 1997 is intended to implement those recommended statutory changes." [1997 c 406 § 1.]

70.105D.030 Department's powers and duties. (1)

The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or willful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020 and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, environmental covenants where necessary to protect human health and the envi-

ronment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department shall consult with and seek comment from a city or county department with land use planning authority for real property subject to the environmental covenant;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70.105D.110, and impose penalties for violations of that section consistent with RCW 70.105D.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(17)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. Nothing in this chapter may be construed to preclude the department from issuing a written opinion on whether further remedial action is necessary at any portion of the real property located within a facility, even if further remedial action is still necessary elsewhere at the same facility. Such a written opinion on a portion of a facility must also provide an opinion on the status of the facility as a whole. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance; and

(j) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environ-

ment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedial releases or threatened releases at the site;

(e) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) To achieve and protect the state's long-term ecological health, the department shall prioritize sufficient funding to clean up hazardous waste sites and prevent the creation of future hazards due to improper disposal of toxic wastes, and create financing tools to clean up large-scale hazardous waste sites requiring multiyear commitments. To effectively monitor toxic accounts expenditures, the department shall develop a comprehensive ten-year financing report that identifies long-term remedial action project costs, tracks expenses, and projects future needs.

(4) Before December 20th of each even-numbered year, the department shall:

(a) Develop a comprehensive ten-year financing report in coordination with all local governments with clean-up responsibilities that identifies the projected biennial hazardous waste site remedial action needs that are eligible for funding from the local toxics control account;

(b) Work with local governments to develop working capital reserves to be incorporated in the ten-year financing report;

(c) Identify the projected remedial action needs for orphaned, abandoned, and other clean-up sites that are eligible for funding from the state toxics control account;

(d) Project the remedial action need, cost, revenue, and any recommended working capital reserve estimate to the next biennium's long-term remedial action needs from both the local toxics control account and the state toxics control account, and submit this information to the appropriate standing fiscal and environmental committees of the senate and house of representatives. This submittal must also include a ranked list of such remedial action projects for both accounts; and

(e) Provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state and local toxics control accounts, including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its waste management priorities under RCW 70.105.150, and all funds expended under this chapter.

(5) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of RCW 70.105D.020 and the classification of substances or products as hazardous substances for purposes of RCW 82.21.020(1). The board shall consist of five independent members to serve staggered three-year terms. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

(7) For all facilities where an environmental covenant has been required under subsection (1)(f) of this section, including all facilities where the department has required an environmental covenant under an order, agreed order, or consent decree, or as a condition of a written opinion issued under the authority of subsection (1)(i) of this section, the department shall periodically review the environmental covenant for effectiveness. Except as otherwise provided in (c) of this subsection, the department shall conduct a review at least once every five years after an environmental covenant is recorded.

(a) The review shall consist of, at a minimum:

(i) A review of the title of the real property subject to the environmental covenant to determine whether the environmental covenant was properly recorded and, if applicable, amended or terminated;

(ii) A physical inspection of the real property subject to the environmental covenant to determine compliance with the environmental covenant, including whether any development or redevelopment of the real property has violated the terms of the environmental covenant; and

(iii) A review of the effectiveness of the environmental covenant in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances. This shall include a review of available monitoring data.

(b) If an environmental covenant has been amended or terminated without proper authority, or if the terms of an environmental covenant have been violated, or if the environmental covenant is no longer effective in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances, then the department shall take any and all appropriate actions necessary to ensure compliance with the environmental covenant and the policies and requirements of this chapter.

(c) For facilities where an environmental covenant required by the department under subsection (1)(f) of this

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section was required before July 1, 2007, the department shall:

(i) Enter all required information about the environmental covenant into the registry established under RCW 64.70.120 by June 30, 2008;

(ii) For those facilities where more than five years has elapsed since the environmental covenant was required and the department has yet to conduct a review, conduct an initial review according to the following schedule:

(A) By December 30, 2008, fifty facilities;

(B) By June 30, 2009, fifty additional facilities; and

(C) By June 30, 2010, the remainder of the facilities;

(iii) Once this initial review has been completed, conduct subsequent reviews at least once every five years. [2007 c 446 § 1; 2007 c 225 § 1; 2007 c 104 § 19; 2002 c 288 § 3; 2001 c 291 § 401; 1997 c 406 § 3; 1995 c 70 § 2. Prior: 1994 c 257 § 11; 1994 c 254 § 3; 1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988).]

Reviser's note: This section was amended by 2007 c 104 § 19, 2007 c 225 § 1, and by 2007 c 446 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Effective date—2002 c 288 §§ 2-4: See note following RCW 70.105D.110.

Severability—2002 c 288: See note following RCW 70.105D.010.

Part headings not law—Effective date—2001 c 291: See notes following RCW 43.20A.360.

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.040 Standard of liability—Settlement. (1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (i) An act of God;
- (ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that:

(i) The settlement will yield substantial new resources to facilitate cleanup;

(ii) The settlement will expedite remedial action consistent with the rules adopted under this chapter; and

(iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of vacant or abandoned commercial or industrial contaminated property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit, including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the development of a facility by a governmental entity to address an important public purpose.

(6) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes. [1997 c 406 § 4; 1994 c 254 § 4; 1989 c 2 § 4 (Initiative Measure No. 97, approved November 8, 1988).]

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

70.105D.050 Enforcement. (1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply. The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

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(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70.105D.110 or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.

(7) Any person who owns real property or lender holding a mortgage on real property that is subject to a lien filed under RCW 70.105D.055 may petition the department to have the lien removed or the amount of the lien reduced. If, after consideration of the petition and the information supporting the petition, the department decides to deny the request, the person may, within ninety days after receipt of the department's denial, file suit for removal or reduction of the lien. The person is entitled to removal of a lien filed under RCW 70.105D.055(2)(a) if they can prove by a preponderance of the evidence that the person is not a liable party under RCW 70.105D.040. The person is entitled to a reduction of the amount of the lien if they can prove by a preponderance of the evidence:

(a) For liens filed under RCW 70.105D.055(2)(a), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property; and

(b) For liens filed under RCW 70.105D.055(2)(c), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property or exceeds the increase of the fair market value of the real property solely attributable to the remedial action conducted by the department. [2005 c 211 § 2; 2002 c 288 § 4; 1994 c 257 § 12; 1989 c 2 § 5 (Initiative Measure No. 97, approved November 8, 1988).]

Effective date—2002 c 288 §§ 2-4: See note following RCW 70.105D.110.

Severability—2002 c 288: See note following RCW 70.105D.010.

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.055 Lien authority. (1) It is in the public interest for the department to recover remedial action costs incurred in discharging its responsibility under this chapter, as these recovered funds can then be applied to the cleanup of other facilities. Thus, in addition to other cost-recovery mechanisms provided under this chapter, this section is intended to facilitate the recovery of state funds spent on

remedial actions by providing the department with lien authority. This will also prevent a facility owner or mortgagee from gaining a financial windfall from increased land value resulting from department-conducted remedial actions at the expense of the state taxpayers.

(2) If the state of Washington incurs remedial action costs relating to a remedial action of real property, and those remedial action costs are unrecovered by the state of Washington, the department may file a lien against that real property.

(a) Except as provided in (c) of this subsection, liens filed under this section shall have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded, except for the following liens:

(i) Local and special district property tax assessments; and

(ii) Mortgage liens recorded before liens or notices of intent to conduct remedial actions are recorded under this section.

(b) Liens filed pursuant to (a) and (c) of this subsection shall not exceed the remedial action costs incurred by the state.

(c)(i) If the real property for which the department has incurred remedial action costs is abandoned, the department may choose to limit the amount of the lien to the increase in the fair market value of the real property that is attributable to a remedial action conducted by the department. The increase in fair market value shall be determined by subtracting the county assessor's value of the real property for the most recent year prior to remedial action being initiated from the value of the real property after remedial action. The value of the real property after remedial action shall be determined by the bona fide purchase price of the real property or by a real estate appraiser retained by the department. Liens limited in this way have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded.

(ii) For the purposes of this subsection, "abandoned" means there has not been significant business activity on the real property for three years or property taxes owed on the real property are three years in arrears prior to the department incurring costs attributable to this lien.

(d) The department shall, when notifying potentially liable persons of their potential liability under RCW 70.105D.040, include a notice stating that if the department incurs remedial action costs relating to the remediation of real property and the costs are not recovered by the department, the department may file a lien against that real property under this section.

(e) Except for emergency remedial actions, the department must provide notice to the following persons before initiating remedial actions conducted by persons under contract to the department on real property on which a lien may be filed under this section:

(i) The real property owner;

(ii) Mortgagees;

(iii) Lienholders of record;

(iv) Persons known to the department to be conducting remedial actions at the facility at the time of such notice; and

(v) Persons known to the department to be under contract to conduct remedial actions at the facility at the time of such notice.

For emergency remedial actions, this notice shall be provided within thirty days after initiation of the emergency remedial actions.

(f) The department may record a copy of the notice in (e) of this subsection, along with a legal description of the property on which the remedial action will take place, with the county auditor in the county where the real property is located. If the department subsequently files a lien, the effective date of the lien will be the date this notice was recorded.

(3) Before filing a lien under this section, the department shall give the owner of real property on which the lien is to be filed and mortgagees and lienholders of record a notice of its intent to file a lien:

(a) The notice required under this subsection (3) must be sent by certified mail to the real property owner and mortgagees of record at the addresses listed in the recorded documents. If the real property owner is unknown or if a mailed notice is returned as undeliverable, the department shall provide notice by posting a legal notice in the newspaper of largest circulation in the county [in which] the site is located. The notice shall provide:

(i) A statement of the purpose of the lien;

(ii) A brief description of the real property to be affected by the lien;

(iii) A statement of the remedial action costs incurred by the state related to the real property affected by the lien;

(iv) A brief statement of facts showing probable cause that the real property is the subject of the remedial action costs incurred by the department; and

(v) The time period following service or other notice during which any recipient of the notice whose legal rights may be affected by the lien may comment on the notice.

(b) Any comments on the notice must be received by the department on or before thirty days following service or other provision of the notice of intent to file a lien.

(c) If no comments are received by the department, the lien may be filed on the real property immediately.

(d) If the department receives any comments on the lien, the department shall determine if there is probable cause for filing the certificate of lien. If the department determines there is probable cause, the department may file the lien. Any further challenge to the lien may only occur at the times specified under RCW 70.105D.060.

(e) If the department has reason to believe that exigent circumstances require the filing of a lien prior to giving notice under this subsection (3), or prior to the expiration of the time period for comments, the department may file the lien immediately. For the purposes of this subsection (3), exigent circumstances include, but are not limited to, an imminent bankruptcy filing by the real property owner, or the imminent transfer or sale of the real property subject to lien by the real property owner, or both.

(4) A lien filed under this section is effective when a statement of lien is filed with the county auditor in the county where the real property is located. The statement of lien must include a description of the real property subject to lien and the amount of the lien.

(5) Unless the department determines it is in the public interest to remove the lien, the lien continues until the liability for the remedial action costs have been satisfied through sale of the real property, foreclosure, or other means agreed to by the department. Any action for foreclosure of the lien shall be brought by the attorney general in a civil action in the court having jurisdiction and in the manner prescribed for the judicial foreclosure of a mortgage.

(6)(a) This section does not apply to real property owned by a local government or special purpose district or real property used solely for residential purposes and consisting of four residential units or less at the time the lien is recorded. This limitation does not apply to illegal drug manufacturing and storage sites under chapter 64.44 RCW.

(b) If the real property owner has consented to the department filing a lien on the real property, then only subsection (3)(a)(i) through (iii) of this section requiring notice to mortgagees and lienholders of record apply. [2005 c 211 § 1.]

70.105D.060 Timing of review. The department's investigative and remedial decisions under RCW 70.105D.030 and 70.105D.050, its decisions regarding filing a lien under RCW 70.105D.055, and its decisions regarding liable persons under RCW 70.105D.020, 70.105D.040, 70.105D.050, and 70.105D.055 shall be reviewable exclusively in superior court and only at the following times: (1) In a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the department to enforce an order or an agreed order, or seek a civil penalty under this chapter; (3) in a suit for reimbursement under RCW 70.105D.050(2); (4) in a suit by the department to compel investigative or remedial action; (5) in a citizen's suit under RCW 70.105D.050(5); and (6) in a suit for removal or reduction of a lien under RCW 70.105D.050(7). Except in suits for reduction or removal of a lien under RCW 70.105D.050(7), the court shall uphold the department's actions unless they were arbitrary and capricious. In suits for reduction or removal of a lien under RCW 70.105D.050(7), the court shall review such suits pursuant to the standards set forth in RCW 70.105D.050(7). [2007 c 104 § 20; 2005 c 211 § 3; 1994 c 257 § 13; 1989 c 2 § 6 (Initiative Measure No. 97, approved November 8, 1988).]

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.070 Toxics control accounts (as amended by 2008 c 328).

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority:

(i) Remedial actions;

(ii) Hazardous waste plans and programs under chapter 70.105 RCW;

(iii) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(iv) Funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and

(v) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment.

(b) Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that is a Puget Sound partner, as defined in RCW 90.71.010, along with any project that is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, shall, except as conditioned by RCW 70.105D.120, receive priority for any available funding for any grant or funding programs or sources that use a competitive bidding process.

(c) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(d) To expedite cleanups throughout the state, the department shall partner with local communities and liable parties for cleanups. The department is authorized to use the following additional strategies in order to ensure a healthful environment for future generations:

(i) The director may alter grant-matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property under RCW 70.105D.040(5) that would not otherwise occur;

(ii) The use of outside contracts to conduct necessary studies;

(iii) The purchase of remedial action cost-cap insurance, when necessary to expedite multiparty clean-up efforts.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation, or, after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) The department shall adopt rules for grant or loan issuance and performance.

(8) During the 2007-2009 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as reflect excess fund balance in the account. [2008 c 328 § 6009. Prior: 2007 c 522 § 954; 2007 c 520 § 6033; 2007 c 446 § 2; 2007 c 341 § 30; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923; prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

70.105D.070 Toxics control accounts (as amended by 2008 c 329).

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority:

(i) Remedial actions;

(ii) Hazardous waste plans and programs under chapter 70.105 RCW;

(iii) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(iv) Funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and

(v) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment.

(b) Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that is a Puget Sound partner, as defined in RCW 90.71.010, along with any project that is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, shall, except as conditioned by RCW 70.105D.120, receive priority for any available funding for any grant or funding programs or sources that use a competitive bidding process.

(c) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation, or, after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) The department shall adopt rules for grant or loan issuance and performance.

(8) During the 2007-2009 fiscal biennium, the local toxics control account may also be used for a standby rescue tug at Neah Bay. [2008 c 329 § 919; 2007 c 341 § 30; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923. Prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

70.105D.070 Toxics control accounts (as amended by 2008 c 329).

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and (v) cleanup and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment. For purposes of this subsection (3)(a)(v), "abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During the 1999-2001 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals. During the 2005-2007 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as specified in the omnibus capital budget bill. During the 2005-2007 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(c) To expedite cleanups throughout the state, the department shall partner with local communities and liable parties for cleanups. The department is authorized to use the following additional strategies in order to ensure a healthful environment for future generations:

(i) The director may alter grant-matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property under RCW 70.105D.040(5) that would not otherwise occur;

(ii) The use of outside contracts to conduct necessary studies;

(iii) The purchase of remedial action cost-cap insurance, when necessary to expedite multiparty clean-up efforts.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance.

(8) During the 2005-2007 fiscal biennium, the legislature may transfer from the state toxics control account to the water quality account such amounts as reflect the excess fund balance of the fund.

(9) During the 2007-2009 fiscal biennium, the local toxics control account may also be used for a standby rescue tug at Neah Bay. [2008 c 329 § 920; 2007 c 446 § 2; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923. Prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

70.105D.070 Toxics control accounts (as amended by 2008 c 329).

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and (v) cleanup and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment. For purposes of this subsection (3)(a)(v), "abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During the 1999-2001 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals. During the 2005-2007 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as specified in the omnibus capital budget bill. During the 2007-2009 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance.

(8) During the 2007-2009 fiscal biennium, the local toxics control account may also be used for a standby rescue tug at Neah Bay. [2008 c 329 § 921. Prior: 2007 c 522 § 954; 2007 c 520 § 6033; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 §

923; prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Reviser's note: RCW 70.105D.070 was amended four times during the 2008 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Part headings not law—Severability—Effective date—2007 c 520: See notes following RCW 43.19.125.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Finding—2001 c 27: "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Construction—Severability—Effective date—1998 c 346: See notes following RCW 50.24.014.

Local governments—Increased service—1998 c 81: "If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management." [1998 c 81 § 3.]

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

70.105D.080 Private right of action—Remedial action costs. Except as provided in RCW 70.105D.040(4) (d) and (f), a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other person liable under RCW 70.105D.040 for the recovery of remedial action costs. In the action, natural resource damages paid to the state under this chapter may also be recovered. Recovery shall be based on such equitable factors as the court determines are appropriate. Remedial action costs shall include reasonable attorneys' fees and expenses. Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. Substantial equivalence shall be determined by the court with reference to the rules adopted by the department under this chapter. An action under this section may be brought after remedial action costs are incurred but must be brought within three years from the date remedial action confirms cleanup standards are met or within one year of May 12, 1993, whichever is later. The prevailing party in such an action shall recover its reasonable

attorneys' fees and costs. This section applies to all causes of action regardless of when the cause of action may have arisen. To the extent a cause of action has arisen prior to May 12, 1993, this section applies retroactively, but in all other respects it applies prospectively. [1997 c 406 § 6; 1993 c 326 § 1.]

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Effective date—1993 c 326: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 326 § 2.]

Severability—1993 c 326: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 326 § 3.]

70.105D.090 Remedial actions—Exemption from procedural requirements. (1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW, and the substantive provisions of any laws requiring or authorizing local government permits or approvals. The department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(2) An exemption in this section or in RCW 70.94.335, 70.95.270, 70.105.116, *77.55.030, 90.48.039, and 90.58.355 shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section. [2003 c 39 § 30; 1994 c 257 § 14.]

*Reviser's note: RCW 77.55.030 was recodified as RCW 77.55.061 pursuant to 2005 c 146 § 1001.

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.100 Grants to local governments—Statement of environmental benefits—Development of outcome-focused performance measures. In providing grants to local governments, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall

utilize the statement of environmental benefit[s] in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section. [2001 c 227 § 5.]

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

70.105D.110 Releases of hazardous substances—Notice—Exemptions. (1) Except as provided in subsection (5) of this section, any owner or operator of a facility that is actively transitioning from operating under a federal permit for treatment, storage, or disposal of hazardous waste issued under 42 U.S.C. Sec. 6925 to operating under the provisions of this chapter, who has information that a hazardous substance has been released to the environment at the owner or operator's facility that may be a threat to human health or the environment, shall issue a notice to the department within ninety days. The notice shall include a description of any remedial actions planned, completed, or underway.

(2) The notice must be posted in a visible, publicly accessible location on the facility, to remain in place until all remedial actions except confirmational monitoring are complete.

(3) After receiving the notice from the facility, the department must review the notice and mail a summary of its contents, along with any additional information deemed appropriate by the department, to:

(a) Each residence and landowner of a residence whose property boundary is within three hundred feet of the boundary of the property where the release occurred or if the release occurred from a pipeline or other facility that does not have a property boundary, within three hundred feet of the actual release;

(b) Each business and landowner of a business whose property boundary is within three hundred feet of the boundary of the property where the release occurred;

(c) Each residence, landowner of a residence, and business with a property boundary within the area where hazardous substances have come to be located as a result of the release;

(d) Neighborhood associations and community organizations representing an area within one mile of the facility and recognized by the city or county with jurisdiction within this area;

(e) The city, county, and local health district with jurisdiction within the areas described in (a), (b), and (c) of this subsection; and

(f) The department of health.

(4) A notice produced by a facility shall provide the following information:

(a) The common name of any hazardous substances released and, if available, the chemical abstract service registry number of these substances;

(b) The address of the facility where the release occurred;

(c) The date the release was discovered;

- (d) The cause and date of the release, if known;
 - (e) The remedial actions being taken or planned to address the release;
 - (f) The potential health and environmental effects of the hazardous substances released; and
 - (g) The name, address, and telephone number of a contact person at the facility where the release occurred.
- (5) The following releases are exempt from the notification requirements in this section:
- (a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;
 - (b) The lawful and nonnegligent use of hazardous household substances by a natural person for personal or domestic purposes;
 - (c) The discharge of hazardous substances in compliance with permits issued under chapter 70.94, 90.48, or 90.56 RCW;
 - (d) De minimis amounts of any hazardous substance leaked or discharged onto the ground;
 - (e) The discharge of hazardous substances to a permitted waste water treatment facility or from a permitted waste water collection system or treatment facility as allowed by a facility's discharge permit;
 - (f) Any releases originating from a single-family or multifamily residence, including but not limited to the discharge of oil from a residential home heating oil tank with the capacity of five hundred gallons or less;
 - (g) Any spill on a public road, street, or highway or to surface waters of the state that has previously been reported to the United States coast guard and the state division of emergency management under chapter 90.56 RCW;
 - (h) Any release of hazardous substances to the air;
 - (i) Any release that occurs on agricultural land, including land used to grow trees for the commercial production of wood or wood fiber, that is at least five acres in size, when the effects of the release do not come within three hundred feet of any property boundary. For the purposes of this subsection, agricultural land includes incidental uses that are compatible with agricultural or silvicultural purposes, including, but not limited to, land used for the housing of the owner, operator, or employees, structures used for the storage or repair of equipment, machinery, and chemicals, and any paths or roads on the land; and
 - (j) Releases that, before January 1, 2003, have been previously reported to the department, or remediated in compliance with a settlement agreement under RCW 70.105D.040(4) or enforcement order or agreed order issued under this chapter or have been the subject of an opinion from the department under RCW 70.105D.030(1)(i) that no further remedial action is required.

An exemption from the notification requirements of this section does not exempt the owner or operator of a facility from any other notification or reporting requirements, or imply a release from liability under this chapter.

(6) If a significant segment of the community to be notified speaks a language other than English, an appropriate translation of the notice must also be posted and mailed to the department in accordance with the requirements of this section.

(7) The facility where the release occurred is responsible for reimbursing the department within thirty days for the

actual costs associated with the production and mailing of the notices under this section. [2002 c 288 § 2.]

Effective date—2002 c 288 §§ 2-4: "Sections 2 through 4 of this act take effect January 1, 2003." [2002 c 288 § 6.]

Severability—2002 c 288: See note following RCW 70.105D.010.

70.105D.120 Puget Sound partners. When administering funds under this chapter, the department shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 31.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

70.105D.130 Cleanup settlement account—Reporting requirements. (1) The cleanup settlement account is created in the state treasury. The account is not intended to replace the state toxics control account established under RCW 70.105D.070. All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.

(2) The following receipts must be deposited into the cleanup settlement account:

(a) Receipts from settlements or court orders that direct payment to the account and resolve a person's liability or potential liability under this chapter for either or both of the following:

(i) Conducting future remedial action at a specific facility, if it is not feasible to require the person to conduct the remedial action based on the person's financial insolvency, limited ability to pay, or insignificant contribution under RCW 70.105D.040(4)(a);

(ii) Assessing or addressing the injury to natural resources caused by the release of a hazardous substance from a specific facility; and

(b) Receipts from investment of the moneys in the account.

(3) If a settlement or court order does not direct payment of receipts described in subsection (2)(a) of this section into the cleanup settlement account, then the receipts from any payment to the state must be deposited into the state toxics control account.

(4) Expenditures from the cleanup settlement account may only be used to conduct remedial actions at the specific facility or to assess or address the injury to natural resources caused by the release of hazardous substances from that facility for which the moneys were deposited in the account. Conducting remedial actions or assessing or addressing injury to natural resources includes direct expenditures and indirect expenditures such as department oversight costs.

(5) The department shall track moneys received, interest earned, and moneys expended separately for each facility.

(6) After the department determines that all remedial actions at a specific facility, and all actions assessing or addressing injury to natural resources caused by the release of hazardous substances from that facility, are completed, including payment of all related costs, any moneys remaining for the specific facility must be transferred to the state toxics control account established under RCW 70.105D.070.

(7) The department shall provide the office of financial management and the fiscal committees of the legislature with a report by October 31st of each year regarding the activity within the cleanup settlement account during the previous fiscal year. [2008 c 106 § 1.]

70.105D.900 Short title—1989 c 2. This act shall be known as "the model toxics control act." [1989 c 2 § 22 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.905 Captions—1989 c 2. As used in this act, captions constitute no part of the law. [1989 c 2 § 21 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.910 Construction—1989 c 2. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [1989 c 2 § 19 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.915 Existing agreements—1989 c 2. The consent orders and decrees in effect on March 1, 1989, shall remain valid and binding. [1989 c 2 § 20 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.920 Effective date—1989 c 2. (1) Sections 1 through 24 of this act shall take effect March 1, 1989, except that the director of ecology and the director of revenue may take whatever actions may be necessary to ensure that sections 1 through 24 of this act are implemented on their effective date.

*(2) This section does not apply and shall have no force or effect if (a) this act is passed by the legislature in the 1988 regular session or (b) no bill is enacted by the legislature involving hazardous substance cleanup (along with any other subject matter) between August 15, 1987, and January 1, 1988. [1989 c 2 § 26 (Initiative Measure No. 97, approved November 8, 1988).]

***Reviser's note:** Neither condition contained in subsection (2) was met.

70.105D.921 Severability—1989 c 2. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 2 § 18 (Initiative Measure No. 97, approved November 8, 1988).]

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Chapter 70.105E RCW

MIXED RADIOACTIVE AND HAZARDOUS WASTE

Sections

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70.105E.901	Short title—2005 c 1 (Initiative Measure No. 297).
70.105E.902	Captions not law—2005 c 1 (Initiative Measure No. 297).

70.105E.010 Purpose. The purpose of chapter 1, Laws of 2005 is to prohibit sites at which mixed radioactive and hazardous wastes have contaminated or threaten to contaminate the environment, such as at the Hanford nuclear reservation, from adding more waste that is not generated from the cleanup of the site until such waste on-site has been cleaned up and is stored, treated, or disposed of in compliance with all state and federal environment laws. [2005 c 1 § 1 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.020 Policy. (1) The Hanford nuclear reservation, through which the Columbia river flows for fifty miles, is the most contaminated area in North America. Use of Hanford as a national waste dump for radioactive and/or hazardous or toxic wastes will increase contamination and risks.

(2) Cleanup is the state of Washington's top priority at sites with hazardous waste contamination that threatens our rivers, groundwater, environment, and health. Adding more waste to contaminated sites undermines the cleanup of those sites. Cleanup is delayed and funds and resources diverted if facilities needed to treat or clean up existing waste are used for imported waste, and if larger facilities must be built to accommodate off-site wastes.

(3) The fundamental and inalienable right of each person residing in Washington state to a healthy environment has been jeopardized by pollution of air and water spreading from Hanford.

(4) The economy of Washington state, from agriculture to tourism, to fisheries, could be irreparably harmed from any accident releasing radiation or mixed radioactive and hazardous wastes.

(5) It is Washington state policy to prohibit adding more waste to a site where mixed radioactive and hazardous wastes (a) are not stored or monitored in compliance with state and federal hazardous waste laws and (b) have been dumped in unlined soil trenches which threaten to contaminate our state's resources.

(6) It is state policy to protect Washington's current and future residents, particularly children and other sensitive individuals, from the cumulative risks of cancer caused by all cancer-causing hazardous substances, including radionu-

clides, by ensuring that hazardous substance release and disposal sites meet the standards established pursuant to chapter 70.105D RCW.

(7) Effective public and tribal involvement is necessary for government agencies to make sound decisions that will protect human health and the environment for thousands of years. It is Washington state policy to encourage and enhance effective public and tribal involvement in the complex decisions relating to cleanup, closure, permitting, and transportation of mixed waste; and to provide effective assistance to the public and local governments in reviewing and commenting upon complex decision documents. It is appropriate that the polluter pay for necessary public participation for decisions relating to waste releases and risks from mixed waste sites.

(8) The transport of mixed radioactive and hazardous wastes is inherently dangerous, and should be minimized. Decisions involving transportation of these wastes must be made with full involvement of the potentially affected public through whose communities these wastes will pass. [2005 c 1 § 2 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Dangerous waste" has the same meaning as the term is defined in RCW 70.105.010.

(2) "Department" means the department of ecology.

(3) "Dispose" or "disposal" have the same meanings as the terms are defined in RCW 70.105.010.

(4) "Facility" has the same meaning as the term is defined in RCW 70.105.010.

(5) "Hanford" means the geographic area comprising the Hanford nuclear reservation, owned and operated by the United States department of energy, or any successor federal agency.

(6) "Hazardous substance" has the same meaning as the term is defined in RCW 70.105D.020.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, as those terms are defined in RCW 70.105.010.

(8) "Local government" means a city, town, or county.

(9) "Mixed waste" or "mixed radioactive and hazardous waste" means any hazardous substance or dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component, including any such substances that have been released to the environment, or pose a threat of future release, in a manner that may expose persons or the environment to either the non-radioactive or radioactive hazardous substances.

(10) "Mixed waste surcharge" means an additional charge for the purposes of local government and public participation in decisions relating to mixed waste facilities: Added to the service charge assessed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of mixed wastes; or against facilities at which mixed wastes have been released, or which are undergoing closure pursuant

to chapter 70.105 RCW or remedial action pursuant to chapter 70.105D RCW.

(11) "Person" has the same meaning as the term is defined in RCW 70.105D.020.

(12) "Release" has the same meaning as the term is defined in RCW 70.105D.020.

(13) "Remedy or remedial action" have the same meanings as the terms are defined in RCW 70.105D.020.

(14) "Site" means the contiguous geographic area under the same ownership, lease, or operation where a facility is located, or where there has been a release of hazardous substances. In the event of a release of hazardous substances, "site" includes any area, or body of surface or ground water, where a hazardous substance has been deposited, stored, disposed of, placed, migrated to, or otherwise come to be located.

(15) Unless otherwise defined, or the context indicates otherwise, terms not defined in this section have the same meaning as defined in chapter 70.105 RCW, when used in this chapter. [2005 c 1 § 3 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.040 Duties of the department of ecology to regulate mixed wastes. (1) The department of ecology shall regulate mixed wastes to the fullest extent it is not preempted by federal law, pursuant to chapter 70.105 RCW and the further provisions of this chapter.

(2) Any facility owner or operator of a site storing, managing, processing, transferring, treating, or disposing of mixed wastes shall apply for and obtain a final facility permit under chapter 70.105 RCW, this chapter, and the federal resource, conservation, and recovery act (RCRA), 42 U.S.C. Sec. 6901 et seq., as amended, before transporting to, storing or disposing at, the facility any additional mixed wastes not generated at the facility. At any facility granted a sitewide permit, under which permits for individual units are appended or become individual chapters, final facility permits must be applied for and obtained, for each unit or facility within the site where mixed wastes are, or will be, stored or disposed, prior to transporting to, storing or disposing at, the facility any additional mixed wastes not generated at the facility.

(3) The department shall not issue any permit requested under subsection (2) of this section unless the facility owner or operator is in compliance with the requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, for obtaining and maintaining a final facility permit for existing mixed wastes stored, treated, or disposed of at the facility.

(4) If any sites, units, or facilities have interim status or an interim status permit, but fail to meet requirements for maintaining interim status under chapter 70.105 RCW, this chapter, or RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, including but not limited to groundwater monitoring and compliance requirements, the department shall find that the applicant for a final facility permit for mixed wastes under this section has failed to demonstrate compliance for pur-

poses of obtaining such a permit pursuant to subsection (2) or (3) of this section.

(5) The addition of new trenches or cells, or widening or deepening of trenches, at a site with existing trenches containing mixed wastes shall be considered an expansion of the existing facilities for purposes of compliance with chapter 70.105 RCW or this chapter, and any permit or permit modification for such expansion shall be subject to the requirements of this section.

(6)(a) The department shall not issue a permit, or modify any existing permit, allowing for the treatment, storage, or disposal of any additional mixed wastes not generated at the site or facility as part of a remedial or corrective action, until:

(i) The site or facility is in full compliance with the requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, for obtaining and maintaining a closure permit for any facility or unit from which a release of hazardous substances has occurred or is threatened to occur, after characterization and corrective action; or

(ii) The department has issued a formal determination that no further remedial action is necessary to remedy such a release pursuant to chapter 70.105D RCW.

(b) The prohibitions of this subsection (6) against granting or modifying a permit apply whenever a release of a hazardous substance, including but not limited to releases of radionuclides and any other carcinogenic substances, has occurred at a site or facility, and such release, or the cumulative impact of all releases at the site, are projected by the department to have the potential to exceed the following standards:

(i) Surface or ground water standards established pursuant to federal or state laws, including but not limited to maximum concentration limits, drinking water, or other standards; or

(ii) Cleanup or other standards adopted to protect human health or the environment pursuant to RCW 70.105D.030.

(7) Until all the requirements of subsection (6) [of this section] have been met, the department shall, by permit condition, limit any new construction of, expansion of, or final facility permit for, a facility for treating, storing or disposing of mixed waste to the capacity or size necessary for investigation, characterization, remediation, or corrective action of facilities or units undergoing closure, or remedial or corrective action at the site.

(8) The department may grant or modify permits pursuant to chapter 70.105 RCW solely for the purpose of remediating or closing existing facilities or units where there has been a release or threatened release of mixed wastes, if the permit expressly bars the storage or disposal of wastes that are not generated on-site pursuant to a remedial action, closure or corrective action approved by the department pursuant to this chapter or chapter 70.105D RCW.

(9) The department may permit specific treatment capacity at sites subject to the limitations of this section to be utilized for remediation or clean-up wastes from other sites, consistent with a site treatment plan approved by the department pursuant to RCRA, 42 U.S.C. [Sec.] 6901 et seq., as amended; provided that the department determines, after public notice and comment and consideration of impacts and alternatives in an environmental impact statement prepared

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pursuant to chapter 43.21C RCW, that use of such capacity will not: (i) Significantly increase any emissions, discharges, risks or consequences of potential accidents; (ii) result in permanent disposal of imported off-site wastes in the soil at the site; (iii) be stored in excess of any applicable time limits, or any applicable requirement; or, (iv) impact funding for cleanup and corrective actions at the site or, result in delay of treatment or remediation of wastes at the site. [2005 c 1 § 4 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.050 Releases of radioactive substances—Clean-up standards. (1) The department shall consider releases, or potential releases, of radioactive substances or radionuclides as hazardous substances if the radioactive substance poses a risk of a carcinogenic, toxic, or any other adverse health or environmental effect. The department shall require corrective action for, or remediation of, such releases to meet the same health risk based minimum clean-up standards as adopted for other carcinogenic, toxic, or other hazardous substances posing similar health risks pursuant to RCW 70.105D.030.

(2) The department shall include all known or suspected human carcinogens, including radionuclides and radioactive substances, in calculating the applicable clean-up standard, corrective action level, or maximum allowable projected release from a landfill or other facility or unit at which mixed wastes are stored, disposed, or are reasonably believed by the department to be present, for purposes of chapter 70.105 RCW, this chapter, or chapter 70.105D RCW. In making any permit decision pursuant to chapter 70.105 RCW or this chapter, or in reviewing the adequacy of any environmental document prepared by another state, local, or federal agency, relating to mixed waste sites or facilities, the department shall ensure that the cumulative risk from all such carcinogens does not exceed the maximum acceptable carcinogen risk established by the department for purposes of determining clean-up standards pursuant to RCW 70.105D.030, or one additional cancer caused from exposure to all potential releases of hazardous substances at the site per one hundred thousand exposed individuals, whichever is more protective. [2005 c 1 § 5 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.060 Disposal of waste in unlined trenches—Investigation and cleanup of unlined trenches—Closure of mixed waste tank systems. (1)(a) The department, within sixty days after December 2, 2004, shall order any site owner or operator utilizing landfills or burial grounds containing unlined soil trenches in which mixed wastes are reasonably believed by the department to have been disposed to:

(i) Cease disposal of all further wastes in unlined soil trenches or facilities within thirty days of the order;

(ii) Initiate an investigation to provide the department with an inventory based on actual characterization of all hazardous substances potentially disposed in unlined trenches;

(iii) Initiate an investigation of releases or potential releases of any hazardous substances that were potentially disposed in unlined trenches;

(iv) Prepare, or pay the costs of the department to prepare, pursuant to the provisions of chapters 70.105 and 70.105D RCW, a plan for waste retrieval, treatment, closure, and monitoring for the unlined soil trenches, which may include temporary caps pending full characterization and remediation, the schedule for which shall be based upon determination of requirements to prevent migration of wastes; and

(v) Install and maintain a groundwater and soil column monitoring system, within two years, which is in compliance with all requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended.

(b) The department shall provide, by rule, for public notice, hearings, and comment on the scope of investigations and all actions necessary to fulfill the purposes of this section. Notice to the public for purposes of this section shall include a description of potential impacts to health or the environment from the facilities, and the potential for any state resources, or land areas, to be restricted from future use due to potential releases of hazardous substances from the site or facility.

(2) At any site with one or more land disposal facilities or units containing unlined trenches or pits, at which mixed wastes are stored or were disposed, any proposed expansion of such land disposal facility or unit, or application to permit new land disposal facilities at the same site, shall be considered to be an impermissible expansion of the existing units or facilities where:

(a) There is a reasonable basis to believe mixed or hazardous wastes are buried or stored that have not been fully characterized to conclusively determine that no mixed or hazardous wastes are present;

(b) A release of a hazardous substance has occurred, including but not limited to releases of radioactive or mixed wastes; or

(c) The department has information to indicate that there is a significant potential for a release of hazardous substances.

(3) Determinations and permit actions, pursuant to chapter 70.105 RCW or this chapter, relating to the closure of tank systems consisting of one or more interconnected tanks in which mixed wastes are currently, or were, stored, shall be made by the department only after consideration of the cumulative impacts of all tank residuals and leaks from such systems at the site pursuant to chapter 43.21C RCW. Actions may not be taken to close individual tanks, or which may prevent the retrieval of residual mixed wastes remaining in a tank, in any element of the tank system, or in the soil due to leaks from the tank system, prior to compliance with this section and determination of the quantity, nature, and potential impacts from such residuals or releases. In no event may the department allow the use of a landfill closure for mixed waste tank systems prior to all potentially effective and practicable actions having been taken to characterize, and remediate, releases and potential releases. The department may require research and development of technologies for characterization or retrieval pursuant to this section. [2005 c 1 § 6 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.070 Disclosure of costs and clean-up budgets. The department shall require, as a condition for any permit issued pursuant to the provisions of chapter 70.105 RCW or this chapter for facilities storing, treating, or disposing of mixed wastes, and at which hazardous substance releases to the environment have occurred, and remedial or corrective action has not been completed, that the site owner or operator disclose annually to the department the projected total and annual cost of each project or action required to meet the provisions of each applicable federal or state law governing investigation, cleanup, corrective action, closure, or health and safety of facilities at the site; and, if the owner or operator is a state or federal agency, the budgets or budget requests for such purposes for the owner's current fiscal year and each of the upcoming three fiscal years. Where the owner of the site is a federal agency, the annual disclosure shall be provided to the department within fourteen days of: Submission of the agency's budget request to congress; final appropriation of funds; and at the time any field request is submitted to the agency's headquarters for funding in fiscal years beyond the current fiscal year. The disclosures to the department required by this section shall include, at a minimum, a comparison of the cost estimate for all activity required by compliance orders, decrees, schedules, or agreements, with the funds requested and with the funds appropriated. The owner or operator shall provide additional detail on projected costs and budgets, at the request of the department. Every year, the department shall hold public hearings, and seek advice from the site advisory board, on the disclosures required by this section and funding priorities. [2005 c 1 § 7 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.080 Exemptions: Naval reactor disposal at Hanford—Low-level waste compact. (1) Intent. The state of Washington has previously permitted, and committed to assist in the national need for, disposal of sealed nuclear reactor vessels and compartments from submarines and other vessels of the United States navy; and to operate a regional disposal site for low-level waste with no hazardous waste pursuant to an interstate compact. The United States navy reactor vessels or compartments are sealed in a manner estimated to prevent release of hazardous or radioactive wastes for hundreds of years, exceeding the performance of a liner system while disposal trenches are operating. Therefore, the state of Washington accepts the burden and risks of continued disposal of retired United States navy reactor vessels and low-level waste pursuant to the compact, recognizing that this disposal will cause future impacts to the soil, environment, and groundwater.

(2) Nothing in chapter 1, Laws of 2005 shall affect existing permits for, or in any manner prohibit, the storage or disposal of sealed nuclear reactor vessels or compartments from retired United States navy submarines or surface ships at the existing disposal facility at Hanford, or affect existing per-

mits for the operation of any facility by the federal government at which United States navy reactors are decommissioned or refueled.

(3) Obligations of the state pursuant to the Northwest interstate compact on low-level radioactive waste management and agreements made by the compact shall not be interfered with or affected by any provision of chapter 1, Laws of 2005. If hazardous or mixed wastes have been disposed or released at any facility operated pursuant to the compact, the relevant provisions of this chapter apply. [2005 c 1 § 8 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.090 Advisory board—Public involvement—

Funding. (1) At any site or facility at which there has been a release of mixed wastes, permits issued under chapter 70.105 RCW for mixed waste facilities shall provide for the operation and funding of a broadly representative advisory board. The board shall be composed of representatives chosen by: Potentially affected tribes; regional and statewide citizen groups with an established record of concern regarding human health or the environment impacted or potentially impacted by releases from the site; local groups concerned with health and resource impacts; local governments; and the state of Oregon if that state may be, or has been, impacted by the release or threatened release of waste. Such permits shall specify that the advisory board be continued with adequate funding, provided by the owner or operator of the site, to perform its chartered functions until final closure or certification of the completion of remedial or corrective action.

(2) The department shall request the advisory board created or maintained at a facility pursuant to this section to advise it on procedural and substantive matters necessary for informed public comment. The department shall formally consider and respond to any comments from the advisory board regarding exposure scenarios prior to issuing any decision on a remedial, corrective, or closure action.

(3) The department shall base planning for its own oversight and permitting functions utilizing an assumption that mixed waste facility service charges established pursuant to RCW 70.105.280 should not be less than one percent of the first two hundred million dollars of the estimated annual site clean-up budget for the coming year, and one-half of one percent of the estimated annual site clean-up budget above that level. If the department determines that a lower or higher level of service charges is necessary to support its oversight and public involvement functions, then it shall seek comment from any advisory committee established for the site, and from the public, regarding the appropriate level of support.

(4)(a) Due to the complexity of issues involving mixed waste storage, treatment and disposal facilities, at such facilities, the department shall make available annual local government and public participation grants for both: (i) Assistance in public review of mixed waste permit, closure, and clean-up decisions; and, (ii) review of, and public comment on, site budgets, compliance costs and funding priorities. Public participation grants pursuant to this section shall be provided as determined by the criteria adopted by the department pursuant to RCW 70.105D.070(5). Local government

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grants pursuant to this section shall be made available to either a local government or a coalition of local governments. Grants under this section may be renewed annually at a level two times that permitted under RCW 70.105D.070(5), and shall not be subject to annual appropriation by the legislature.

(b) Local government and public participation grants established under this chapter shall be funded through the state toxics control account, by charging an applicant or permit holder a mixed waste surcharge added to the service charge established by RCW 70.105.280. This surcharge shall be collected and administered consistent with the procedures and requirements established in this section and RCW 70.105.280 to ensure adequate public and local government involvement. This mixed waste surcharge shall be no less than fifteen one-hundredths of one percent of the first two hundred million dollars of annual site budget for all related clean-up activities, of which five one-hundredths of one percent shall be available for grants to local government. The mixed waste surcharge for public and local government participation grants shall be five one-hundredths of one percent of the portion of any estimated annual site clean-up budget exceeding two hundred million dollars. Any unused mixed waste surcharges assessed under this section shall remain in the state toxics control account established pursuant to chapter 70.105D RCW, and shall be utilized to reduce the mixed waste surcharge assessed the owner or operator of the facility in future years.

(5) For federal facilities with releases of mixed wastes or hazardous substances owned or operated [by] a federal agency, such as Hanford, the annual site clean-up budget shall be determined by the department, for purposes of this section, based upon the greater of the congressional budget request or appropriations of the federal government for activities at the site related to cleanup or waste management. If the appropriation amount for a fiscal year exceeds the congressional budget request, the department shall adjust the assessment of the mixed waste surcharge within thirty days of final enactment of the appropriation. [2005 c 1 § 9 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.100 Enforcement and appeals. (1) Any person may bring a civil action to compel the owner or operator of a mixed waste facility to comply with the requirements of this chapter or any permit or order issued by the department pursuant to this chapter; or to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give written notice to the department of intent to sue, unless a substantial endangerment exists. The court may award attorney fees and other costs to a prevailing plaintiff in the action.

(2) Orders of the department relating to mixed waste facilities under this chapter may be appealed to the pollution control hearings board, by any person whose interests in natural resources or health may be adversely affected by the action or inaction of the department.

(3) Civil actions under this section may be brought in superior court of Thurston county or of the county in which the release or threatened release of a hazardous substance

occurs, or where mixed wastes that are the subject of the action may be transported, stored, treated, or disposed.

(4) Any violation of this chapter shall be considered a violation of chapter 70.105 RCW, and subject to all enforcement actions by the department or attorney general for violations of that chapter, including imposition of civil or criminal penalties. [2005 c 1 § 10 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.900 Construction—2005 c 1 (Initiative Measure No. 297). The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [2005 c 1 § 11 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.901 Short title—2005 c 1 (Initiative Measure No. 297). This act shall be known as the Cleanup Priority Act. [2005 c 1 § 12 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

70.105E.902 Captions not law—2005 c 1 (Initiative Measure No. 297). Captions used in this act are not any part of the law. [2005 c 1 § 13 (Initiative Measure No. 297, approved November 2, 2004).]

Reviser's note: Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

Chapter 70.106 RCW

POISON PREVENTION— LABELING AND PACKAGING

Sections

70.106.010	Purpose.
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70.106.905	Saving—1974 ex.s. c 49.
70.106.910	Chapter cumulative and nonexclusive.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

70.106.010 Purpose. The purpose of this chapter is to provide for special packaging to protect children from personal injury, serious illness or death resulting from handling, using or ingesting household substances, and to provide penalties. [1974 ex.s. c 49 § 1.]

70.106.020 Short title. This chapter shall be cited as the Washington Poison Prevention Act of 1974. [1974 ex.s. c 49 § 2.]

70.106.030 Definitions—Construction. The definitions in RCW 70.106.040 through 70.106.090 unless the context otherwise requires shall govern the construction of this chapter. [1974 ex.s. c 49 § 3.]

70.106.040 "Director" defined. "Director" means the director of the department of agriculture of the state of Washington, or his duly authorized representative. [1974 ex.s. c 49 § 4.]

70.106.050 "Sale" defined. "Sale" means to sell, offer for sale, hold for sale, handle or use as an inducement in the promotion of a household substance or the sale of another article or product. [1974 ex.s. c 49 § 5.]

70.106.060 "Household substance" defined. "Household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:

(1) A "hazardous substance", which means (a) any substance or mixture of substances or product which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children; (b) any substances which the director by regulation finds to meet the requirements of subsection (1)(a) of this section; (c) any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health, safety or welfare; and (d) any toy or other article intended for use by children which the director by regulation determines presents an electrical, mechanical or thermal hazard.

(2) A pesticide as defined in the Washington Pesticide Control Act, chapter 15.58 RCW as now or hereafter amended;

(3) A food, drug, or cosmetic as those terms are defined in the Uniform Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW as now or hereafter amended; or

(4) A substance intended for use as fuel when stored in portable containers and used in the heating, cooking, or refrigeration system of a house; or

(5) Any other substance which the director may declare to be a household substance subsequent to a hearing as pro-

vided for under the provisions of chapter 34.05 RCW, Administrative Procedure Act, for the adoption of rules. [1974 ex.s. c 49 § 6.]

70.106.070 "Package" defined. "Package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of RCW 70.106.110(1)(b), also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include:

(1) Any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(2) Any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping. [1974 ex.s. c 49 § 7.]

70.106.080 "Special packaging" defined. "Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time. [1974 ex.s. c 49 § 8.]

70.106.090 "Labeling" defined. "Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance. [1974 ex.s. c 49 § 9.]

70.106.100 Standards for packaging. (1) The director may establish in accordance with the provisions of this chapter, by regulation, standards for the special packaging of any household substance if he finds that:

(a) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance; and

(b) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(2) In establishing a standard under this section, the director shall consider:

(a) The reasonableness of such standard;

(b) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(c) The manufacturing practices of industries affected by this chapter; and

(d) The nature and use of the household substance.

(3) In carrying out the provisions of this chapter, the director shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

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(4) Nothing in this chapter authorizes the director to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in RCW 70.106.110(1)(b), labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the director may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

(5) The director shall cause the regulations promulgated under this chapter to conform with the requirements or exemptions of the Federal Hazardous Substances Act and with the regulations or interpretations promulgated pursuant thereto. [1974 ex.s. c 49 § 10.]

70.106.110 Exceptions from packaging standards.

(1) For the purpose of making any household substance which is subject to a standard established under RCW 70.106.100 readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if:

(a) The manufacturer or packer also supplies such substance in packages which comply with such standard; and

(b) The packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the director may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(2) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(3) In the case of a household substance subject to such a standard which is packaged under subsection (1) of this section in a noncomplying package, if the director determines that such substance is not also being supplied by a manufacturer or packer in popular size packages which comply with such standard, he may, after giving the manufacturer or packer an opportunity to comply with the purposes of this chapter, by order require such substance to be packaged by such manufacturer or packer exclusively in special packaging complying with such standard if he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this chapter. [1974 ex.s. c 49 § 11.]

70.106.120 Adoption of rules and regulations under federal poison prevention packaging act. One of the purposes of this chapter is to promote uniformity with the Poison Prevention Packaging Act of 1970 and rules and regulations adopted thereunder. In accordance with such declared purpose, all of the special packaging rules and regulations adopted under the Poison Prevention Packaging Act of 1970 (84 Stat. 1670; 7 U.S.C. Sec. 135; 15 U.S.C. Sec. 1261, 1471-1476; 21 U.S.C. Sec. 343, 352, 353, 362) on July 24, 1974,

are hereby adopted as rules and regulations applicable to this chapter. In addition, any rule or regulation adopted hereafter under said Federal Poison Prevention Act of 1970 concerning special packaging and published in the federal register shall be deemed to have been adopted under the provisions of this chapter. The director may, however, within thirty days of the publication of the adoption of any such rule or regulation under the Federal Poison Prevention Packaging Act of 1970, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be conducted in accord with the provisions of chapter 34.05 RCW, Administrative Procedure Act, as now enacted or hereafter amended. [1974 ex.s. c 49 § 12.]

70.106.140 Penalties. (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation of the provisions of this chapter or rules adopted under this chapter is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 358; 1974 ex.s. c 49 § 16.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.106.150 Authority to adopt regulations—Delegation of authority to board of pharmacy. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director. However, the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1987 c 236 § 1.]

70.106.900 Severability—1974 ex.s. c 49. If any provision of this 1974 act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1974 ex.s. c 49 § 14.]

70.106.905 Saving—1974 ex.s. c 49. The enactment of this 1974 act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 24, 1974. [1974 ex.s. c 49 § 15.]

70.106.910 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1974 ex.s. c 49 § 17.]

Chapter 70.107 RCW NOISE CONTROL

Sections

70.107.010 Purpose.
70.107.020 Definitions.

70.107.030 Powers and duties of department.
70.107.040 Technical advisory committee.
70.107.050 Civil penalties.
70.107.060 Other rights, remedies, powers, duties and functions—Local regulation—Approval—Procedure.
70.107.070 Rules relating to motor vehicles—Violations—Penalty.
70.107.080 Exemptions.
70.107.900 Construction—Severability—1974 ex.s. c 183.
70.107.910 Short title.

70.107.010 Purpose. The legislature finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Antinoise measures of the past have not adequately protected against the invasion of these interests by noise. There is a need, therefore, for an expansion of efforts statewide directed toward the abatement and control of noise, considering the social and economic impact upon the community and the state. The purpose of this chapter is to provide authority for such an expansion of efforts, supplementing existing programs in the field. [1974 ex.s. c 183 § 1.]

70.107.020 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Department" means the department of ecology.
- (2) "Director" means director of the department of ecology.
- (3) "Local government" means county or city government or any combination of the two.
- (4) "Noise" means the intensity, duration and character of sounds from any and all sources.
- (5) "Person" means any individual, corporation, partnership, association, governmental body, state, or other entity whatsoever. [1974 ex.s. c 183 § 2.]

70.107.030 Powers and duties of department. The department is empowered as follows:

(1) The department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in identified environments in order to protect against adverse affects of noise on the health, safety and welfare of the people, the value of property, and the quality of environment: PROVIDED, That in so doing the department shall take also into account the economic and practical benefits to be derived from the use of various products in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise

control technology and practice is provided. These rules may include, but shall not be limited to:

(a) Performance standards setting allowable noise limits for the operation of products which produce noise;

(b) Use standards regulating, as to time and place, the operation of individual products which produce noise above specified levels considering frequency spectrum and duration: PROVIDED, The rules shall provide for temporarily exceeding those standards for stated purposes; and

(c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.

(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.

(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.

(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in RCW 46.09.020 contributes significantly to environmental noise levels and directs the department, in exercising the rule-making authority under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.

(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975. [1974 ex.s. c 183 § 3.]

70.107.040 Technical advisory committee. The director shall name a technical advisory committee to assist the department in the implementation of this chapter. Committee members shall be entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 164; 1974 ex.s. c 183 § 4.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.107.050 Civil penalties. (1) Any person who violates any rule adopted by the department under this chapter shall be subject to a civil penalty not to exceed one hundred dollars imposed by local government pursuant to this section. An action under this section shall not preclude enforcement of any provisions of the local government noise ordinance.

Penalties shall become due and payable thirty days from the date of receipt of a notice of penalty unless within such time said notice is appealed in accordance with the administrative procedures of the local government, or if it has no such administrative appeal, to the pollution control hearings board pursuant to the provisions of chapter 43.21B RCW and procedural rules adopted thereunder. In cases in which appeals are timely filed, penalties sustained by the local administrative agency or the pollution control hearings board shall become due and payable on the issuance of said agency or board's final order in the appeal.

(2) Whenever penalties incurred pursuant to this section have become due and payable but remain unpaid, the attorney for the local government may bring an action in the superior court of the county in which the violation occurred for recovery of penalties incurred. In all such actions the procedures

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and rules of evidence shall be the same as in any other civil action. [1987 c 103 § 2; 1974 ex.s. c 183 § 5.]

70.107.060 Other rights, remedies, powers, duties and functions—Local regulation—Approval—Procedure. (1) Nothing in this chapter shall be construed to deny, abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(2) Nothing in this chapter shall deny, abridge or alter any powers, duties and functions relating to noise abatement and control now or hereafter vested in any state agency, nor shall this chapter be construed as granting jurisdiction over the industrial safety and health of employees in work places of the state, as now or hereafter vested in the department of labor and industries.

(3) Standards and other control measures adopted by the department under this chapter shall be exclusive except as hereinafter provided. A local government may impose limits or control sources differing from those adopted or controlled by the department upon a finding that such requirements are necessitated by special conditions. Noise limiting requirements of local government which differ from those adopted or controlled by the department shall be invalid unless first approved by the department. If the department of ecology fails to approve or disapprove standards submitted by local governmental jurisdictions within ninety days of submittal, such standards shall be deemed approved. If disapproved, the local government may appeal the decision to the pollution control hearings board which shall decide the appeal on the basis of the provisions of this chapter, and the applicable regulations, together with such briefs, testimony, and oral argument as the hearings board in its discretion may require. The department determination of whether to grant approval shall depend on the reasonableness and practicability of compliance. Particular attention shall be given to stationary sources located near jurisdictional boundaries, and temporary noise producing operations which may operate across one or more jurisdictional boundaries.

(4) In carrying out the rule-making authority provided in this chapter, the department shall follow the procedures of the administrative procedure act, chapter 34.05 RCW, and shall take care that no rules adopted purport to exercise any powers preempted by the United States under federal law. [1987 c 103 § 1; 1974 ex.s. c 183 § 6.]

70.107.070 Rules relating to motor vehicles—Violations—Penalty. Any rule adopted under this chapter relating to the operation of motor vehicles on public highways shall be administered according to testing and inspection procedures adopted by rule by the state patrol. Violation of any motor vehicle performance standard adopted pursuant to this chapter shall be a misdemeanor, enforced by such authorities and in such manner as violations of chapter 46.37 RCW. Violations subject to the provisions of this section shall be exempt from the provisions of RCW 70.107.050. [1987 c 330 § 749; 1974 ex.s. c 183 § 7.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

70.107.080 Exemptions. The department shall, in the exercise of rule-making power under this chapter, provide exemptions or specially limited regulations relating to recreational shooting and emergency or law enforcement equipment where appropriate in the interests of public safety.

The department in the development of rules under this chapter, shall consult and take into consideration the land use policies and programs of local government. [1974 ex.s. c 183 § 8.]

70.107.900 Construction—Severability—1974 ex.s. c 183. (1) This chapter shall be liberally construed to carry out its broad purposes.

(2) If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 183 § 11.]

70.107.910 Short title. This chapter shall be known and may be cited as the "Noise Control Act of 1974". [1974 ex.s. c 183 § 12.]

Chapter 70.108 RCW

OUTDOOR MUSIC FESTIVALS

Sections

70.108.010	Legislative declaration.
70.108.020	Definitions.
70.108.030	Permits—Required—Compliance with rules and regulations.
70.108.040	Application for permit—Contents—Filing.
70.108.050	Approval or denial of permit—Corrections—Procedure—Judicial review.
70.108.060	Reimbursement of expenses incurred in reviewing request.
70.108.070	Cash deposit—Surety bond—Insurance.
70.108.080	Revocation of permits.
70.108.090	Drugs prohibited.
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70.108.110	Age of patrons.
70.108.120	Permits—Posting—Transferability.
70.108.130	Penalty.
70.108.140	Inspection of books and records.
70.108.150	Firearms—Penalty.
70.108.160	Preparations—Completion requirements.
70.108.170	Local regulations and ordinances not precluded.

Reviser's note: Throughout chapter 70.108 RCW the references to "this act" have been changed to "this chapter." "This act" [1971 ex.s. c 302] consists of this chapter, the 1971 amendments to RCW 9.40.110-9.40.130, 9.41.010, 9.41.070, 26.44.050, 70.74.135, 70.74.270, 70.74.280, and the enactment of RCW 9.27.015 and 9.91.110.

70.108.010 Legislative declaration. The legislature hereby declares it to be the public interest, and for the protection of the health, welfare and property of the residents of the state of Washington to provide for the orderly and lawful conduct of outdoor music festivals by assuring that proper sanitary, health, fire, safety, and police measures are provided and maintained. This invocation of the police power is prompted by and based upon prior experience with outdoor music festivals where the enforcement of the existing laws and regulations on dangerous and narcotic drugs, indecent exposure, intoxicating liquor, and sanitation has been rendered most difficult by the flagrant violations thereof by a large number of festival patrons. [1971 ex.s. c 302 § 19.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.108.020 Definitions. For the purposes of this chapter the following words and phrases shall have the indicated meanings:

(1) "Outdoor music festival" or "music festival" or "festival" means an assembly of persons gathered primarily for outdoor, live or recorded musical entertainment, where the predicted attendance is two thousand persons or more and where the duration of the program is five hours or longer: PROVIDED, That this definition shall not be applied to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies which do not exceed by more than two hundred fifty people the maximum seating capacity of the structure where the assembly is held: PROVIDED, FURTHER, That this definition shall not apply to government sponsored fairs held on regularly established fairgrounds nor to assemblies required to be licensed under other laws or regulations of the state.

(2) "Promoter" means any person or other legal entity issued a permit to conduct an outdoor music festival.

(3) "Applicant" means the promoter who has the right of control of the conduct of an outdoor music festival who applies to the appropriate legislative authority for a license to hold an outdoor music festival.

(4) "Issuing authority" means the legislative body of the local governmental unit where the site for an outdoor music festival is located.

(5) "Participate" means to knowingly provide or deliver to the festival site supplies, materials, food, lumber, beverages, sound equipment, generators, or musical entertainment and/or to attend a music festival. A person shall be presumed to have knowingly provided as that phrase is used herein after he has been served with a court order. [1971 ex.s. c 302 § 21.]

70.108.030 Permits—Required—Compliance with rules and regulations. No person or other legal entity shall knowingly allow, conduct, hold, maintain, cause to be advertised or permit an outdoor music festival unless a valid permit has been obtained from the issuing authority for the operation of such music festival as provided for by this chapter. One such permit shall be required for each outdoor music festival. A permit may be granted for a period not to exceed sixteen consecutive days and a festival may be operated during any or all of the days within such period. Any person, persons, partnership, corporation, association, society, fraternal or social organization, failing to comply with the rules, regulations or conditions contained in this chapter shall be subject to the appropriate penalties as prescribed by this chapter. [1971 ex.s. c 302 § 22.]

70.108.040 Application for permit—Contents—Filing. Application for an outdoor music festival permit shall be in writing and filed with the clerk of the issuing authority wherein the festival is to be held. Said application shall be filed not less than ninety days prior to the first scheduled day of the festival and shall be accompanied with a permit fee in the amount of two thousand five hundred dollars. Said application shall include:

(1) The name of the person or other legal entity on behalf of whom said application is made: PROVIDED, That a nat-

ural person applying for such permit shall be eighteen years of age or older;

(2) A financial statement of the applicant;

(3) The nature of the business organization of the applicant;

(4) Names and addresses of all individuals or other entities having a ten percent or more proprietary interest in the festival;

(5) The principal place of business of applicant;

(6) A legal description of the land to be occupied, the name and address of the owner thereof, together with a document showing the consent of said owner to the issuance of a permit, if the land be owned by a person other than the applicant;

(7) The scheduled performances and program;

(8) Written confirmation from the local health officer that he or she has reviewed and approved plans for site and development in accordance with rules, regulations and standards adopted by the state board of health. Such rules and regulations shall include criteria as to the following and such other matters as the state board of health deems necessary to protect the public's health:

(a) Submission of plans

(b) Site

(c) Water supply

(d) Sewage disposal

(e) Food preparation facilities

(f) Toilet facilities

(g) Solid waste

(h) Insect and rodent control

(i) Shelter

(j) Dust control

(k) Lighting

(l) Emergency medical facilities

(m) Emergency air evacuation

(n) Attendant physicians

(o) Communication systems

(9) A written confirmation from the appropriate law enforcement agency from the area where the outdoor music festival is to take place, showing that traffic control and crowd protection policing have been contracted for or otherwise provided by the applicant meeting the following conditions:

(a) One person for each two hundred persons reasonably expected to be in attendance at any time during the event for purposes of traffic and crowd control.

(b) The names and addresses of all traffic and crowd control personnel shall be provided to the appropriate law enforcement authority: PROVIDED, That not less than twenty percent of the traffic and crowd control personnel shall be commissioned police officers or deputy sheriffs: PROVIDED FURTHER, That on and after February 25, 1972 any commissioned police officer or deputy sheriff who is employed and compensated by the promoter of an outdoor music festival shall not be eligible and shall not receive any benefits whatsoever from any public pension or disability plan of which he or she is a member for the time he is so employed or for any injuries received during the course of such employment.

(c) During the hours that the festival site shall be open to the public there shall be at least one regularly commissioned

police officer employed by the jurisdiction wherein the festival site is located for every one thousand persons in attendance and said officer shall be on duty within the confines of the actual outdoor music festival site.

(d) All law enforcement personnel shall be charged with enforcing the provisions of this chapter and all existing statutes, ordinances and regulations.

(10) A written confirmation from the appropriate law enforcement authority that sufficient access roads are available for ingress and egress to the parking areas of the outdoor music festival site and that parking areas are available on the actual site of the festival or immediately adjacent thereto which are capable of accommodating one auto for every four persons in estimated attendance at the outdoor music festival site.

(11) A written confirmation from the department of natural resources, where applicable, and the chief of the Washington state patrol, through the director of fire protection, that all fire prevention requirements have been complied with.

(12) A written statement of the applicant that all state and local law enforcement officers, fire control officers and other necessary governmental personnel shall have free access to the site of the outdoor music festival.

(13) A statement that the applicant will abide by the provisions of this chapter.

(14) The verification of the applicant warranting the truth of the matters set forth in the application to the best of the applicant's knowledge, under the penalty of perjury. [1995 c 369 § 59; 1986 c 266 § 120; 1972 ex.s. c 123 § 1; 1971 ex.s. c 302 § 23.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.108.050 Approval or denial of permit—Corrections—Procedure—Judicial review. Within fifteen days after the filing of the application the issuing authority shall either approve or deny the permit to the applicant. Any denial shall set forth in detail the specific grounds therefor. The applicant shall have fifteen days after the receipt of such denial or such additional time as the issuing authority shall grant to correct the deficiencies set forth and the issuing authority shall within fifteen days after receipt of such corrections either approve or deny the permit. Any denial shall set forth in detail the specific grounds therefor.

After the applicant has filed corrections and the issuing authority has thereafter again denied the permit, the applicant may within five days after receipt of such second denial seek judicial review of such denial by filing a petition in the superior court for the county of the issuing authority. The review shall take precedence over all other civil actions and shall be conducted by the court without a jury. The court shall, upon request, hear oral argument and receive written briefs and shall either affirm the denial or order that the permit be issued. An applicant may not use any other procedure to obtain judicial review of a denial. [1972 ex.s. c 123 § 2; 1971 ex.s. c 302 § 24.]

70.108.060 Reimbursement of expenses incurred in reviewing request. Any local agency requested by an applicant to give written approval as required by RCW 70.108.040

may within fifteen days after the applicant has filed his application apply to the issuing authority for reimbursement of expenses reasonably incurred in reviewing such request. Upon a finding that such expenses were reasonably incurred the issuing authority shall reimburse the local agency therefor from the funds of the permit fee. The issuing authority shall prior to the first scheduled date of the festival return to the applicant that portion of the permit fee remaining after all such reimbursements have been made. [1971 ex.s. c 302 § 25.]

70.108.070 Cash deposit—Surety bond—Insurance.

After the application has been approved the promoter shall deposit with the issuing authority, a cash deposit or surety bond. The bond or deposit shall be used to pay any costs or charges incurred to regulate health or to clean up afterwards outside the festival grounds or any extraordinary costs or charges incurred to regulate traffic or parking. The bond or other deposit shall be returned to the promoter when the issuing authority is satisfied that no claims for damage or loss will be made against said bond or deposit, or that the loss or damage claimed is less than the amount of the deposit, in which case the uncommitted balance thereof shall be returned: PROVIDED, That the bond or cash deposit or the uncommitted portion thereof shall be returned not later than thirty days after the last day of the festival.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a liability insurance policy in an amount of not less than one hundred thousand dollars bodily injury coverage per person covering any bodily injury negligently caused by any officer or employee of the festival while acting in the performance of his or her duties. The policy shall name the issuing authority of the permit as an additional named insured.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a one hundred thousand dollar liability property damage insurance policy covering any property damaged due to negligent failure by any officer or employee of the festival to carry out duties imposed by this chapter. The policy shall have the issuing authority of the permit as an additional named insured. [1972 ex.s. c 123 § 3; 1971 ex.s. c 302 § 26.]

70.108.080 Revocation of permits. Revocation of any permit granted pursuant to this chapter shall not preclude the imposition of penalties as provided for in this chapter and the laws of the state of Washington. Any permit granted pursuant to the provisions of this chapter to conduct a music festival shall be summarily revoked by the issuing authority when it finds that by reason of emergency the public peace, health, safety, morals or welfare can only be preserved and protected by such revocation.

Any permit granted pursuant to the provisions of this chapter to conduct a music festival may otherwise be revoked for any material violation of this chapter or the laws of the state of Washington after a hearing held upon not less than three days notice served upon the promoter personally or by certified mail.

Every permit issued under the provisions of this chapter shall state that such permit is issued as a measure to protect

and preserve the public peace, health, safety, morals and welfare, and that the right of the appropriate authority to revoke such permit is a consideration of its issuance. [1971 ex.s. c 302 § 27.]

70.108.090 Drugs prohibited. No person, persons, partnership, corporation, association, society, fraternal or social organization to whom a music festival permit has been granted shall, during the time an outdoor music festival is in operation, knowingly permit or allow any person to bring upon the premises of said music festival, any narcotic or dangerous drug as defined by chapters *69.33 or 69.40 RCW, or knowingly permit or allow narcotic or dangerous drug to be consumed on the premises, and no person shall take or carry onto said premises any narcotic or dangerous drug. [1971 ex.s. c 302 § 28.]

**Reviser's note:* Chapter 69.33 RCW was repealed by 1971 ex.s. c 308 § 69.50.606.

70.108.100 Proximity to schools, churches, homes.

No music festival shall be operated in a location which is closer than one thousand yards from any schoolhouse or church, or five hundred yards from any house, residence or other human habitation unless waived by occupants. [1971 ex.s. c 302 § 29.]

70.108.110 Age of patrons. No person under the age of sixteen years shall be admitted to any outdoor music festival without the escort of his or her parents or legal guardian and proof of age shall be provided upon request. [1971 ex.s. c 302 § 30.]

70.108.120 Permits—Posting—Transferability. Any permit granted pursuant to this chapter shall be posted in a conspicuous place on the site of the outdoor music festival and such permit shall be not transferable or assignable without the consent of the issuing authority. [1971 ex.s. c 302 § 31.]

70.108.130 Penalty. (1) Except as otherwise provided in this section, any person who willfully fails to comply with the rules, regulations, and conditions set forth in this chapter or who aids or abets such a violation or failure to comply is guilty of a gross misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such a rule, regulation, or condition relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule, regulation, or condition equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor. [2003 c 53 § 359; 1979 ex.s. c 136 § 104; 1971 ex.s. c 302 § 32.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

70.108.140 Inspection of books and records. The department of revenue shall be allowed to inspect the books and records of any outdoor music festival during the period of

operation of the festival and after the festival has concluded for the purpose of determining whether or not the tax laws of this state are complied with. [1972 ex.s. c 123 § 4.]

70.108.150 Firearms—Penalty. It shall be unlawful for any person, except law enforcement officers, to carry, transport or convey, or to have in his possession or under his control any firearm while on the site of an outdoor music festival.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and not more than two hundred dollars or by imprisonment in the county jail for not less than ten days and not more than ninety days or by both such fine and imprisonment. [1972 ex.s. c 123 § 5.]

70.108.160 Preparations—Completion requirements. All preparations required to be made by the provisions of this chapter on the music festival site shall be completed thirty days prior to the first day scheduled for the festival. Upon such date or such earlier date when all preparations have been completed, the promoter shall notify the issuing authority thereof, and the issuing authority shall make an inspection of the festival site to determine if such preparations are in reasonably full compliance with plans submitted pursuant to RCW 70.108.040. If a material violation exists the issuing authority shall move to revoke the music festival permit in the manner provided by RCW 70.108.080. [1972 ex.s. c 123 § 6.]

70.108.170 Local regulations and ordinances not precluded. Nothing in this chapter shall be construed as precluding counties, cities and other political subdivisions of the state of Washington from enacting ordinances or regulations for the control and regulation of outdoor music festivals nor shall this chapter repeal any existing ordinances or regulations. [1972 ex.s. c 123 § 7.]

Chapter 70.110 RCW

FLAMMABLE FABRICS— CHILDREN'S SLEEPWEAR

Sections

70.110.010	Short title.
70.110.020	Legislative finding.
70.110.030	Definitions.
70.110.040	Compliance required.
70.110.050	Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations.
70.110.070	Strict liability.
70.110.080	Personal service of process—Jurisdiction of courts.
70.110.900	Provisions additional.
70.110.910	Severability—1973 1st ex.s. c 211.

70.110.010 Short title. This chapter may be known and cited as the "Flammable Fabrics Act". [1973 1st ex.s. c 211 § 1.]

70.110.020 Legislative finding. The legislature hereby finds and declares that fabric related burns from children's sleepwear present an immediate and serious danger to the

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infants and children of this state. The legislature therefore declares it to be in the public interest, and for the protection of the health, property, and welfare of the residents of this state to herein provide for flammability standards for children's sleepwear. [1973 1st ex.s. c 211 § 2.]

70.110.030 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Person" means an individual, partnership, corporation, association, or any other form of business enterprise, and every officer thereof.

(2) "Children's sleepwear" means any product of wearing apparel from infant size up to and including size fourteen which is sold or intended for sale for the primary use of sleeping or activities related to sleeping, such as nightgowns, pajamas, and similar or related items such as robes, but excluding diapers and underwear.

(3) "Fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any material or synthetic fiber, film, or substitute therefor which is intended for use, or which may reasonably be expected to be used, in children's sleepwear.

(4) The term "infant size up to and including size six-x" means the sizes defined as infant through and including six-x in Department of Commerce Voluntary Standards, Commercial Standard 151-50, "Body Measurements for the Sizing of Apparel for Infants, Babies, Toddlers, and Children", Commercial Standard 153, "Body Measurements for the Sizing of Apparel for Girls", and Commercial Standard 155, "Body Measurements for the Sizing of Boys' Apparel".

(5) "Fabric related burns" means burns that would not have been incurred but for the fact that sleepwear worn at the time of the burns did not comply with commercial standards promulgated by the secretary of commerce of the United States in March, 1971, identified as Standard for the Flammability of Children's Sleepwear (DOC FF 3-71) 36 F.R. 14062 and by the Flammable Fabrics Act 15 U.S.C. 1193. [1973 1st ex.s. c 211 § 3.]

70.110.040 Compliance required. (1) It shall be unlawful to manufacture for sale, sell, or offer for sale any new and unused article of children's sleepwear which does not comply with the standards established in the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71), 36 F.R. 14062 and the Flammable Fabrics Act, 15 U.S.C. 1191-1204.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 360; 1973 1st ex.s. c 211 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.110.050 Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations. The attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1973 1st ex.s. c 211 § 5.]

70.110.070 Strict liability. Any person who violates RCW 70.110.040 shall be strictly liable for fabric-related burns. [1973 1st ex.s. c 211 § 7.]

70.110.080 Personal service of process—Jurisdiction of courts. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has violated any provision of this chapter. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [1973 1st ex.s. c 211 § 8.]

70.110.900 Provisions additional. The provisions of this chapter shall be in addition to and not a substitution for or limitation of any other law. [1973 1st ex.s. c 211 § 9.]

70.110.910 Severability—1973 1st ex.s. c 211. If any provision of this chapter, or its application to any person or circumstance is held invalid the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 211 § 10.]

Chapter 70.111 RCW INFANT CRIB SAFETY ACT

Sections

70.111.010	Findings—Purpose—Intent.
70.111.020	Definitions.
70.111.030	Unsafe cribs—Prohibition—Definition—Penalty.
70.111.040	Exemption.
70.111.060	Civil actions.
70.111.070	Remedies.
70.111.900	Short title.
70.111.901	Severability—1996 c 158.

70.111.010 Findings—Purpose—Intent. (1) The legislature finds all of the following:

(a) The disability and death of infants resulting from injuries sustained in crib accidents are a serious threat to the public health, welfare, and safety of the people of this state.

(b) Infants are an especially vulnerable class of people.

(c) The design and construction of a baby crib must ensure that it is safe to leave an infant unattended for extended periods of time. A parent or caregiver has a right to believe that the crib in use is a safe place to leave an infant.

(d) Over thirteen thousand infants are injured in unsafe cribs every year.

(e) In the past decade, six hundred twenty-two infants died (a rate of sixty-two infants each year) from injuries sustained in unsafe cribs.

(f) The United States consumer product safety commission estimates that the cost to society resulting from injuries and death due to unsafe cribs is two hundred thirty-five million dollars per year.

(g) Secondhand, hand-me-down, and heirloom cribs pose a special problem. There were four million infants born in this country last year, but only one million new cribs sold. As many as three out of four infants are placed in secondhand, hand-me-down, or heirloom cribs.

(h) Most injuries and deaths occur in secondhand, hand-me-down, or heirloom cribs.

(i) Existing state and federal legislation is inadequate to deal with this hazard.

(j) Prohibiting the remanufacture, retrofit, sale, contracting to sell or resell, leasing, or subletting of unsafe cribs, particularly unsafe secondhand, hand-me-down, or heirloom cribs, will prevent injuries and deaths caused by cribs.

(2) The purpose of this chapter is to prevent the occurrence of injuries and deaths to infants as a result of unsafe cribs by making it illegal to remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, after June 6, 1996, any full-size or nonfull-size crib that is unsafe for any infant using the crib.

(3) It is the intent of the legislature to encourage public and private collaboration in disseminating materials relative to the safety of baby cribs to parents, child care providers, and those who would be likely to place unsafe cribs in the stream of commerce. The legislature also intends that informational materials regarding baby crib safety be available to consumers through the department of health. [1996 c 158 § 1.]

70.111.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Infant" means any person less than thirty-five inches tall and less than three years of age.

(2) "Crib" means a bed or containment designed to accommodate an infant.

(3) "Full-size crib" means a full-size crib as defined in Section 1508.3 of Title 16 of the Code of Federal Regulations regarding the requirements for full-size cribs.

(4) "Nonfull-size crib" means a nonfull-size crib as defined in Section 1509.2(b) of Title 16 of the Code of the Federal Regulations regarding the requirements for nonfull-size cribs.

(5) "Person" means any natural person, firm, corporation, association, or agent or employee thereof.

(6) "Commercial user" means any person who deals in full-size or nonfull-size cribs of the kind governed by this chapter or who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to the full-size or nonfull-size cribs governed by this chapter, including child care facilities and family child care homes licensed by the department of social and health services under chapter 74.15 RCW, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce full-size or nonfull-size cribs. [1996 c 158 § 3.]

70.111.030 Unsafe cribs—Prohibition—Definition—Penalty. (1) No commercial user may remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, on or after June 6, 1996, a full-size or nonfull-size crib that is unsafe for any infant using the crib.

(2) A crib is presumed to be unsafe pursuant to this chapter if it does not conform to all of the following:

(a) Part 1508 (commencing with Section 1508.1) of Title 16 of the Code of Federal Regulations;

(b) Part 1509 (commencing with Section 1509.1) of Title 16 of the Code of Federal Regulations;

(c) Part 1303 (commencing with Section 1303.1) of Title 16 of the Code of Federal Regulations;

(d) American Society for Testing Materials Voluntary Standards F966-90;

(e) American Society for Testing Materials Voluntary Standards F1169.88;

(f) Any regulations that are adopted in order to amend or supplement the regulations described in (a) through (e) of this subsection.

(3) Cribs that are unsafe or fail to perform as expected pursuant to subsection (2) of this section include, but are not limited to, cribs that have any of the following dangerous features or characteristics:

(a) Corner posts that extend more than one-sixteenth of an inch;

(b) Spaces between side slats more than two and three-eighths inches;

(c) Mattress support that can be easily dislodged from any point of the crib. A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five pound upward force from underneath the crib;

(d) Cutout designs on the end panels;

(e) Rail height dimensions that do not conform to the following:

(i) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches;

(ii) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches;

(f) Any screws, bolts, or hardware that are loose and not secured;

(g) Sharp edges, points, or rough surfaces, or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(h) Nonfull-size cribs with tears in mesh or fabric sides.

(4) On or after January 1, 1997, any commercial user who willfully and knowingly violates this section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars. Hotels, motels, and similar transient lodging, child care facilities, and family child care homes are not subject to this section until January 1, 1999. [2003 c 53 § 361; 1996 c 158 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.111.040 Exemption. Any crib that is clearly not intended for use by an infant is exempt from the provisions of this chapter, provided that it is accompanied at the time of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce, by a notice to be furnished by the commercial user declaring that it is not intended to be used for an infant and is dangerous to use for an infant. The commercial user is further exempt from claims for liability resulting from use of a crib contrary to the notice required in this section. [1996 c 158 § 5.]

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70.111.060 Civil actions. Any person may maintain an action against any commercial user who violates RCW 70.111.030 to enjoin the remanufacture, retrofit, sale, contract to sell, contract to resell, lease, or subletting of a full-size or nonfull-size crib that is unsafe for any infant using the crib, and for reasonable attorneys' fees and costs. This section does not apply to hotels, motels, and similar transient lodging, child care facilities, and family child care homes until January 1, 1999. [1996 c 158 § 7.]

70.111.070 Remedies. Remedies available under this chapter are in addition to any other remedies or procedures under any other provision of law that may be available to an aggrieved party. [1996 c 158 § 8.]

70.111.900 Short title. This chapter may be known and cited as the infant crib safety act. [1996 c 158 § 2.]

70.111.901 Severability—1996 c 158. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1996 c 158 § 9.]

Chapter 70.112 RCW

FAMILY MEDICINE—EDUCATION AND RESIDENCY PROGRAMS

Sections

70.112.010 Definitions.

70.112.020 Education in family medical practice—Department in school of medicine—Residency programs—Financial support.

70.112.030 Family practice education advisory board—Chairman—Membership.

70.112.040 Advisory board—Terms of members—Filling vacancies.

70.112.050 Advisory board—Duties.

70.112.060 Funding of residency programs.

Council for children and families: Chapter 43.121 RCW.

70.112.010 Definitions. (1) "School of medicine" means the University of Washington school of medicine located in Seattle, Washington;

(2) "Residency programs" mean community based family practice residency educational programs either in existence or established under this chapter;

(3) "Affiliated" means established or developed in cooperation with the school of medicine;

(4) "Family practice unit" means the community facility or classroom used for training of ambulatory health skills within a residency training program; and

(5) "Advisory board" means the family practice education advisory board created by this chapter. [1975 1st ex.s. c 108 § 1.]

70.112.020 Education in family medical practice—Department in school of medicine—Residency programs—Financial support. There is established a statewide medical education system for the purpose of training resident physicians in family practice. The dean of the school of medicine shall be responsible for implementing the development and expansion of residency programs in cooperation with the medical profession, hospitals, and clinics located throughout

the state. The chairman of the department of family medicine in the school of medicine, with the consent of the advisory board, shall determine where affiliated residency programs shall exist; giving consideration to communities in the state where the population, hospital facilities, number of physicians, and interest in medical education indicate the potential success of the residency program. The medical education system shall provide financial support for residents in training for those programs which are affiliated with the school of medicine and shall establish positions for appropriate faculty to staff these programs. The number of programs shall be determined by the board and be in keeping with the needs of the state. [1975 1st ex.s. c 108 § 2.]

70.112.030 Family practice education advisory board—Chairman—Membership. There is created a family practice education advisory board which shall consist of eight members with the dean of the school of medicine serving as chairman. Other members of the board will be:

- (1) Chairman, department of family medicine, school of medicine;
- (2) Two public members to be appointed by the governor;
- (3) A member appointed by the Washington state medical association;
- (4) A member appointed by the Washington state academy of family physicians;
- (5) A hospital administrator representing those Washington hospitals with family practice residency programs, appointed by the governor; and
- (6) A director representing the directors of community based family practice residency programs, appointed by the governor. [1975 1st ex.s. c 108 § 3.]

70.112.040 Advisory board—Terms of members—Filling vacancies. The dean and chairman of the department of family medicine at the University of Washington school of medicine shall be permanent members of the advisory board. Other members will be initially appointed as follows: Terms of the two public members shall be two years; the member from the medical association and the hospital administrator, three years; and the remaining two members, four years. Thereafter, terms for the nonpermanent members shall be four years; members may serve two consecutive terms; and new appointments shall be filled in the same manner as for original appointments. Vacancies shall be filled for an unexpired term in the manner of the original appointment. [1975 1st ex.s. c 108 § 4.]

70.112.050 Advisory board—Duties. The advisory board shall advise the dean and the chairman of the department of family medicine in the implementation of the educational programs provided for in this chapter; including, but not limited to, the selection of the areas within the state where affiliate residency programs shall exist, the allocation of funds appropriated under this chapter, and the procedures for review and evaluation of the residency programs. [1998 c 245 § 111; 1975 1st ex.s. c 108 § 5.]

70.112.060 Funding of residency programs. (1) The moneys appropriated for these statewide family medicine residency programs shall be in addition to all the income of the University of Washington and its school of medicine and shall not be used to supplant funds for other programs under the administration of the school of medicine.

(2) The allocation of state funds for the residency programs shall not exceed fifty percent of the total cost of the program.

(3) No more than twenty-five percent of the appropriation for each fiscal year for the affiliated programs shall be authorized for expenditures made in support of the faculty and staff of the school of medicine who are associated with the affiliated residency programs and are located at the school of medicine.

(4) No funds for the purposes of this chapter shall be used to subsidize the cost of care incurred by patients. [1975 1st ex.s. c 108 § 6.]

Chapter 70.114 RCW MIGRANT LABOR HOUSING

Sections

- 70.114.010 Legislative declaration—Fees for use of housing.
- 70.114.020 Migrant labor housing facility—Employment security department authorized to contract for continued operation.

70.114.010 Legislative declaration—Fees for use of housing. The legislature finds that the migrant labor housing project constructed on property purchased by the state in Yakima county should be continued until June 30, 1981. The employment security department is authorized to set day use or extended period use fees, consistent with those established by the department of parks and recreation. [1979 ex.s. c 79 § 1; 1977 ex.s. c 287 § 1; 1975 1st ex.s. c 50 § 1; 1974 ex.s. c 125 § 1.]

70.114.020 Migrant labor housing facility—Employment security department authorized to contract for continued operation. The employment security department is authorized to enter into such agreements and contracts as may be necessary to provide for the continued operation of the facility by a state agency, an appropriate local governmental body, or by such other entity as the commissioner may deem appropriate and in the state's best interest. [1979 ex.s. c 79 § 2; 1977 ex.s. c 287 § 2; 1975 1st ex.s. c 50 § 3; 1974 ex.s. c 125 § 4.]

Chapter 70.114A RCW TEMPORARY WORKER HOUSING— HEALTH AND SAFETY REGULATION

Sections

- 70.114A.010 Findings—Intent.
- 70.114A.020 Definitions.
- 70.114A.030 Application of chapter.
- 70.114A.040 Responsibilities of department.
- 70.114A.045 Housing operation standards—Departments' agreement—Enforcement.
- 70.114A.050 Housing on rural worksites.
- 70.114A.060 Inspection of housing.
- 70.114A.065 Licensing, operation, and inspection—Rules.
- 70.114A.070 Technical assistance.

70.114A.081	Temporary worker building code—Rules—Guidelines— Exceptions—Enforcement—Variations.
70.114A.085	Temporary worker building code—Report.
70.114A.100	Rules—Compliance with federal act.
70.114A.110	Cherry harvest temporary labor camps—Rule making— Definition—Conditions for occupation—Application.
70.114A.900	Severability—1995 c 220.
70.114A.901	Effective date—1995 c 220.

70.114A.010 Findings—Intent. The legislature finds that there is an inadequate supply of temporary and permanent housing for migrant and seasonal workers in this state. The legislature also finds that unclear, complex regulations related to the development, construction, and permitting of worker housing inhibit the development of this much needed housing. The legislature further finds that as a result, many workers are forced to obtain housing that is unsafe and unsanitary.

Therefore, it is the intent of the legislature to encourage the development of temporary and permanent housing for workers that is safe and sanitary by: Establishing a clear and concise set of regulations for temporary housing; establishing a streamlined permitting and administrative process that will be locally administered and encourage the development of such housing; and by providing technical assistance to organizations or individuals interested in the development of worker housing. [1995 c 220 § 1.]

70.114A.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(2) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the reforestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(3) "Department" means the department of health.

(4) "Dwelling unit" means a shelter, building, or portion of a building, that may include cooking and eating facilities, that is:

(a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(b) Physically separated from other sleeping and common-use areas.

(5) "Enforcement" and "enforcement actions" include the authority to levy and collect fines.

(6) "Facility" means a sleeping place, drinking water, toilet, sewage disposal, food handling installation, or other installations required for compliance with this chapter.

(7) "Occupant" means a temporary worker or a person who resides with a temporary worker at the housing site.

(8) "Operator" means a person holding legal title to the land on which temporary worker housing is located. However, if the legal title and the right to possession are in different persons, "operator" means a person having the lawful control or supervision over the temporary worker housing under a lease or other arrangement.

(9) "Temporary worker" means an agricultural employee employed intermittently and not residing year-round at the same site.

(10) "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy. [1999 c 374 § 6; 1995 c 220 § 2.]

70.114A.030 Application of chapter. Chapter 220, Laws of 1995, applies to temporary worker housing that consists of five or more dwelling units, or any combination of dwelling units, dormitories, or spaces that house ten or more occupants. [1995 c 220 § 3.]

70.114A.040 Responsibilities of department. The department is designated the single state agency responsible for encouraging the development of additional temporary worker housing, and shall be responsible for coordinating the activities of the various state and local agencies to assure a seamless, nonduplicative system for the development and operation of temporary worker housing. [1995 c 220 § 4.]

70.114A.045 Housing operation standards—Departments' agreement—Enforcement. By December 1, 1999, the department and the department of labor and industries shall jointly establish a formal agreement that identifies the roles of each of the two agencies with respect to the enforcement of temporary worker housing operation standards.

The agreement shall, to the extent feasible, provide for inspection and enforcement actions by a single agency, and shall include measures to avoid multiple citations for the same violation. [1999 c 374 § 3.]

70.114A.050 Housing on rural worksites. Temporary worker housing located on a rural worksite, and used for workers employed on the worksite, shall be considered a permitted use at the rural worksite for the purposes of zoning or other land use review processes, subject only to height, setback, and road access requirements of the underlying zone. [1995 c 220 § 5.]

70.114A.060 Inspection of housing. The secretary of the department or authorized representative may inspect housing covered by chapter 220, Laws of 1995, to enforce temporary worker housing rules adopted by the state board of health prior to July 25, 1999, or the department, or when the secretary or representative has reasonable cause to believe that a violation of temporary worker housing rules adopted by the state board of health prior to July 25, 1999, or the department is occurring or is being maintained. If the buildings or premises are occupied as a residence, a reasonable effort shall be made to obtain permission from the resident. If the premises or building is unoccupied, a reasonable effort shall be made to locate the owner or other person having charge or control of the building or premises and request entry. If consent for entry is not obtained, for whatever reason, the secretary or representative shall have recourse to

every remedy provided by law to secure entry. [1999 c 374 § 7; 1995 c 220 § 6.]

70.114A.065 Licensing, operation, and inspection—Rules. The department and the department of labor and industries shall adopt joint rules for the licensing, operation, and inspection of temporary worker housing, and the enforcement thereof. These rules shall establish standards that are as effective as the standards developed under the Washington industrial safety and health act, chapter 49.17 RCW. [1999 c 374 § 1.]

70.114A.070 Technical assistance. The department of community, trade, and economic development shall contract with private, nonprofit corporations to provide technical assistance to any private individual or nonprofit organization wishing to construct temporary or permanent worker housing. The assistance may include information on state and local application and approval procedures, information or assistance in applying for federal, state, or local financial assistance, including tax incentives, information on cost-effective housing designs, or any other assistance the department of community, trade, and economic development may deem helpful in obtaining the active participation of private individuals or groups in constructing or operating temporary or permanent worker housing. [1995 c 220 § 7.]

70.114A.081 Temporary worker building code—Rules—Guidelines—Exceptions—Enforcement—Variations. (1) The department shall adopt by rule a temporary worker building code in conformance with the temporary worker housing standards developed under the Washington industrial safety and health act, chapter 49.17 RCW, and the following guidelines:

(a) The temporary worker building code shall provide construction standards for shelter and associated facilities that are safe, secure, and capable of withstanding the stresses and loads associated with their designated use, and to which they are likely to be subjected by the elements;

(b) The temporary worker building code shall permit and facilitate designs and formats that allow for maximum affordability, consistent with the provision of decent, safe, and sanitary housing;

(c) In developing the temporary worker building code the department of health shall consider:

(i) The need for dormitory type housing for groups of unrelated individuals; and

(ii) The need for housing to accommodate families;

(d) The temporary worker building code shall incorporate the opportunity for the use of construction alternatives and the use of new technologies that meet the performance standards required by law;

(e) The temporary worker building code shall include standards for heating and insulation appropriate to the type of structure and length and season of occupancy;

(f) The temporary worker building code shall include standards for temporary worker housing that are to be used only during periods when no auxiliary heat is required; and

(g) The temporary worker building code shall provide that persons operating temporary worker housing consisting

of four or fewer dwelling units or combinations of dwelling units, dormitories, or spaces that house nine or fewer occupants may elect to comply with the provisions of the temporary worker building code, and that unless the election is made, such housing is subject to the codes adopted under RCW 19.27.031.

(2) In adopting the temporary worker building code, the department shall make exceptions to the codes listed in RCW 19.27.031 and chapter 19.27A RCW, in keeping with the guidelines set forth in this section. The initial temporary worker building code adopted by the department shall be substantially equivalent with the temporary worker building code developed by the state building code council as directed by section 8, chapter 220, Laws of 1995.

(3) The temporary worker building code authorized and required by this section shall be enforced by the department.

The department shall have the authority to allow minor variations from the temporary worker building code that do not compromise the health or safety of workers. Procedures for requesting variations and guidelines for granting such requests shall be included in the rules adopted under this section. [1999 c 374 § 8; 1998 c 37 § 2.]

70.114A.085 Temporary worker building code—Report. The department shall prepare a report to the legislature on utilization of the temporary worker building code authorized by RCW 70.114A.081. The report shall include the number of housing units, number of families or individuals housed, number of growers obtaining permits, the geographic distribution of the permits, and recommendations of changes in the temporary worker building code necessary to avoid health and safety problems for the occupants. The report shall be transmitted to the senate committee on commerce, trade, housing and financial institutions and the house of representatives committee on economic development, housing and trade by December 15, 2000, and an update shall be transmitted every two years thereafter. [1999 c 374 § 11.]

70.114A.100 Rules—Compliance with federal act. Any rules adopted under chapter 220, Laws of 1995, pertaining to an employer who is subject to the migrant and seasonal agricultural worker protection act (96 Stat. 2583; 29 U.S.C. Sec. 1801 et seq.), must comply with the housing provisions of that federal act. [1995 c 220 § 10.]

70.114A.110 Cherry harvest temporary labor camps—Rule making—Definition—Conditions for occupation—Application. (1) The department and the department of labor and industries are directed to engage in joint rule making to establish standards for cherry harvest temporary labor camps. These standards may include some variation from standards that are necessary for longer occupancies, provided they are as effective as the standards adopted under the Washington industrial safety and health act, chapter 49.17 RCW. As used in this section "cherry harvest temporary labor camp" means a place where housing and related facilities are provided to agricultural employees by agricultural employers for their use while employed for the harvest of cherries. The housing and facilities may be occupied by agricultural employees for a period not to exceed one week before the

commencement through one week following the conclusion of the cherry crop harvest within the state.

(2) Facilities licensed under rules adopted under this section may not be used to provide housing for agricultural employees who are nonimmigrant aliens admitted to the United States for agricultural labor or services of a temporary or seasonal nature under section 1101(a)(15)(H)(ii)(a) of the immigration and nationality act (8 U.S.C. Sec. 1101(a)(15)(H)(ii)(a)).

(3) This section has no application to temporary worker housing constructed in conformance with codes listed in RCW 19.27.031 or 70.114A.081. [2002 c 23 § 1; 1999 c 374 § 5.]

70.114A.900 Severability—1995 c 220. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 220 § 13.]

70.114A.901 Effective date—1995 c 220. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 3, 1995]. [1995 c 220 § 14.]

Chapter 70.115 RCW

DRUG INJECTION DEVICES

Sections

- 70.115.050 Retail sale of hypodermic syringes, needles—Duty of retailer.
70.115.060 Retailers not required to sell hypodermic syringes.

70.115.050 Retail sale of hypodermic syringes, needles—Duty of retailer. On the sale at retail of any hypodermic syringe, hypodermic needle, or any device adapted for the use of drugs by injection, the retailer shall satisfy himself or herself that the device will be used for the legal use intended. [1981 c 147 § 5.]

70.115.060 Retailers not required to sell hypodermic syringes. Nothing contained in chapter 213, Laws of 2002 shall be construed to require a retailer to sell hypodermic needles or syringes to any person. [2002 c 213 § 3.]

Chapter 70.116 RCW

PUBLIC WATER SYSTEM COORDINATION ACT OF 1977

Sections

- 70.116.010 Legislative declaration.
70.116.020 Declaration of purpose.
70.116.030 Definitions.
70.116.040 Critical water supply service area—Designation—Establishment or amendment of external boundaries—Procedures.
70.116.050 Development of water system plans for critical water supply service areas.
70.116.060 Approval of coordinated water system plan—Limitations following approval—Dispute resolution mechanism—Update or revision of plan.
70.116.070 Service area boundaries within critical water supply area.
70.116.080 Performance standards relating to fire protection.
70.116.090 Assumption of jurisdiction or control of public water system by city, town, or code city.

- 70.116.100 Bottled water exempt.
70.116.110 Rate making authority preserved.
70.116.120 Short title.
70.116.134 Satellite system management agencies.
70.116.140 Review of water or sewer system plan—Time limitations—Notice of rejection of plan or extension of timeline.
70.116.900 Severability—1977 ex.s. c 142.

Drinking water quality consumer complaints: RCW 80.04.110.

70.116.010 Legislative declaration. The legislature hereby finds that an adequate supply of potable water for domestic, commercial, and industrial use is vital to the health and well-being of the people of the state. Readily available water for use in public water systems is limited and should be developed and used efficiently with a minimum of loss or waste.

In order to maximize efficient and effective development of the state's public water supply systems, the department of health shall assist water purveyors by providing a procedure to coordinate the planning of the public water supply systems. [1991 c 3 § 365; 1977 ex.s. c 142 § 1.]

70.116.020 Declaration of purpose. The purposes of this chapter are:

(1) To provide for the establishment of critical water supply service areas related to water utility planning and development;

(2) To provide for the development of minimum planning and design standards for critical water supply service areas to insure that water systems developed in these areas are consistent with regional needs;

(3) To assist in the orderly and efficient administration of state financial assistance programs for public water systems; and

(4) To assist public water systems to meet reasonable standards of quality, quantity and pressure. [1977 ex.s. c 142 § 2.]

70.116.030 Definitions. Unless the context clearly requires otherwise, the following terms when used in this chapter shall be defined as follows:

(1) "Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future needs of the systems and sets forth means for meeting those needs in the most efficient manner possible. Such a plan shall include provisions for subsequently updating the plan. In areas where more than one water system exists, a coordinated plan may consist of either: (a) A new plan developed for the area following its designation as a critical water supply service area; or (b) a compilation of compatible water system plans existing at the time of such designation and containing such supplementary provisions as are necessary to satisfy the requirements of this chapter. Any such coordinated plan must include provisions regarding: Future service area designations; assessment of the feasibility of shared source, transmission, and storage facilities; emergency inter-ties; design standards; and other concerns related to the construction and operation of the water system facilities.

(2) "Critical water supply service area" means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply prob-

lems which threaten the present or future water quality or reliability of service in such a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

(3) "Public water system" means any system providing water intended for, or used for, human consumption or other domestic uses. It includes, but is not limited to, the source, treatment for purifying purposes only, storage, transmission, pumping, and distribution facilities where water is furnished to any community, or number of individuals, or is made available to the public for human consumption or domestic use, but excluding water systems serving one single family residence. However, systems existing on September 21, 1977 which are owner operated and serve less than ten single family residences or which serve only one industrial plant shall be excluded from this definition and the provisions of this chapter.

(4) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates for wholesale or retail service a public water system. It also means the authorized agents of any such entities.

(5) "Secretary" means the secretary of the department of health or the secretary's authorized representative.

(6) "Service area" means a specific geographical area serviced or for which service is planned by a purveyor. [1991 c 3 § 366; 1977 ex.s. c 142 § 3.]

70.116.040 Critical water supply service area—Designation—Establishment or amendment of external boundaries—Procedures. (1) The secretary and the appropriate local planning agencies and purveyors, shall study geographical areas where water supply problems related to uncoordinated planning, inadequate water quality or unreliable service appear to exist. If the results of the study indicate that such water supply problems do exist, the secretary or the county legislative authority shall designate the area involved as being a critical water supply service area, consult with the appropriate local planning agencies and purveyors, and appoint a committee of not less than three representatives therefrom solely for the purpose of establishing the proposed external boundaries of the critical water supply service area. The committee shall include a representative from each purveyor serving more than fifty customers, the county legislative authority, county planning agency, and health agencies. Such proposed boundaries shall be established within six months of the appointment of the committee.

During the six month period following the establishment of the proposed external boundaries of the critical water supply services areas, the county legislative authority shall conduct public hearings on the proposed boundaries and shall modify or ratify the proposed boundaries in accordance with the findings of the public hearings. The boundaries shall reflect the existing land usage, and permitted densities in county plans, ordinances, and/or growth policies. If the proposed boundaries are not modified during the six month period, the proposed boundaries shall be automatically ratified and be the critical water supply service area.

After establishment of the external boundaries of the critical water supply service area, no new public water sys-

tems may be approved within the boundary area unless an existing water purveyor is unable to provide water service.

(2) At the time a critical water supply service area is established, the external boundaries for such area shall not include any fractional part of a purveyor's existing contiguous service area.

(3) The external boundaries of the critical water supply service area may be amended in accordance with procedures prescribed in subsection (1) of this section for the establishment of the critical water supply service areas when such amendment is necessary to accomplish the purposes of this chapter. [1977 ex.s. c 142 § 4.]

70.116.050 Development of water system plans for critical water supply service areas. (1) Each purveyor within the boundaries of a critical water supply service area shall develop a water system plan for the purveyor's future service area if such a plan has not already been developed: PROVIDED, That nonmunicipally owned public water systems are exempt from the planning requirements of this chapter, except for the establishment of service area boundaries if they have no plans for water service beyond their existing service area: PROVIDED FURTHER, That if the county legislative authority permits a change in development that will increase the demand for water service of such a system beyond the existing system's ability to provide minimum water service, the purveyor shall develop a water system plan in accordance with this section. The establishment of future service area boundaries shall be in accordance with RCW 70.116.070.

(2) After the boundaries of a critical water supply service area have been established pursuant to RCW 70.116.040, the committee established in RCW 70.116.040 shall participate in the development of a coordinated water system plan for the designated area. Such a plan shall incorporate all water system plans developed pursuant to subsection (1) of this section. The plan shall provide for maximum integration and coordination of public water system facilities consistent with the protection and enhancement of the public health and well-being. Decisions of the committee shall be by majority vote of those present at meetings of the committee.

(3) Those portions of a critical water supply service area not yet served by a public water system shall have a coordinated water system plan developed by existing purveyors based upon permitted densities in county plans, ordinances, and/or growth policies for a minimum of five years beyond the date of establishment of the boundaries of the critical water supply service area.

(4) To insure that the plan incorporates the proper designs to protect public health, the secretary shall adopt regulations pursuant to chapter 34.05 RCW concerning the scope and content of coordinated water system plans, and shall ensure, as minimum requirements, that such plans:

(a) Are reviewed by the appropriate local governmental agency to insure that the plan is not inconsistent with the land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects.

(b) Recognize all water resource plans, water quality plans, and water pollution control plans which have been adopted by units of local, regional, and state government.

(c) Incorporate the fire protection standards developed pursuant to RCW 70.116.080.

(d) Identify the future service area boundaries of the public water system or systems included in the plan within the critical water supply service area.

(e) Identify feasible emergency inter-ties between adjacent purveyors.

(f) Include satellite system management requirements consistent with RCW 70.116.134.

(g) Include policies and procedures that generally address failing water systems for which counties may become responsible under RCW 43.70.195.

(5) If a "water general plan" for a critical water supply service area or portion thereof has been prepared pursuant to chapter 36.94 RCW and such a plan meets the requirements of subsections (1) and (4) of this section, such a plan shall constitute the coordinated water system plan for the applicable geographical area.

(6) The committee established in RCW 70.116.040 may develop and utilize a mechanism for addressing disputes that arise in the development of the coordinated water system plan.

(7) Prior to the submission of a coordinated water system plan to the secretary for approval pursuant to RCW 70.116.060, the legislative authorities of the counties in which the critical water supply service area is located shall hold a public hearing thereon and shall determine the plan's consistency with subsection (4) of this section. If within sixty days of receipt of the plan, the legislative authorities find any segment of a proposed service area of a purveyor's plan or any segment of the coordinated water system plan to be inconsistent with any current land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects, the secretary shall not approve that portion of the plan until the inconsistency is resolved between the local government and the purveyor. If no comments have been received from the legislative authorities within sixty days of receipt of the plan, the secretary may consider the plan for approval.

(8) Any county legislative authority may adopt an abbreviated plan for the provision of water supplies within its boundaries that includes provisions for service area boundaries, minimum design criteria, and review process. The elements of the abbreviated plan shall conform to the criteria established by the department under subsection (4) of this section and shall otherwise be consistent with other adopted land use and resource plans. The county legislative authority may, in lieu of the committee required under RCW 70.116.040, and the procedures authorized in this section, utilize an advisory committee that is representative of the water utilities and local governments within its jurisdiction to assist in the preparation of the abbreviated plan, which may be adopted by resolution and submitted to the secretary for approval. Purveyors within the boundaries covered by the abbreviated plan need not develop a water system plan, except to the extent required by the secretary or state board of health under other authority. Any abbreviated plan adopted by a county legislative authority pursuant to this subsection shall be subject to the same provisions contained in RCW 70.116.060 for coordinated water system plans that are

approved by the secretary. [1995 c 376 § 7; 1977 ex.s. c 142 § 5.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.116.060 Approval of coordinated water system plan—Limitations following approval—Dispute resolution mechanism—Update or revision of plan. (1) A coordinated water system plan shall be submitted to the secretary for design approval within two years of the establishment of the boundaries of a critical water supply service area.

(2) The secretary shall review the coordinated water system plan and, to the extent the plan is consistent with the requirements of this chapter and regulations adopted hereunder, shall approve the plan, provided that the secretary shall not approve those portions of a coordinated water system plan that fail to meet the requirements for future service area boundaries until any boundary dispute is resolved as set forth in RCW 70.116.070.

(3) Following the approval of a coordinated water system plan by the secretary:

(a) All purveyors constructing or proposing to construct public water system facilities within the area covered by the plan shall comply with the plan.

(b) No other purveyor shall establish a public water system within the area covered by the plan, unless the local legislative authority determines that existing purveyors are unable to provide the service in a timely and reasonable manner, pursuant to guidelines developed by the secretary. An existing purveyor is unable to provide the service in a timely manner if the water cannot be provided to an applicant for water within one hundred twenty days unless specified otherwise by the local legislative authority. If such a determination is made, the local legislative authority shall require the new public water system to be constructed in accordance with the construction standards and specifications embodied in the coordinated water system plan approved for the area. The service area boundaries in the coordinated plan for the affected utilities shall be revised to reflect the decision of the local legislative authority.

(4) The secretary may deny proposals to establish or to expand any public water system within a critical water supply service area for which there is not an approved coordinated water system plan at any time after two years of the establishment of the critical water supply service area: PROVIDED, That service connections shall not be considered expansions.

(5) The affected legislative authorities may develop and utilize a mechanism for addressing disputes that arise in the implementation of the coordinated water system plan after the plan has been approved by the secretary.

(6) After adoption of the initial coordinated water system plan, the local legislative authority or the secretary may determine that the plan should be updated or revised. The legislative authority may initiate an update at any time, but the secretary may initiate an update no more frequently than once every five years. The update may encompass all or a portion of the plan, with the scope of the update to be determined by the secretary and the legislative authority. The process for the update shall be the one prescribed in RCW 70.116.050.

(7) The provisions of subsection (3) of this section shall not apply in any county for which a coordinated water system

plan has not been approved under subsection (2) of this section.

(8) If the secretary initiates an update or revision of a coordinated water system plan, the state shall pay for the cost of updating or revising the plan. [1995 c 376 § 2; 1977 ex.s. c 142 § 6.]

Findings—1995 c 376: "The legislature finds that:

(1) Protection of the state's water resources, and utilization of such resources for provision of public water supplies, requires more efficient and effective management than is currently provided under state law;

(2) The provision of public water supplies to the people of the state should be undertaken in a manner that is consistent with the planning principles of the growth management act and the comprehensive plans adopted by local governments under the growth management act;

(3) Small water systems have inherent difficulties with proper planning, operation, financing, management and maintenance. The ability of such systems to provide safe and reliable supplies to their customers on a long-term basis needs to be assured through proper management and training of operators;

(4) New water quality standards and operational requirements for public water systems will soon generate higher rates for the customers of those systems, which may be difficult for customers to afford to pay. It is in the best interest of the people of this state that small systems maintain themselves in a financially viable condition;

(5) The drinking water 2000 task force has recommended maintaining a strong and properly funded statewide drinking water program, retaining primary responsibility for administering the federal safe drinking water act in Washington. The task force has further recommended delegation of as many water system regulatory functions as possible to local governments, with provision of adequate resources and elimination of barriers to such delegation. In order to achieve these objectives, the state shall provide adequate funding from both general state funds and funding directly from the regulated water system;

(6) The public health services improvement plan recommends that the principal public health functions in Washington, including regulation of public water systems, should be fully funded by state revenues and undertaken by local jurisdictions with the capacity to perform them; and

(7) State government, local governments, water suppliers, and other interested parties should work for continuing economic growth of the state by maximizing the use of existing water supply management alternatives, including regional water systems, satellite management, and coordinated water system development." [1995 c 376 § 1.]

70.116.070 Service area boundaries within critical water supply area. (1) The proposed service area boundaries of public water systems within the critical water supply service area that are required to submit water system plans under this chapter shall be identified in the system's plan. The local legislative authority, or its planning department or other designee, shall review the proposed boundaries to determine whether the proposed boundaries of one or more systems overlap. The boundaries determined by the local legislative authority not to overlap shall be incorporated into the coordinated water system plan. Where any overlap exists, the local legislative authority may attempt to resolve the conflict through procedures established under RCW 70.116.060(5).

(2) Any final decision by a local legislative authority regarding overlapping service areas, or any unresolved disputes regarding service area boundaries, may be appealed or referred to the secretary in writing for resolution. After receipt of an appeal or referral, the secretary shall hold a public hearing thereon. The secretary shall provide notice of the hearing by certified mail to each purveyor involved in the dispute, to each county legislative authority having jurisdiction in the area and to the public. The secretary shall provide public notice pursuant to the provisions of chapter 65.16 RCW. Such notice shall be given at least twenty days prior to the

hearing. The hearing may be continued from time to time and, at the termination thereof, the secretary may restrict the expansion of service of any purveyor within the area if the secretary finds such restriction is necessary to provide the greatest protection of the public health and well-being. [1995 c 376 § 13; 1977 ex.s. c 142 § 7.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.116.080 Performance standards relating to fire protection. The secretary shall adopt performance standards relating to fire protection to be incorporated into the design and construction of public water systems. The standards shall be consistent with recognized national standards. The secretary shall adopt regulations pertaining to the application and enforcement of the standards: PROVIDED, That the regulations shall require the application of the standards for new and expanding systems only. The standards shall apply in critical water supply service areas unless the approved coordinated plan provides for nonfire flow systems. [1977 ex.s. c 142 § 8.]

70.116.090 Assumption of jurisdiction or control of public water system by city, town, or code city. The assumption of jurisdiction or control of any public water system or systems by a city, town, or code city, shall be subject to the provisions of chapter 35.13A RCW, and the provisions of this chapter shall be superseded by the provisions of chapter 35.13A RCW regarding such an assumption of jurisdiction. [1977 ex.s. c 142 § 9.]

70.116.100 Bottled water exempt. Nothing in this chapter shall apply to water which is bottled or otherwise packaged in a container for human consumption or domestic use, or to the treatment, storage and transportation facilities used in the processing of the bottled water or the distribution of the bottles or containers of water. [1977 ex.s. c 142 § 10.]

70.116.110 Rate making authority preserved. Nothing in this chapter shall be construed to alter in any way the existing authority of purveyors and municipal corporations to establish, administer and apply water rates and rate provisions. [1977 ex.s. c 142 § 11.]

70.116.120 Short title. This chapter shall be known and may be cited as the "Public Water System Coordination Act of 1977". [1977 ex.s. c 142 § 12.]

70.116.134 Satellite system management agencies. (1) The secretary shall adopt rules pursuant to chapter 34.05 RCW establishing criteria for designating individuals or water purveyors as qualified satellite system management agencies. The criteria shall set forth minimum standards for designation as a satellite system management agency qualified to assume ownership, operation, or both, of an existing or proposed public water system. The criteria shall include demonstration of financial integrity and operational capability, and may require demonstration of previous experience in successful operation and management of a public water system.

(2) Each county shall identify potential satellite system management agencies to the secretary for areas where: (a) No purveyor has been designated a future service area pursuant to this chapter, or (b) an existing purveyor is unable or unwilling to provide service. Preference shall be given to public utilities or utility districts or to investor-owned utilities under the jurisdiction of the utilities and transportation commission.

(3) The secretary shall approve satellite system management agencies meeting the established criteria and shall maintain and make available to counties a list of approved agencies. Prior to the construction of a new public water system, the individual(s) proposing the new system or requesting service shall first be directed by the local agency responsible for issuing the construction or building permit to one or more qualified satellite system management agencies designated for the service area where the new system is proposed for the purpose of exploring the possibility of a satellite agency either owning or operating the proposed new water system.

(4) Approved satellite system management agencies shall be reviewed periodically by the secretary for continued compliance with established criteria. The secretary may require status reports and other information necessary for such review. Satellite system management agencies shall be subject to reapproval at the discretion of the secretary but not less than once every five years.

(5) The secretary may assess reasonable fees to process applications for initial approval and for periodic review of satellite system management agencies. A satellite system management account is hereby created in the custody of the state treasurer. All receipts from satellite system management agencies or applicants under subsection (4) of this section shall be deposited into the account. Funds in this account may be used only for administration of the satellite system management program. Expenditures from the account shall be authorized by the secretary or the secretary's designee. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(6) For purposes of this section, "satellite system management agency" and "satellite agency" shall mean a person or entity that is certified by the secretary to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems. [1991 c 18 § 1.]

70.116.140 Review of water or sewer system plan—Time limitations—Notice of rejection of plan or extension of timeline. For any new or revised water or sewer system plan submitted for review under this chapter, the department of health shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department of health may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general comprehensive plan. For rejections of plans or extensions of the timeline, the department shall provide in writing, to the person or entity submitting the plan, the reason for such action. In addition, the person or entity submitting the plan and the department of

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health may mutually agree to an extension of the deadlines contained in this section. [2002 c 161 § 3.]

70.116.900 Severability—1977 ex.s. c 142. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 142 § 13.]

Chapter 70.118 RCW

ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

70.118.010	Legislative declaration.
70.118.020	Definitions.
70.118.030	Local boards of health—Administrative search warrant— Administrative plan—Corrections.
70.118.040	Local boards of health—Authority to waive sections of local plumbing and/or building codes.
70.118.050	Adoption of more restrictive standards.
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70.118.070	Additives—Confidentiality.
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70.118.090	Funding.
70.118.100	Alternative systems—Technical review committee.
70.118.110	Alternative systems—State guidelines and standards.
70.118.120	Inspectors—Certificate of competency.
70.118.130	Civil penalties.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Local health officer authority to grant waiver from on-site sewage system requirements: RCW 70.05.072.

70.118.010 Legislative declaration. The legislature finds that over one million, two hundred thousand persons in the state are not served by sanitary sewers and that they must rely on septic tank systems. The failure of large numbers of such systems has resulted in significant health hazards, loss of property values, and water quality degradation. The legislature further finds that failure of such systems could be reduced by utilization of nonwater-carried sewage disposal systems, or other alternative methods of effluent disposal, as a correctional measure. Waste water volume diminution and disposal of most of the high bacterial waste through composting or other alternative methods of effluent disposal would result in restorative improvement or correction of existing substandard systems. [1977 ex.s. c 133 § 1.]

70.118.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Nonwater-carried sewage disposal devices" means any device that stores and treats nonwater-carried human urine and feces.

(2) "Alternative methods of effluent disposal" means systems approved by the department of health, including at least, mound systems, alternating drainfields, anaerobic filters, evapotranspiration systems, and aerobic systems.

(3) "Failure" means: (a) Effluent has been discharged on the surface of the ground prior to approved treatment; or (b) effluent has percolated to the surface of the ground; or (c) effluent has contaminated or threatens to contaminate a groundwater supply.

(4) "Additive" means any commercial product intended to affect the performance or aesthetics of an on-site sewage disposal system.

(5) "Department" means the department of health.

(6) "On-site sewage disposal system" means any system of piping, treatment devices, or other facilities that convey, store, treat, or dispose of sewage on the property where it originates or on nearby property under the control of the user where the system is not connected to a public sewer system. For purposes of this chapter, an on-site sewage disposal system does not include indoor plumbing and associated fixtures.

(7) "Chemical additive" means those additives containing acids, bases, or other chemicals deemed unsafe by the department for use in an on-site sewage disposal system.

(8) "Additive manufacturer" means any person who manufactures, formulates, blends, packages, or repackages an additive product for sale, use, or distribution within the state. [1994 c 281 § 2; 1993 c 321 § 2; 1991 c 3 § 367; 1977 ex.s. c 133 § 2.]

Finding—Purpose—1994 c 281: "The legislature finds that chemical additives do, and that other types of additives may, contribute to septic system failure and groundwater contamination. In order to determine which ingredients of nonchemically based additive products have adverse effects on public health or the environment, it is necessary to submit such products to a review procedure.

The purpose of this act is: (1) To establish a timely and orderly procedure for review and approval of on-site sewage disposal system additives; (2) to prohibit the use, sale, or distribution of additives having an adverse effect on public health or the water quality of the state; (3) to require the disclosure of the contents of additives that are advertised, sold, or distributed in the state; and (4) to provide for consumer protection." [1994 c 281 § 1.]

Effective date—1994 c 281: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 281 § 7.]

Intent—1993 c 321: See note following RCW 70.118.060.

70.118.030 Local boards of health—Administrative search warrant—Administrative plan—Corrections. (1) Local boards of health shall identify failing septic tank drain-field systems in the normal manner and will use reasonable effort to determine new failures. The local health officer, environmental health director, or equivalent officer may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. The warrant may only be applied for after the local health officer or the health officer's designee has requested inspection of the person's property under the specific administrative plan required in this section, and the person has refused the health officer or the health officer's designee access to the person's property. Timely notice must be given to any affected person that a warrant is being requested and that the person may be present at any court proceeding to consider the requested search warrant. The court official may issue the warrant upon probable cause. A request for a search warrant must show [that] the inspection, examination, test, or sampling is in response to pollution in commercial or recreational shellfish harvesting areas or pollution in fresh water. A specific administrative plan must be developed expressly in response to the pollution. The local health officer, environmental health director, or equivalent officer shall submit the plan to the court as part of the justification for the warrant, along with specific evi-

dence showing that it is reasonable to believe pollution is coming from the septic system on the property to be accessed for inspection. The plan must include each of the following elements:

(a) The overall goal of the inspection;

(b) The location and identification by address of the properties being authorized for inspection;

(c) Requirements for giving the person owning the property and the person occupying the property if it is someone other than the owner, notice of the plan, its provisions, and times of any inspections;

(d) The survey procedures to be used in the inspection;

(e) The criteria that would be used to define an on-site sewage system failure; and

(f) The follow-up actions that would be pursued once an on-site sewage system failure has been identified and confirmed.

(2) Discretionary judgment will be made in implementing corrections by specifying nonwater-carried sewage disposal devices or other alternative methods of treatment and effluent disposal as a measure of ameliorating existing substandard conditions. Local regulations shall be consistent with the intent and purposes stated in this section. [1998 c 152 § 1; 1977 ex.s. c 133 § 3.]

70.118.040 Local boards of health—Authority to waive sections of local plumbing and/or building codes. With the advice of the secretary of the department of health, local boards of health are hereby authorized to waive applicable sections of local plumbing and/or building codes that might prohibit the use of an alternative method for correcting a failure. [1991 c 3 § 368; 1977 ex.s. c 133 § 4.]

70.118.050 Adoption of more restrictive standards. If the legislative authority of a county or city finds that more restrictive standards than those contained in *section 2 of this act or those adopted by the state board of health for systems allowed under *section 2 of this act or limitations on expansion of a residence are necessary to ensure protection of the public health, attainment of state water quality standards, and the protection of shellfish and other public resources, the legislative authority may adopt ordinances or resolutions setting standards as they may find necessary for implementing their findings. The legislative authority may identify the geographic areas where it is necessary to implement the more restrictive standards. In addition, the legislative authority may adopt standards for the design, construction, maintenance, and monitoring of sewage disposal systems. [1989 c 349 § 3.]

***Reviser's note:** "Section 2 of this act" did not become law. See effective date note following.

Effective date—1989 c 349: "(1) Except as provided in subsection (2) of this section, this act shall take effect November 1, 1989.

(2) *Section 2 of this act shall not take effect if the state board of health adopts standards for the replacement and repair of existing on-site sewage disposal systems located on property adjacent to marine waters by October 31, 1989." [1989 c 349 § 4.]

***Reviser's note:** Section 2 of this act did not take effect. See chapter 248-96 WAC.

70.118.060 Additive regulation. (1) After July 1, 1994, a person may not use, sell, or distribute a chemical additive to on-site sewage disposal systems.

(2) After January 1, 1996, no person shall use, sell, or distribute any on-site sewage disposal additive whose ingredients have not been approved by the department.

(3) Each manufacturer of an on-site sewage disposal system additive that is sold, advertised, or distributed in the state shall submit the following information to the department: (a) The name and address of the company; (b) the name of the product; (c) the complete product formulation; (d) the location where the product is manufactured; (e) the intended method of product application; and (f) a request that the product be reviewed.

(4) The department shall adopt rules providing the criteria, review, and decision-making procedures to be used in reviewing on-site sewage disposal additives for use, sale, or distribution in the state. The criteria shall be designed to determine whether the additive has an adverse effect on public health or water quality. The department may charge a fee sufficient to cover the costs of evaluating the additive, including the development of criteria and review procedures. The fee schedule shall be established by rule.

(5) The department shall issue a decision as to whether a product registered pursuant to subsection (3) of this section is approved or denied within forty-five days of receiving a complete evaluation as required pursuant to subsection (4) of this section.

(6) Manufacturers shall reregister their product as provided in subsection (3) of this section each time their product formulation changes. The department may require a new approval for products registered under this subsection prior to allowing the use, sale, or distribution within the state.

(7) The department may contract with private laboratories for the performance of any duties necessary to carry out the purpose of this section.

(8) The attorney general or appropriate city or county prosecuting attorney is authorized to bring an appropriate action to enjoin any violation of the prohibition on the sale or distribution of additives, or to enjoin any violation of the conditions in RCW 70.118.080.

(9) The department is responsible for providing written notification to additives manufacturers of the provisions of this section and RCW 70.118.070 and 70.118.080. The notification shall be provided no later than thirty days after April 1, 1994. Within thirty days of notification from the department, manufacturers shall provide the same notification to their distributors, wholesalers, and retail customers. [1994 c 281 § 3; 1993 c 321 § 3.]

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70.118.020.

Intent—1993 c 321: "The legislature finds that most additives do not have a positive effect on the operation of on-site systems and can contaminate groundwater aquifers, render septic drainfields dysfunctional, and result in costly repairs to homeowners. It is therefore the intent of the legislature to ban the use, sale, and distribution of additives within the state unless an additive has been specifically approved by the department of health." [1993 c 321 § 1.]

70.118.070 Additives—Confidentiality. The department shall hold confidential any information obtained pursuant to RCW 70.118.060 when shown by any manufacturer

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that such information, if made public, would divulge confidential business information, methods, or processes entitled to protection as trade secrets of the manufacturer. [1994 c 281 § 4.]

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70.118.020.

70.118.080 Additives—Unfair practices. (1) Each manufacturer of a certified and approved additive product advertised, sold, or distributed in the state shall:

(a) Make no claims relating to the elimination of the need for septic tank pumping or proper septic tank maintenance;

(b) List the components of additive products on the product label, along with information regarding instructions for use and precautions;

(c) Make no false statements, design, or graphic representation relative to an additive product that is inconsistent with RCW 70.118.060, 70.118.070, or this section; and

(d) Make no claims, either direct or implied, about the performance of the product based on state approval of its ingredients.

(2) A violation of this section is an unfair act or practice in violation of the consumer protection act, chapter 19.86 RCW. [1994 c 281 § 5.]

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70.118.020.

70.118.090 Funding. The department may not use funds appropriated to implement an element of the action agenda developed by the Puget Sound partnership under RCW 90.71.310 to conduct any activity required under chapter 281, Laws of 1994. [2007 c 341 § 61; 1994 c 281 § 6.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70.118.020.

70.118.100 Alternative systems—Technical review committee. The department of health must include one person who is familiar with the operation and maintenance of certified proprietary devices on the technical review committee responsible for evaluating and making recommendations to the department of health regarding the general use of alternative on-site sewage systems in the state. [1997 c 447 § 3.]

Finding—Purpose—Construction—1997 c 447: See notes following RCW 70.05.074.

70.118.110 Alternative systems—State guidelines and standards. In order to assure that technical guidelines and standards keep pace with advancing technologies, the department of health in collaboration with the technical review committee, local health departments, and other interested parties, must review and update as appropriate, the state guidelines and standards for alternative on-site sewage disposal every three years. The first review and update must be completed by January 1, 1999. [1997 c 447 § 5.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

70.118.120 Inspectors—Certificate of competency. (1) The local board of health shall ensure that individuals

who conduct inspections of on-site wastewater treatment systems or who otherwise conduct reviews of such systems are qualified in the technology and application of on-site sewage treatment principles. A certificate of competency issued by the department of licensing is adequate demonstration that an individual is competent in the engineering aspects of on-site wastewater treatment system technology.

(2) A local board of health may allow noncertified individuals to review designs of, and conduct inspections of, on-site wastewater treatment systems for a maximum of two years after the date of hire, if a certified individual reviews or supervises the work during that time. [1999 c 263 § 22.]

70.118.130 Civil penalties. A local health officer who is responsible for administering and enforcing regulations regarding on-site sewage disposal systems is authorized to issue civil penalties for violations of those regulations under the same limitations and requirements imposed on the department under RCW 70.118B.050, except that the amount of a penalty shall not exceed one thousand dollars per day for every violation, and judgments shall be entered in the name of the local health jurisdiction and penalties shall be placed into the general fund or funds of the entity or entities operating the local health jurisdiction. [2007 c 343 § 9.]

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

Chapter 70.118A RCW

ON-SITE SEWAGE DISPOSAL SYSTEMS—MARINE RECOVERY AREAS

Sections

- 70.118A.010 Findings—Purpose.
- 70.118A.020 Definitions.
- 70.118A.030 Local health officers to develop a written on-site program management plan.
- 70.118A.040 Local health officers—Determination of marine recovery areas.
- 70.118A.050 Marine recovery area on-site strategy.
- 70.118A.060 Local health officer duties—Electronic data systems.
- 70.118A.070 Department review of on-site program management plans—Assistance to local health jurisdictions.
- 70.118A.080 Department to contract with local health jurisdictions—Funding assistance—Requirements—Revised compliance dates—Work group.
- 70.118A.090 Chapter to supplement chapter 70.118 RCW.

70.118A.010 Findings—Purpose. The legislature finds that:

(1) Hood Canal and other marine waters in Puget Sound are at risk of severe loss of marine life from low-dissolved oxygen. The increased input of human-influenced nutrients, especially nitrogen, is a factor causing this low-dissolved oxygen condition in some of Puget Sound’s waters, in addition to such natural factors as poor overall water circulation and stratification that discourages mixing of surface-to-deeper waters;

(2) A significant portion of the state’s residents live in homes served by on-site sewage disposal systems, and many new residences will be served by these systems;

(3) Properly functioning on-site sewage disposal systems largely protect water quality. However, improperly functioning on-site sewage disposal systems in marine recovery areas

may contaminate surface water, causing public health problems;

(4) Local programs designed to identify and correct failing on-site sewage disposal systems have proven effective in reducing and eliminating public health hazards, improving water quality, and reopening previously closed shellfish areas; and

(5) State water quality monitoring data and analysis can help to focus these enhanced local programs on specific geographic areas that are sources of pollutants degrading Puget Sound waters.

Therefore, it is the purpose of this chapter to authorize enhanced local programs in marine recovery areas to inventory existing on-site sewage disposal systems, to identify the location of all on-site sewage disposal systems in marine recovery areas, to require inspection of on-site sewage disposal systems and repairs to failing systems, to develop electronic data systems capable of sharing information regarding on-site sewage disposal systems, and to monitor these programs to ensure that they are working to protect public health and Puget Sound water quality. [2006 c 18 § 1.]

70.118A.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Board" means the state board of health.
- (2) "Department" means the department of health.
- (3) "Failing" means a condition of an existing on-site sewage disposal system or component that threatens the public health by inadequately treating sewage, or by creating a potential for direct or indirect contact between sewage and the public. Examples of a failing on-site sewage disposal system include:
 - (a) Sewage on the surface of the ground;
 - (b) Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;
 - (c) Sewage leaking from a sewage tank or collection system;
 - (d) Cesspools or seepage pits where evidence of groundwater or surface water quality degradation exists;
 - (e) Inadequately treated effluent contaminating groundwater or surface water; or
 - (f) Noncompliance with standards stipulated on the permit.

(4) "Local health officer" or "local health jurisdiction" means the local health officers and local health jurisdictions in the following counties bordering Puget Sound: Clallam, Island, Kitsap, Jefferson, Mason, San Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce, Thurston, and Whatcom.

(5) "Marine recovery area" means an area of definite boundaries where the local health officer, or the department in consultation with the health officer, determines that additional requirements for existing on-site sewage disposal systems may be necessary to reduce potential failing systems or minimize negative impacts of on-site sewage disposal systems.

(6) "Marine recovery area on-site strategy" or "on-site strategy" means a local health jurisdiction’s on-site sewage disposal system strategy required under RCW 70.118A.050. This strategy is a component of the on-site program management plan required under RCW 70.118A.030.

(7) "On-site sewage disposal system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, or provides subsurface soil treatment and dispersal of sewage. It consists of a collection system, a treatment component or treatment sequence, and a soil dispersal component. An on-site sewage disposal system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. For purposes of this chapter, the term "on-site sewage disposal system" does not include any system regulated by a water quality discharge permit issued under chapter 90.48 RCW.

(8) "Unknown system" means an on-site sewage disposal system that was installed without the knowledge or approval of the local health jurisdiction, including those that were installed before such approval was required. [2006 c 18 § 2.]

70.118A.030 Local health officers to develop a written on-site program management plan. By July 1, 2007, the local health officers of health jurisdictions in the twelve counties bordering Puget Sound shall develop a written on-site program management plan to provide guidance to the local health jurisdiction. [2006 c 18 § 3.]

70.118A.040 Local health officers—Determination of marine recovery areas. (1) In developing on-site program management plans required under RCW 70.118A.030, the local health officer shall propose a marine recovery area for those land areas where existing on-site sewage disposal systems are a significant factor contributing to concerns associated with:

(a) Shellfish growing areas that have been threatened or downgraded by the department under chapter 69.30 RCW;

(b) Marine waters that are listed by the department of ecology under section 303(d) of the federal clean water act (33 U.S.C. Sec. 1251 et seq.) for low-dissolved oxygen or fecal coliform; or

(c) Marine waters where nitrogen has been identified as a contaminant of concern by the local health officer.

(2) In determining the boundaries for a marine recovery area, the local health officer shall assess and include those land areas where existing on-site sewage disposal systems may affect water quality in the marine recovery area.

(3) Determinations made by the local health officer under this section, including identification of nitrogen as a contaminant of concern, will be based on published guidance developed by the department. The guidance must be designed to ensure the proper use of available scientific and technical data. The health officer shall document the basis for these determinations when plans are submitted to the department.

(4) After July 1, 2007, the local health officer may designate additional marine recovery areas meeting the criteria of this section, according to new information. Where the department recommends the designation of a marine recovery area or expansion of a designated marine recovery area, the local health officer shall notify the department of its decision concerning the recommendation within ninety days of receipt of the recommendation. [2006 c 18 § 4.]

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70.118A.050 Marine recovery area on-site strategy.

(1) The local health officer of a local health jurisdiction where a marine recovery area has been proposed under RCW 70.118A.040 shall develop and approve a marine recovery area on-site strategy that includes designation of marine recovery areas to guide the local health jurisdiction in developing and managing all existing on-site sewage disposal systems within marine recovery areas within its jurisdiction. The on-site strategy must be a component of the program management plan required under RCW 70.118A.030. The department may grant an extension of twelve months where a local health jurisdiction has demonstrated substantial progress toward completing its on-site strategy.

(2) An on-site strategy for a marine recovery area must specify how the local health jurisdiction will by July 1, 2012, and thereafter, find:

(a) Existing failing systems and ensure that system owners make necessary repairs; and

(b) Unknown systems and ensure that they are inspected as required to ensure that they are functioning properly, and repaired, if necessary. [2006 c 18 § 5.]

70.118A.060 Local health officer duties—Electronic data systems. In a marine recovery area, each local health officer shall:

(1) Require that on-site sewage disposal system maintenance specialists, septic tank pumpers, or others performing on-site sewage disposal system inspections submit reports or inspection results to the local health jurisdiction regarding any failing system; and

(2) Develop and maintain an electronic data system of all on-site sewage disposal systems within a marine recovery area to enable the local health jurisdiction to actively manage on-site sewage disposal systems. In assisting development of electronic data systems, the department shall work with local health jurisdictions with marine recovery areas and the on-site sewage disposal system industry to develop common forms and protocols to facilitate sharing of data. A marine recovery area on-site sewage disposal electronic data system must be compatible with all on-site sewage disposal electronic data systems used throughout a local health jurisdiction. [2006 c 18 § 6.]

70.118A.070 Department review of on-site program management plans—Assistance to local health jurisdictions.

(1) The on-site program management plans of local health jurisdictions required under RCW 70.118A.030 must be submitted to the department by July 1, 2007, and be reviewed to determine if they contain all necessary elements. The department shall provide in writing to the local board of health its review of the completeness of the plan. The board may adopt additional criteria by rule for approving plans.

(2) In reviewing the on-site strategy component of the plan, the department shall ensure that all required elements, including designation of any marine recovery area, have been addressed.

(3) Within thirty days of receiving an on-site strategy, the department shall either approve the on-site strategy or provide in writing the reasons for not approving the strategy and recommend changes. If the department does not approve

the on-site strategy, the local health officer must amend and resubmit the plan to the department for approval.

(4) Upon receipt of department approval or after thirty days without notification, whichever comes first, the local health officer shall implement the on-site strategy.

(5) If the department denies approval of an on-site strategy, the local health officer may appeal the denial to the board. The board must make a final determination concerning the denial.

(6) The department shall assist local health jurisdictions in:

(a) Developing written on-site program management plans required by RCW 70.118A.030;

(b) Identifying reasonable methods for finding unknown systems; and

(c) Developing or enhancing electronic data systems that will enable each local health jurisdiction to actively manage all on-site sewage disposal systems within their jurisdictions, with priority given to those on-site sewage disposal systems that are located in or which could affect designated marine recovery areas. [2006 c 18 § 7.]

70.118A.080 Department to contract with local health jurisdictions—Funding assistance—Requirements—Revised compliance dates—Work group. (1) The department shall enter into a contract with each local health jurisdiction subject to the requirements of this chapter to implement plans developed under this chapter, and to develop or enhance electronic data systems required by this chapter. The contract must include state funding assistance to the local health jurisdiction from funds appropriated to the department for this purpose.

(2) The contract must require, at a minimum, that within a marine recovery area, the local health jurisdiction:

(a) Show progressive improvement in finding failing systems;

(b) Show progressive improvement in working with on-site sewage disposal system owners to make needed system repairs;

(c) Is actively taking steps to find previously unknown systems and ensuring that they are inspected as required and repaired if necessary;

(d) Show progressive improvement in the percentage of on-site sewage disposal systems that are included in an electronic data system; and

(e) Of those on-site sewage disposal systems in the electronic data system, show progressive improvement in the percentage that have had required inspections.

(3) The contract must also include provisions for state assistance in updating the plan. Beginning July 1, 2012, the contract may adopt revised compliance dates, including those in RCW 70.118A.050, where the local health jurisdiction has demonstrated substantial progress in updating the on-site strategy.

(4) The department shall convene a work group for the purpose of making recommendations to the appropriate committees of the legislature for the development of certification or licensing of maintenance specialists. The work group shall make its recommendation with consideration given to the 1998 report to the legislature entitled "On-Site Wastewater Certification Work Group" as it pertains to maintenance spe-

cialists. The work group may give priority to appropriate levels of certification or licensure of maintenance specialists who work in the Puget Sound basin. [2006 c 18 § 8.]

70.118A.090 Chapter to supplement chapter 70.118 RCW. The provisions of this chapter are supplemental to all other authorities governing on-site sewage disposal systems, including chapter 70.118 RCW and rules adopted under that chapter. [2006 c 18 § 9.]

Chapter 70.118B RCW

LARGE ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

70.118B.005	Findings.
70.118B.010	Definitions.
70.118B.020	Comprehensive regulation—Department duties.
70.118B.030	Operating permits required—Application.
70.118B.040	Rules.
70.118B.050	Violations—Civil penalties.
70.118B.060	Injunctions.
70.118B.070	Authority and duties.
70.118B.900	Captions and part headings not law—2007 c 343.

70.118B.005 Findings. The legislature finds that:

(1) Protection of the environment and public health requires properly designed, operated, and maintained on-site sewage systems. Failure of those systems can pose certain health and environmental hazards if sewage leaks above ground or if untreated sewage reaches surface or groundwater.

(2) Chapter 70.118A RCW provides a framework for ongoing management of on-site sewage systems located in marine recovery areas and regulated by local health jurisdictions under state board of health rules. This chapter will provide a framework for comprehensive management of large on-site sewage systems statewide.

(3) The primary purpose of this chapter is to establish, in a single state agency, comprehensive regulation of the design, operation, and maintenance of large on-site sewage systems, and their operators, that provides both public health and environmental protection. To accomplish these purposes, this chapter provides for:

(a) The permitting and continuing oversight of large on-site sewage systems;

(b) The establishment by the department of standards and rules for the siting, design, construction, installation, operation, maintenance, and repair of large on-site sewage systems; and

(c) The enforcement by the department of the standards and rules established under this chapter. [2007 c 343 § 1.]

70.118B.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the state department of health.

(2) "Industrial wastewater" means the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade, or business, from the development of any natural resource, or from animal operations such as feedlots, poultry

houses, or dairies. The term includes contaminated storm water and leachate from solid waste facilities.

(3) "Large on-site sewage system" means an on-site sewage system with design flows of between three thousand five hundred gallons per day and one hundred thousand gallons per day.

(4) "On-site sewage system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, and provides subsurface soil treatment and disposal of domestic sewage. It consists of a collection system, a treatment component or treatment sequence, and a subsurface soil disposal component. It may or may not include a mechanical treatment system. An on-site sewage system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. A holding tank that discharges to a sewer is not included in the definition of on-site sewage system. A system into which storm water or industrial wastewater is discharged is not included in the definition of on-site sewage system.

(5) "Person" means any individual, corporation, company, association, firm, partnership, governmental agency, or any other entity whatsoever, and the authorized agents of any such entities.

(6) "Secretary" means the secretary of health.

(7) "Waters of the state" has the same meaning as defined in RCW 90.48.020. [2007 c 343 § 2.]

70.118B.020 Comprehensive regulation—Department duties. (1) For the protection of human health and the environment the department shall:

(a) Establish and provide for the comprehensive regulation of large on-site sewage systems including, but not limited to, system siting, design, construction, installation, operation, maintenance, and repair;

(b) Control and prevent pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington, except to the extent authorized by permits issued under this chapter;

(c) Issue annual operating permits for large on-site sewage systems based on the system's ability to function properly in compliance with the applicable comprehensive regulatory requirements; and

(d) Enforce the large on-site sewage system requirements.

(2) Large on-site sewage systems permitted by the department may not be used for treatment and disposal of industrial wastewater or combined sanitary sewer and storm water systems.

(3) The work group convened under RCW 70.118A.080(4) to make recommendations to the appropriate committees of the legislature for the development of certification or licensing of maintenance specialists shall include recommendations for the development of certification or licensing of large on-site [sewage] system operators. [2007 c 343 § 3.]

70.118B.030 Operating permits required—Application. (1) A person may not install or operate a large on-site sewage system without an operating permit as provided in (2008 Ed.)

this chapter after July 1, 2009. The owner of the system is responsible for obtaining a permit.

(2) The department shall issue operating permits in accordance with the rules adopted under RCW 70.118B.040.

(3) The department shall ensure the system meets all applicable siting, design, construction, and installation requirements prior to issuing an initial operating permit. Prior to renewing an operating permit, the department may review the performance of the system to determine compliance with rules and any permit conditions.

(4) At the time of initial permit application or at the time of permit renewal the department shall impose those permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will be operated and maintained properly. Each application must be accompanied by a fee as established in rules adopted by the department.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each permit may be issued only for the site and owner named in the application. Permits are not transferable or assignable except with the written approval of the department.

(7) The department may deny an application for a permit or modify, suspend, or revoke a permit in any case in which it finds that the permit was obtained by fraud or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding to the permit applicant or permittee.

(8) For systems with design flows of more than fourteen thousand five hundred gallons per day, the department shall adopt rules to ensure adequate public notice and opportunity for review and comment on initial large on-site sewage system permit applications and subsequent permit applications to increase the volume of waste disposal or change effluent characteristics. The rules must include provisions for notice of final decisions. Methods for providing notice may include electronic mail, posting on the department's internet site, publication in a local newspaper, press releases, mailings, or other means of notification the department determines appropriate.

(9) A person aggrieved by the issuance of an initial permit, or by the issuance of a subsequent permit to increase the volume of waste disposal or to change effluent characteristics, for systems with design flows of more than fourteen thousand five hundred gallons per day, has the right to an adjudicative proceeding. The application for an adjudicative proceeding must be in writing, state the basis for contesting the action, include a copy of the decision, be served on and received by the department within twenty-eight days of receipt of notice of the final decision, and be served in a manner that shows proof of receipt. An adjudicative proceeding conducted under this subsection is governed by chapter 34.05 RCW.

(10) Any permit issued by the department of ecology for a large on-site sewage system under chapter 90.48 RCW is

valid until it first expires after July 22, 2007. The system owner shall apply for an operating permit at least one hundred twenty days prior to expiration of the department of ecology permit.

(11) Systems required to meet operator certification requirements under chapter 70.95B RCW must continue to meet those requirements as a condition of the department operating permit. [2007 c 343 § 4.]

70.118B.040 Rules. (1) For the protection of human health and the environment, the secretary shall adopt rules for the comprehensive regulation of large on-site sewage systems, which includes, but is not limited to, the siting, design, construction, installation, maintenance, repair, and permitting of the systems.

(2) In adopting the rules, the secretary shall, in consultation with the department of ecology, require that large on-site sewage systems comply with the applicable sections of chapter 90.48 RCW regarding control and prevention of pollution of waters of the state, including but not limited to:

(a) Surface and groundwater standards established under RCW 90.48.035; and

(b) Those provisions requiring all known, available, and reasonable methods of treatment.

(3) In adopting the rules, the secretary shall ensure that requirements for large on-site sewage systems are consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county. [2007 c 343 § 5.]

70.118B.050 Violations—Civil penalties. (1) A person who violates a law or rule regulating large on-site sewage systems administered by the department is subject to a penalty of not more than ten thousand dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, each day's continuing violation is a separate and distinct violation. The penalty assessed must reflect the significance of the violation and the previous record of compliance on the part of the person responsible for compliance with large on-site sewage system requirements.

(2) Every person who, through an act of commission or omission, procures, aids, or abets a violation is considered to have violated the provisions of this section and is subject to the penalty provided in this section.

(3) The penalty provided for in this section must be imposed by a notice in writing to the person against whom the civil penalty is assessed and must describe the violation. The notice must be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules.

(5) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served, and reasonable attorneys' fees as are incurred if civil enforcement of the final administrative order is required to collect the penalty.

(6) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest-bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorneys' fees for the cost of the attorney general's office in representing the department.

(7) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the large on-site sewage system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(8) A judgment entered under subsection (6) or (7) of this section has the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(9) The large on-site sewage systems account is created in the custody of the state treasurer. All receipts from penalties imposed under this section shall be deposited into the account. Expenditures from the account shall be used by the department to provide training and technical assistance to large on-site sewage system owners and operators. Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 343 § 6.]

70.118B.060 Injunctions. Notwithstanding the existence or use of any other remedy, the department may bring an action to enjoin a violation or threatened violation of this chapter or rules adopted under this chapter. The department may bring the action in the superior court of the county in which the large on-site sewage system is located or in the superior court of Thurston county. [2007 c 343 § 7.]

70.118B.070 Authority and duties. The authority and duties created in this chapter are in addition to any authority and duties already provided in law. Nothing in this chapter

limits the powers of the state or any political subdivision to exercise such authority. [2007 c 343 § 8.]

70.118B.900 Captions and part headings not law—2007 c 343. Captions and part headings used in this act are not any part of the law. [2007 c 343 § 16.]

Chapter 70.119 RCW

PUBLIC WATER SUPPLY SYSTEMS—OPERATORS

Sections

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70.119.150	Waterworks operator certification account.
70.119.160	Fee schedules—Certified operators—Public water systems.
70.119.900	Effective date—1977 ex.s. c 99.

70.119.010 Legislative declaration. The legislature declares that competent operation of a public water system is necessary for the protection of the consumers' health, and therefore it is of vital interest to the public. In order to protect the public health and conserve and protect the water resources of the state, it is necessary to provide for the classifying of all public water systems; to require the examination and certification of the persons responsible for the technical operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1991 c 305 § 1; 1983 c 292 § 1; 1977 ex.s. c 99 § 1.]

70.119.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

(2) "Certified operator" means an individual holding a valid certificate and employed or appointed by any county, water-sewer district, municipality, public or private corporation, company, institution, person, or the state of Washington and who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

(3) "Department" means the department of health.

(4) "Distribution system" means that portion of a public water system which stores, transmits, pumps and distributes water to consumers.

(5) "Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as giardia lamblia; or

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(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(6) "Group A water system" means a system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. Group A water system does not include a system serving fewer than fifteen single-family residences, regardless of the number of people.

(7) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(8) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

(9) "Purification plant" means that portion of a public water system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(10) "Secretary" means the secretary of the department of health.

(11) "Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations, three persons will be considered equivalent to one service.

(12) "Surface water" means all water open to the atmosphere and subject to surface runoff. [1999 c 153 § 67; 1995 c 269 § 2904; 1991 c 305 § 2; 1991 c 3 § 369; 1983 c 292 § 2; 1977 ex.s. c 99 § 2.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Public water supply systems to comply with water quality standards: RCW 70.142.050.

70.119.030 Certified operators required for certain public water systems. (1) A public water system shall have a certified operator if:

(a) It is a group A water system; or

(b) It is a public water system using a surface water source or a groundwater source under the direct influence of surface water.

(2) The certified operators shall be in charge of the technical direction of a water system's operation, or an operating shift of such a system, or a major segment of a system necessary for monitoring or improving the quality of water. The operator shall be certified as provided in RCW 70.119.050.

(3) A certified operator may provide required services to more than one system or to a group of systems. The amount of time that a certified operator shall be required to be present at any given system shall be based upon the time required to properly operate and maintain the public water system as designed and constructed in accordance with RCW 43.20.050. The employing or appointing officials shall designate the position or positions requiring mandatory certification within their individual systems and shall assure that such certified operators are responsible for the system's technical operation.

(4) The department shall, in establishing by rule or otherwise the requirements for public water systems with fewer than one hundred connections, phase in such requirements in order to assure that (a) an adequate number of certified operators are available to serve the additional systems, (b) the systems have adequate notice and time to plan for securing the services of a certified operator, (c) the department has the additional data and other administrative capacity, (d) adequate training is available to certify additional operators as necessary, and (e) any additional requirements under federal law are satisfied. The department shall require certified operators for all group A systems as necessary to conform to federal law or implementing rules or guidelines. Unless necessary to conform to federal law, rules, or guidelines, the department shall not require a certified operator for a system with fewer than one hundred connections unless that system is determined by the department to be in significant noncompliance with operational, monitoring, or water quality standards that would put the public health at risk, as defined by the department by rule, or has, or is required to have, water treatment facilities other than simple disinfection.

(5) Any examination required by the department as a prerequisite for the issuance of a certificate under this chapter shall be offered in each region where the department has a regional office.

(6) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1997 c 218 § 2; 1995 c 376 § 6; 1991 c 305 § 3; 1983 c 292 § 3; 1977 ex.s. c 99 § 3.]

Findings—1997 c 218: "The legislature finds and declares that:

(1) The provision of safe and reliable water supplies to the people of the state of Washington is fundamental to ensuring public health and continuing economic vitality of this state.

(2) The department of health, pursuant to legislative directive in 1995, has provided a report that incorporates the findings and recommendations of the water supply advisory committee as to progress in meeting the objectives of the public health improvement plan, changes warranted by the recent congressional action reauthorizing the federal safe drinking water act, and new approaches to providing services under the general principles of regulatory reform.

(3) The environmental protection agency has recently completed a national assessment of public water system capital needs, which has identified over four billion dollars in such needs in the state of Washington.

(4) The changes to the safe drinking water act offer the opportunity for the increased ability of the state to tailor federal requirements and programs to meet the conditions and objectives within this state.

(5) The department of health and local governments should be provided with adequate authority, flexibility, and resources to be able to imple-

ment the principles and recommendations adopted by the water supply advisory committee.

(6) Statutory changes are necessary to eliminate ambiguity or conflicting authorities, provide additional information and tools to consumers and the public, and make necessary changes to be consistent with federal law.

(7) A basic element to the protection of the public's health from water-borne disease outbreaks is systematic and comprehensive monitoring of water supplies for all contaminants, including hazardous substances with long-term health effects, and routine field visits to water systems for technical assistance and evaluation.

(8) The water systems of this state should have prompt and full access to the newly created federal state revolving fund program to help meet their financial needs and to achieve and maintain the technical, managerial, and financial capacity necessary for long-term compliance with state and federal regulations. This requires authority for streamlined program administration and the provision of the necessary state funds required to match the available federal funds.

(9) Stable, predictable, and adequate funding is essential to a statewide drinking water program that meets state public health objectives and provides the necessary state resources to utilize the new flexibility, opportunities, and programs under the safe drinking water act." [1997 c 218 § 1.]

Effective date—1997 c 218: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 25, 1997]." [1997 c 218 § 6.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.119.040 Exclusions from chapter. Nothing in this chapter shall apply to:

(1) Industrial water supply systems which do not supply water to residences for domestic use and are under the jurisdictional requirements of the Washington Industrial Safety and Health Act of 1973, chapter 49.17 RCW, as now or hereafter amended; or

(2) The preparation, distribution, or sale of bottled water or water similarly packaged. [1977 ex.s. c 99 § 4.]

70.119.050 Rules and regulations—Secretary to adopt. The secretary shall adopt such rules and regulations as may be necessary for the administration of this chapter and shall enforce such rules and regulations. The rules and regulations shall include provisions establishing minimum qualifications and procedures for the certification of operators, criteria for determining the kind and nature of continuing educational requirements for renewal of certification under RCW 70.119.100(2), and provisions for classifying water purification plants and distribution systems.

Rules and regulations adopted under the provisions of this section shall be adopted in accordance with the provisions of chapter 34.05 RCW. [1995 c 269 § 2905; 1983 c 292 § 4; 1977 ex.s. c 99 § 5.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.119.060 Public water systems—Secretary to categorize. The secretary shall further categorize all public water systems with regard to the size, type, source of water, and other relevant physical conditions affecting purification plants and distribution systems to assist in identifying the skills, knowledge and experience required for the certification of operators for each category of such systems, to assure the protection of the public health and conservation and protection of the state's water resources as required under RCW 70.119.010, and to implement the provisions of the state safe

drinking water act in chapter 70.119A RCW. In categorizing all public water systems for the purpose of implementing these provisions of state law, the secretary shall take into consideration economic impacts as well as the degree and nature of any public health risk. [1991 c 305 § 4; 1977 ex.s. c 99 § 6.]

70.119.070 Secretary—Consideration of guidelines.

The secretary is authorized, when taking action pursuant to RCW 70.119.050 and 70.119.060, to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities and commonly accepted national guidelines and standards. [1983 c 292 § 5; 1977 ex.s. c 99 § 7.]

70.119.081 Ad hoc advisory committees. The secretary, in cooperation with the director of ecology, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the development of rules implementing this chapter and on the examination and certification of operators of water systems. [1995 c 269 § 2909.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.119.090 Certificates without examination—Conditions. Certificates shall be issued without examination under the following conditions:

(1) Certificates shall be issued without application fee to operators who, on January 1, 1978, hold certificates of competency attained under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest section of the American water works association.

(2) Certification shall be issued to persons certified by a governing body or owner of a public water system to have been the operators of a purification plant or distribution system on January 1, 1978, but only to those who are required to be certified under RCW 70.119.030(1). A certificate so issued shall be valid for operating any plant or system of the same classification and same type of water source.

(3) A nonrenewable certificate, temporary in nature, may be issued to an operator for a period not to exceed twelve months to fill a vacated position required to have a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1991 c 305 § 5; 1983 c 292 § 7; 1977 ex.s. c 99 § 9.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

70.119.100 Certificates—Issuance and renewal—Conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) Except as provided in RCW 70.119.090, a certificate shall be issued if the operator has satisfactorily passed a written examination, has paid the department an application fee as established by the department under RCW 70.119.160, and has met the requirements specified in the rules and regulations as authorized by this chapter.

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(2) Every certificate shall be renewed annually upon the payment of a fee as established by the department under RCW 70.119.160 and satisfactory evidence is presented to the secretary that the operator has fulfilled the continuing education requirements as prescribed by rule of the department.

(3) The secretary shall notify operators who fail to renew their certificates before the end of the year that their certificates are temporarily valid for two months following the end of the certificate year. Certificates not renewed during the two month period shall be invalid and the secretary shall so notify the holders of such certificates.

(4) An operator who has failed to renew a certificate pursuant to the provisions of this section, may reapply for certification and the secretary may require the operator to meet the requirements established for new applicants. [1993 c 306 § 1; 1991 c 305 § 6; 1987 c 75 § 11; 1983 c 292 § 8; 1982 c 201 § 13; 1977 ex.s. c 99 § 10.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

70.119.110 Certificates—Grounds for revocation.

The secretary may after conducting a hearing revoke a certificate found to have been obtained by fraud or deceit; or for gross negligence in the operation of a purification plant or distribution system; or for an intentional violation of the requirements of this chapter or any lawful rules, order, or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation. [1995 c 269 § 2906; 1991 c 305 § 7; 1983 c 292 § 9; 1977 ex.s. c 99 § 11.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.119.120 Secretary—Authority. To carry out the provisions and purposes of this chapter, the secretary is authorized and empowered to:

(1) Receive financial and technical assistance from the federal government and other public or private agencies.

(2) Participate in related programs of the federal government, other state, interstate agencies, or other public or private agencies or organizations.

(3) Assess fees determined pursuant to RCW 70.119.160 on public water systems to support the waterworks operator certification program. [1993 c 306 § 2; 1977 ex.s. c 99 § 12.]

70.119.130 Violations—Penalties. Any person, including any operator or any firm, association, corporation, municipal corporation, or other governmental subdivision or agency who, after thirty days' written notice, operates a public water system which is not in compliance with RCW 70.119.030(1), shall be guilty of a misdemeanor. Each month of such operation out of compliance with RCW 70.119.030(1) shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereun-

der: PROVIDED, That, except in the case of fraud, deceit, or gross negligence under RCW 70.119.110, no revocation, citation or charge shall be made under RCW 70.119.110 and 70.119.130 until a proper written notice of violation is received and a reasonable opportunity for correction has been given. [1991 c 305 § 8; 1983 c 292 § 10; 1977 ex.s. c 99 § 13.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

70.119.140 Certificates—Reciprocity with other states. Operators certified by any state under provisions that, in the judgment of the secretary, are substantially equivalent to the requirements of this chapter and any rules and regulations promulgated hereunder, may be issued, upon application, a certificate without examination.

In making determinations pursuant to this section, the secretary shall consult with the *board and may consider any generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1977 ex.s. c 99 § 14.]

***Reviser's note:** RCW 70.95B.070, which created the water and wastewater operator certification board of examiners, was repealed by 1995 c 269 § 2907, effective July 1, 1995.

70.119.150 Waterworks operator certification account. The waterworks operator certification account is created in the general fund of the state treasury. All fees paid pursuant to RCW 70.119.100, 70.119.120(3), and any other receipts realized in the administration of this chapter shall be deposited in the waterworks operator certification account. Moneys in the account shall be spent only after appropriation. Moneys from the account shall be used by the department of health to carry out the purposes of the waterworks operator certification program. [1993 c 306 § 3; 1977 ex.s. c 99 § 15.]

70.119.160 Fee schedules—Certified operators—Public water systems. The department of health certifies individuals responsible for the active daily technical operation of public water supply systems and monitors public water supply systems to ensure that such systems comply with the requirements of this chapter and regulations implementing this chapter. The secretary shall establish a schedule of fees for certified operator applicants and renewal licenses and a separate schedule of fees for public water systems to support the waterworks operator certification program. The fees shall be set at a level sufficient for the department to recover the costs of the waterworks operator certification program and in accordance with the procedures established under RCW 43.70.250. [1993 c 306 § 4.]

70.119.900 Effective date—1977 ex.s. c 99. This act shall take effect on January 1, 1978. [1977 ex.s. c 99 § 17.]

Chapter 70.119A RCW PUBLIC WATER SYSTEMS— PENALTIES AND COMPLIANCE

Sections

- 70.119A.020 Definitions.
70.119A.025 Environmental excellence program agreements—Effect on chapter.

- 70.119A.030 Public health emergencies—Violations—Penalty.
70.119A.040 Additional or alternative penalty—Informal resolution unless a public health emergency.
70.119A.050 Enforcement of regulations by local boards of health—Civil penalties.
70.119A.060 Public water systems—Mandate—Conditions for approval or creation of new public water system—Department and local health jurisdiction duties.
70.119A.070 Department contracting authority.
70.119A.080 Drinking water program.
70.119A.100 Operating permits—Findings.
70.119A.110 Operating permits—Application process—Phase-in of implementation—Satellite systems.
70.119A.115 Organic and inorganic chemicals—Area-wide waiver program.
70.119A.120 Safe drinking water account.
70.119A.130 Local government authority.
70.119A.140 Report by bottled water plant operator or water dealer of contaminant in water source.
70.119A.150 Authority to enter premises—Search warrants—Investigations.
70.119A.160 Water supply advisory committee.
70.119A.170 Drinking water assistance account—Drinking water assistance administrative account—Drinking water assistance repayment account—Program to provide financial assistance to public water systems—Responsibilities.
70.119A.180 Water use efficiency requirements—Rules.
70.119A.190 Water system acquisition and rehabilitation program—Created.
70.119A.900 Short title—1989 c 422.

Drinking water quality consumer complaints: RCW 80.04.110.

70.119A.020 Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

- (1) "Department" means the department of health.
- (2) "Local board of health" means the city, town, county, or district board of health.
- (3) "Local health jurisdiction" means an entity created under chapter 70.05, 70.08, or 70.46 RCW which provides public health services to persons within the area.
- (4) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing water for human consumption through pipes or other constructed conveyances, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system, including:
 - (a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and
 - (b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.
- (5) "Order" means a written direction to comply with a provision of the regulations adopted under RCW 43.20.050(2)(a) or 70.119.050 or to take an action or a series of actions to comply with the regulations.
- (6) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.
- (7) "Regulations" means rules adopted to carry out the purposes of this chapter.

(8) "Federal safe drinking water act" means the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., as now in effect or hereafter amended.

(9) "Area-wide waivers" means a waiver granted by the department as a result of a geographically based testing program meeting required provisions of the federal safe drinking water act.

(10) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county, or district public health department.

(11) "Person" includes, but is not limited to, natural persons, municipal corporations, governmental agencies, firms, companies, mutual or cooperative associations, institutions, and partnerships. It also means the authorized agents of any such entities.

(12) "Public health emergency" means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent.

(13) "Secretary" means the secretary of the department of health.

(14) "State board of health" is the board created by RCW 43.20.030. [1999 c 118 § 2; 1994 c 252 § 2; 1991 c 304 § 2; 1991 c 3 § 370; 1989 c 422 § 2; 1986 c 271 § 2.]

Finding—Intent—1999 c 118: "The legislature finds and declares that the provision of safe and reliable water supplies is essential to public health and the continued economic vitality of the state of Washington. Maintaining the authority necessary to ensure safe and reliable water supplies requires that state laws conform with the provisions of the federal safe drinking water act. It is the intent of the legislature that the definition of public water system be amended to reflect recent amendments to the federal safe drinking water act." [1999 c 118 § 1.]

Finding—1994 c 252: "The legislature finds that:

(1) The federal safe drinking water act has imposed significant new costs on public water systems and that the state should seek maximum regulatory flexibility allowed under federal law;

(2) There is a need to comprehensively assess and characterize the groundwaters of the state to evaluate public health risks from organic and inorganic chemicals regulated under federal law;

(3) That federal law provides a mechanism to significantly reduce testing and monitoring costs to public water systems through the use of area-wide waivers.

The legislature therefore directs the department of health to conduct a voluntary program to selectively test the groundwaters of the state for organic and inorganic chemicals regulated under federal law for the purpose of granting area-wide waivers." [1994 c 252 § 1.]

Effective date—1994 c 252: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 252 § 6.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.025 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 24.]

Purpose—1997 c 381: See RCW 43.21K.005.

70.119A.030 Public health emergencies—Violations—Penalty. (1) The secretary or his or her designee or the local health officer may declare a public health emer-

gency. As limited by RCW 70.119A.040, the department may impose penalties for violations of laws or regulations that are determined to be a public health emergency.

(2) As limited by RCW 70.119A.040, the department may impose penalties for violation of laws or rules regulating public water systems and administered by the department of health. [1993 c 305 § 1; 1991 c 304 § 3; 1989 c 422 § 6; 1986 c 271 § 3.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.040 Additional or alternative penalty—Informal resolution unless a public health emergency.

(1)(a) In addition to or as an alternative to any other penalty or action allowed by law, a person who violates a law or rule regulating public water systems and administered by the department of health is subject to a penalty of not more than five thousand dollars per day for every such violation, or, in the case of a violation that has been determined to be a public health emergency, a penalty of not more than ten thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the violation and the previous record of compliance on the part of the public water supplier. In case of continuing violation, every day's continuance shall be a separate and distinct violation.

(b) In addition, a person who constructs, modifies, or expands a public water system or who commences the construction, modification, or expansion of a public water system without first obtaining the required departmental approval is subject to penalties of not more than five thousand dollars per service connection, or, in the case of a system serving a transient population, a penalty of not more than four hundred dollars per person based on the highest average daily population the system serves or is anticipated to serve may be imposed. The total penalty that may be imposed pursuant to this subsection (1)(b) is five hundred thousand dollars. For the purpose of computing the penalty under this subsection, a service connection shall include any new service connection actually constructed, any anticipated service connection the system has been designed to serve, and, in the case of a system modification not involving expansions, each existing service connection that benefits or would benefit from the modification.

(c) Every person who, through an act of commission or omission, procures, aids, or abets a violation is considered to have violated the provisions of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil penalty is assessed and shall describe the violation. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for an adjudicative proceeding is filed as provided in subsection (3) of this section.

(3) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review

as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(4) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served and such reasonable attorney's fees as are incurred in securing the final administrative order.

(5) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorney's fees for the cost of the attorney general's office in representing the department.

(6) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the public water system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(7) A judgment entered under subsection (5) or (6) of this section shall have the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(8) All penalties imposed under this section shall be payable to the state treasury and credited to the safe drinking water account, and shall be used by the department to provide training and technical assistance to system owners and operators.

(9) Except in cases of public health emergencies, the department may not impose monetary penalties under this section unless a prior effort has been made to resolve the violation informally. [1995 c 376 § 8; 1993 c 305 § 2; 1990 c 133 § 8; 1989 c 175 § 135; 1986 c 271 § 4.]

Findings—1995 c 376: See note following RCW 70.116.060.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Effective date—1989 c 175: See note following RCW 34.05.010.

70.119A.050 Enforcement of regulations by local boards of health—Civil penalties. Each local board of health that is enforcing the regulations under an agreement with the department allocating state and local responsibility is authorized to impose and collect civil penalties for violations within the area of its responsibility under the same limitations and requirements imposed upon the department by

RCW 70.119A.030 and 70.119A.040, except that judgment shall be entered in the name of the local board [and] penalties shall be placed into the general fund of the county, city, or town operating the local board of health. [1993 c 305 § 3; 1989 c 422 § 8; 1986 c 271 § 5.]

70.119A.060 Public water systems—Mandate—Conditions for approval or creation of new public water system—Department and local health jurisdiction duties.

(1) In order to assure safe and reliable public drinking water and to protect the public health, public water systems shall:

- (a) Protect the water sources used for drinking water;
- (b) Provide treatment adequate to assure that the public health is protected;
- (c) Provide and effectively operate and maintain public water system facilities;
- (d) Plan for future growth and assure the availability of safe and reliable drinking water;
- (e) Provide the department with the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system, including any changes to this information, and provide to users the name and twenty-four hour telephone number of an emergency contact person; and

(f) Take whatever investigative or corrective action is necessary to assure that a safe and reliable drinking water supply is continuously available to users.

(2) No new public water system may be approved or created unless: (a) It is owned or operated by a satellite system management agency established under RCW 70.116.134 and the satellite system management system complies with financial viability requirements of the department; or (b) a satellite management system is not available and it is determined that the new system has sufficient management and financial resources to provide safe and reliable service. The approval of any new system that is not owned by a satellite system management agency shall be conditioned upon future management or ownership by a satellite system management agency, if such management or ownership can be made with reasonable economy and efficiency, or upon periodic review of the system's operational history to determine its ability to meet the department's financial viability and other operating requirements. The department and local health jurisdictions shall enforce this requirement under authority provided under this chapter, chapter 70.116, or 70.05 RCW, or other authority governing the approval of new water systems by the department or a local jurisdiction.

(3) The department and local health jurisdictions shall carry out the rules and regulations of the state board of health adopted pursuant to RCW 43.20.050(2)(a) and other rules adopted by the department relating to public water systems. [1995 c 376 § 3; 1991 c 304 § 4; 1990 c 132 § 4; 1989 c 422 § 3.]

Findings—1995 c 376: See note following RCW 70.116.060.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

Legislative findings—Severability—1990 c 132: See notes following RCW 43.20.240.

70.119A.070 Department contracting authority. The department may enter into contracts to carry out the purposes of this chapter. [1989 c 422 § 4.]

70.119A.080 Drinking water program. (1) The department shall administer a drinking water program which includes, but is not limited to, those program elements necessary to assume primary enforcement responsibility for part B, and section 1428 of part C of the federal safe drinking water act. No rule promulgated or implemented by the department of health or the state board of health for the purpose of compliance with the requirements of the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., shall be applicable to public water systems to which that federal law is not applicable, unless the department or the state board determines that such rule is necessary for the protection of public health.

(2) The department shall enter into an agreement of administration with the department of ecology and any other appropriate agencies, to administer the federal safe drinking water act.

(3) The department is authorized to accept federal grants for the administration of a primary program. [1991 c 3 § 371; 1989 c 422 § 5.]

70.119A.100 Operating permits—Findings. The legislature finds that:

(1) The responsibility for ensuring that the citizens of this state have a safe and reliable drinking water supply is shared between local government and state government, and is the obligation of every public water system;

(2) A rapid increase in the number of public water systems supplying drinking water to the citizens of this state has significantly increased the burden on both local and state government to monitor and enforce compliance by these systems with state laws that govern planning, design, construction, operation, maintenance, financing, management, and emergency response;

(3) The federal safe drinking water act imposes on state and local governments and the public water systems of this state significant new responsibilities for monitoring, testing, and treating drinking water supplies; and

(4) Existing drinking water programs at both the state and local government level need additional authorities to enable them to more comprehensively and systematically address the needs of the public water systems of this state and assure that the public health and safety of its citizens are protected.

Therefore, annual operating permit requirements shall be established in accordance with this chapter. The operating permit requirements shall be administered by the department and shall be used as a means to assure that public water systems provide safe and reliable drinking water to the public. The department and local government shall conduct comprehensive and systematic evaluations to assess the adequacy and financial viability of public water systems. The department may impose permit conditions, requirements for system improvements, and compliance schedules in order to carry out the purpose of chapter 304, Laws of 1991. [1991 c 304 § 1.]

Requirements effective upon adoption of rules—1991 c 304: "The department shall adopt rules necessary to implement sections 5 through 7 of (2008 Ed.)

this act. The requirements of this act shall take effect upon adoption of rules pursuant to this act." [1991 c 304 § 8.]

70.119A.110 Operating permits—Application process—Phase-in of implementation—Satellite systems. (1) No person may operate a group A public water system unless the person first submits an application to the department and receives an operating permit as provided in this section. A new application must be submitted upon any change in ownership of the system. Any person operating a public water system on July 28, 1991, may continue to operate the system until the department takes final action, including any time necessary for a hearing under subsection (3) of this section, on a permit application submitted by the person operating the system under the rules adopted by the department to implement this section.

(2) The department may require that each application include the information that is reasonable and necessary to determine that the system complies with applicable standards and requirements of the federal safe drinking water act, state law, and rules adopted by the department or by the state board of health.

(3) Following its review of the application, its supporting material, and any information received by the department in its investigation of the application, the department shall issue or deny the operating permit. The department shall act on initial permit applications as expeditiously as possible, and shall in all cases either grant or deny the application within one hundred twenty days of receipt of the application or of any supplemental information required to complete the application. The applicant for a permit shall be entitled to file an appeal in accordance with chapter 34.05 RCW if the department denies the initial or subsequent applications or imposes conditions or requirements upon the operator. Any operator of a public water system that requests a hearing may continue to operate the system until a decision is issued after the hearing.

(4) At the time of initial permit application or at the time of permit renewal the department may impose such permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will provide a safe and reliable water supply to its users.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each application shall be accompanied by an annual fee as follows:

(a) The annual fee for public water supply systems serving fifteen to forty-nine service connections shall be twenty-five dollars.

(b) The annual fee for public water supply systems serving fifty to three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection.

(c) The annual fee for public water supply systems serving three thousand three hundred thirty-four to fifty-three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection plus ten cents for

each service connection in excess of three thousand three hundred thirty-three service connections.

(d) The annual fee for public water supply systems serving fifty-three thousand three hundred thirty-four or more service connections shall be ten thousand dollars.

(e) In addition to the fees under (a) through (d) of this subsection, the department may charge an additional one-time fee of five dollars for each service connection in a new water system.

(f) Until June 30, 2007, in addition to the fees under (a) through (e) of this subsection, the department may charge municipal water suppliers, as defined in RCW 90.03.015, an additional annual fee equivalent to twenty-five cents for each residential service connection for the purpose of funding the water conservation activities in RCW 70.119A.180.

(7) The department may phase-in the implementation for any group of systems provided the schedule for implementation is established by rule. Prior to implementing the operating permit requirement on water systems having less than five hundred service connections, the department shall form a committee composed of persons operating these systems. The committee shall be composed of the department of health, two operators of water systems having under one hundred connections, two operators of water systems having between one hundred and two hundred service connections, two operators of water systems having between two hundred and three hundred service connections, two operators of water systems having between three hundred and four hundred service connections, two operators of water systems having between four hundred and five hundred service connections, and two county public health officials. The members shall be chosen from different geographic regions of the state. This committee shall develop draft rules to implement this section. The draft rules will then be subject to the rule-making procedures in accordance with chapter 34.05 RCW.

(8) The department shall notify existing public water systems of the requirements of RCW 70.119A.030, 70.119A.060, and this section at least one hundred twenty days prior to the date that an application for a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this section.

(9) The department shall issue one operating permit to any approved satellite system management agency. Operating permit fees for approved satellite system management agencies shall be one dollar per connection per year for the total number of connections under the management of the approved satellite agency. The department shall define by rule the meaning of the term "satellite system management agency." If a statutory definition of this term exists, then the department shall adopt by rule a definition consistent with the statutory definition.

(10) For purposes of this section, "group A public water system" and "system" mean those water systems with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. [2003 1st sp.s. c 5 § 18; 1991 c 304 § 5.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.115 Organic and inorganic chemicals—Area-wide waiver program. The department shall develop and implement a voluntary consolidated source monitoring program sufficient to accurately characterize the source water quality of the state's drinking water supplies and to maximize the flexibility allowed in the federal safe drinking water act to allow public water systems to be waived from full testing requirements for organic and inorganic chemicals under the federal safe drinking water act. The department shall arrange for the initial sampling and provide for testing and programmatic costs to the extent that the legislature provides funding for this purpose in water system operating permit fees or through specific appropriation of funds from other sources. The department shall assess a fee using its authority under RCW 43.20B.020, sufficient to cover all testing and directly related costs to public water systems that otherwise are not funded. The department shall adjust the amount of the fee based on the size of the public drinking water system. Fees charged by the department for this purpose may not vary by more than a factor of ten. The department shall, to the extent feasible and cost-effective, use the services of local governments, local health departments, and private laboratories to implement the testing program. The department shall consult with the departments of agriculture and ecology for the purpose of exchanging water quality and other information. [1997 c 218 § 3; 1994 c 252 § 3.]

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

70.119A.120 Safe drinking water account. The safe drinking water account is created in the general fund of the state treasury. All receipts from the operating permit fees required to be paid under RCW 70.119A.110 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of health to carry out the purposes of chapter 304, Laws of 1991 and to carry out contracts with local governments in accordance with this chapter. [1991 c 304 § 6.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.130 Local government authority. Local governments may establish separate operating permit requirements for public water systems provided the operating permit requirements have been approved by the department. The department shall not approve local operating permit requirements unless the local system will result in an increased level of service to the public water system. There shall not be duplicate operating permit requirements imposed by local governments and the department. [1995 c 376 § 9; 1991 c 304 § 7.]

Effective date—1995 c 376 § 9: "Section 9 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 376 § 17.]

Findings—1995 c 376: See note following RCW 70.116.060.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.140 Report by bottled water plant operator or water dealer of contaminant in water source. In such cases where a bottled water plant operator or water dealer knows or has reason to believe that a contaminant is present in the source water because of spill, release of a hazardous substance, or otherwise, and the contaminant's presence would create a potential health hazard to consumers, the plant operator or water dealer must report such an occurrence to the state's department of health. [1992 c 34 § 5.]

Severability—1992 c 34: See note following RCW 69.07.170.

70.119A.150 Authority to enter premises—Search warrants—Investigations. (1)(a) Except as otherwise provided in (b) of this subsection, the secretary or his or her designee shall have the right to enter a premises under the control of a public water system at reasonable times with prior notification in order to determine compliance with laws and rules administered by the department of health to test, inspect, or sample features of a public water system and inspect, copy, or photograph monitoring equipment or other features of a public water system, or records required to be kept under laws or rules regulating public water systems. For the purposes of this section, "premises under the control of a public water system" does not include the premises or private property of a customer of a public water system past the point on the system where the service connection is made.

(b) The secretary or his or her designee need not give prior notification to enter a premises under (a) of this subsection if the purpose of the entry is to ensure compliance by the public water system with a prior order of the department or if the secretary or the secretary's designee has reasonable cause to believe the public water system is violating the law and poses a serious threat to public health and safety.

(2) The secretary or his or her designee may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. An administrative search warrant may be issued for the purposes of inspecting or examining property, buildings, premises, place, books, records, or other physical evidence, or conducting tests or taking samples. The warrant shall be issued upon probable cause. It is sufficient probable cause to show any of the following:

(a) The inspection, examination, test, or sampling is pursuant to a general administrative plan to determine compliance with laws or rules administered by the department; or

(b) The secretary or his or her designee has reason to believe that a violation of a law or rule administered by the department has occurred, is occurring, or may occur.

(3) The local health officer or the designee of a local health officer of a local board of health that is enforcing rules regulating public water systems under an agreement with the department allocating state and local responsibility is authorized to conduct investigations and to apply for, obtain, and execute administrative search warrants necessary to perform the local board's agreed-to responsibilities under the same limitations and requirements imposed on the department under this section. [1993 c 305 § 4.]

70.119A.160 Water supply advisory committee. The department shall create a water supply advisory committee. Membership on the committee shall reflect a broad range of

interests in the regulation of public water supplies, including water utilities of all sizes, local governments, business groups, special purpose districts, local health jurisdictions, other state and federal agencies, financial institutions, environmental organizations, the legislature, and other groups substantially affected by the department's role in implementing state and federal requirements for public water systems. Members shall be appointed for fixed terms of no less than two years, and may be reappointed. Any members of an existing advisory committee to the drinking water program may remain as members of the water supply advisory committee. The committee shall provide advice to the department on the organization, functions, service delivery methods, and funding of the drinking water program. The committee shall also review the adequacy and necessity of the current and prospective funding for the drinking water program, and the results of the committees' review shall be forwarded to the department. The report shall include a discussion of the extent to which the drinking water program has progressed toward achieving the objectives of the public health improvement plan, and an assessment of any changes to the program necessitated by modifications to the federal safe drinking water act. [1998 c 245 § 112; 1995 c 376 § 4.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.119A.170 Drinking water assistance account—Drinking water assistance administrative account—Drinking water assistance repayment account—Program to provide financial assistance to public water systems—Responsibilities. (1) A drinking water assistance account is created in the state treasury. Such subaccounts as are necessary to carry out the purposes of this chapter are permitted to be established within the account. Therefore, the drinking water assistance administrative account and the drinking water assistance repayment account are created in the state treasury. The purpose of the account is to allow the state to use any federal funds that become available to states from congress to fund a state revolving loan fund program as part of the reauthorization of the federal safe drinking water act. Expenditures from the account may only be made by the secretary, the public works board, or the department of community, trade, and economic development, after appropriation. Moneys in the account may only be used, consistent with federal law, to assist water systems to provide safe drinking water through a program administered through the department of health, the public works board, and the department of community, trade, and economic development and for other activities authorized under federal law. Money may be placed in the account from the proceeds of bonds when authorized by the legislature, transfers from other state funds or accounts, federal capitalization grants or other financial assistance, all repayments of moneys borrowed from the account, all interest payments made by borrowers from the account or otherwise earned on the account, or any other lawful source. All interest earned on moneys deposited in the account, including repayments, shall remain in the account and may be used for any eligible purpose. Moneys in the account may only be used to assist local governments and water systems to provide safe and reliable drinking water, for other services and assistance authorized by federal law to be

funded from these federal funds, and to administer the program.

(2) The department and the public works board shall establish and maintain a program to use the moneys in the drinking water assistance account as provided by the federal government under the safe drinking water act. The department and the public works board, in consultation with purveyors, local governments, local health jurisdictions, financial institutions, commercial construction interests, other state agencies, and other affected and interested parties, shall by January 1, 1999, adopt final joint rules and requirements for the provision of financial assistance to public water systems as authorized under federal law. Prior to the effective date of the final rules, the department and the public works board may establish and utilize guidelines for the sole purpose of ensuring the timely procurement of financial assistance from the federal government under the safe drinking water act, but such guidelines shall be converted to rules by January 1, 1999. The department and the public works board shall make every reasonable effort to ensure the state's receipt and disbursement of federal funds to eligible public water systems as quickly as possible after the federal government has made them available. By December 15, 1997, the department and the public works board shall provide a report to the appropriate committees of the legislature reflecting the input from the affected interests and parties on the status of the program. The report shall include significant issues and concerns, the status of rule making and guidelines, and a plan for the adoption of final rules.

(3) If the department, public works board, or any other department, agency, board, or commission of state government participates in providing service under this section, the administering entity shall endeavor to provide cost-effective and timely services. Mechanisms to provide cost-effective and timely services include: (a) Adopting federal guidelines by reference into administrative rules; (b) using existing management mechanisms rather than creating new administrative structures; (c) investigating the use of service contracts, either with other governmental entities or with non-governmental service providers; (d) the use of joint or combined financial assistance applications; and (e) any other method or practice designed to streamline and expedite the delivery of services and financial assistance.

(4) The department shall have the authority to establish assistance priorities and carry out oversight and related activities, other than financial administration, with respect to assistance provided with federal funds. The department, the public works board, and the department of community, trade, and economic development shall jointly develop, with the assistance of water purveyors and other affected and interested parties, a memorandum of understanding setting forth responsibilities and duties for each of the parties. The memorandum of understanding at a minimum, shall include:

(a) Responsibility for developing guidelines for providing assistance to public water systems and related oversight prioritization and oversight responsibilities including requirements for prioritization of loans or other financial assistance to public water systems;

(b) Department submittal of preapplication information to the public works board for review and comment;

(c) Department submittal of a prioritized list of projects to the public works board for determination of:

(i) Financial capability of the applicant; and

(ii) Readiness to proceed, or the ability of the applicant to promptly commence the project;

(d) A process for determining consistency with existing water resource planning and management, including coordinated water supply plans, regional water resource plans, and comprehensive plans under the growth management act, chapter 36.70A RCW;

(e) A determination of:

(i) Least-cost solutions, including consolidation and restructuring of small systems, where appropriate, into more economical units;

(ii) The provision of regional facilities;

(iii) Projects and activities that facilitate compliance with the federal safe drinking water act; and

(iv) Projects and activities that are intended to achieve the public health objectives of federal and state drinking water laws;

(f) Implementation of water conservation and other demand management measures consistent with state guidelines for water utilities;

(g) Assistance for the necessary planning and engineering to assure that consistency, coordination, and proper professional review are incorporated into projects or activities proposed for funding;

(h) Minimum standards for water system capacity, financial viability, and water system planning;

(i) Testing and evaluation of the water quality of the state's public water system to assure that priority for financial assistance is provided to systems and areas with threats to public health from contaminated supplies and reduce in appropriate cases the substantial increases in costs and rates that customers of small systems would otherwise incur under the monitoring and testing requirements of the federal safe drinking water act;

(j) Coordination, to the maximum extent possible, with other state programs that provide financial assistance to public water systems and state programs that address existing or potential water quality or drinking contamination problems;

(k) Definitions of "affordability" and "disadvantaged community" that are consistent with these and similar terms in use by other state or federal assistance programs;

(l) Criteria for the financial assistance program for public water systems, which shall include, but are not limited to:

(i) Determining projects addressing the most serious risk to human health;

(ii) Determining the capacity of the system to effectively manage its resources, including meeting state financial viability criteria; and

(iii) Determining the relative benefit to the community served; and

(m) Ensure that each agency fulfills the audit, accounting, and reporting requirements under federal law for its portion of the administration of this program.

(5) The department and the public works board shall begin the process to disburse funds no later than October 1, 1997, and shall adopt such rules as are necessary under chapter 34.05 RCW to administer the program by January 1, 1999. [2001 c 141 § 4; 1997 c 218 § 4; 1995 c 376 § 10.]

Purpose—2001 c 141: See note following RCW 43.84.092.

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Findings—1995 c 376: See note following RCW 70.116.060.

70.119A.180 Water use efficiency requirements—

Rules. (1) It is the intent of the legislature that the department establish water use efficiency requirements designed to ensure efficient use of water while maintaining water system financial viability, improving affordability of supplies, and enhancing system reliability.

(2) The requirements of this section shall apply to all municipal water suppliers and shall be tailored to be appropriate to system size, forecasted system demand, and system supply characteristics.

(3) For the purposes of this section:

(a) Water use efficiency includes conservation planning requirements, water distribution system leakage standards, and water conservation performance reporting requirements; and

(b) "Municipal water supplier" and "municipal water supply purposes" have the meanings provided by RCW 90.03.015.

(4) To accomplish the purposes of this section, the department shall adopt rules necessary to implement this section by December 31, 2005. The department shall:

(a) Develop conservation planning requirements that ensure municipal water suppliers are: (i) Implementing programs to integrate conservation with water system operation and management; and (ii) identifying how to appropriately fund and implement conservation activities. Requirements shall apply to the conservation element of water system plans and small water system management programs developed pursuant to chapter 43.20 RCW. In establishing the conservation planning requirements the department shall review the current department conservation planning guidelines and include those elements that are appropriate for rule. Conservation planning requirements shall include but not be limited to:

(A) Selection of cost-effective measures to achieve a system's water conservation objectives. Requirements shall allow the municipal water supplier to select and schedule implementation of the best methods for achieving its conservation objectives;

(B) Evaluation of the feasibility of adopting and implementing water delivery rate structures that encourage water conservation;

(C) Evaluation of each system's water distribution system leakage and, if necessary, identification of steps necessary for achieving water distribution system leakage standards developed under (b) of this subsection;

(D) Collection and reporting of water consumption and source production and/or water purchase data. Data collection and reporting requirements shall be sufficient to identify water use patterns among utility customer classes, where applicable, and evaluate the effectiveness of each system's conservation program. Requirements, including reporting frequency, shall be appropriate to system size and complexity. Reports shall be available to the public; and

(E) Establishment of minimum requirements for water demand forecast methodologies such that demand forecasts

prepared by municipal water suppliers are sufficient for use in determining reasonably anticipated future water needs;

(b) Develop water distribution system leakage standards to ensure that municipal water suppliers are taking appropriate steps to reduce water system leakage rates or are maintaining their water distribution systems in a condition that results in leakage rates in compliance with the standards. Limits shall be developed in terms of percentage of total water produced and/or purchased and shall not be lower than ten percent. The department may consider alternatives to the percentage of total water supplied where alternatives provide a better evaluation of the water system's leakage performance. The department shall institute a graduated system of requirements based on levels of water system leakage. A municipal water supplier shall select one or more control methods appropriate for addressing leakage in its water system;

(c) Establish minimum requirements for water conservation performance reporting to assure that municipal water suppliers are regularly evaluating and reporting their water conservation performance. The objective of setting conservation goals is to enhance the efficient use of water by the water system customers. Performance reporting shall include:

(i) Requirements that municipal water suppliers adopt and achieve water conservation goals. The elected governing board or governing body of the water system shall set water conservation goals for the system. In setting water conservation goals the water supplier may consider historic conservation performance and conservation investment, customer base demographics, regional climate variations, forecasted demand and system supply characteristics, system financial viability, system reliability, and affordability of water rates. Conservation goals shall be established by the municipal water supplier in an open public forum;

(ii) Requirements that the municipal water supplier adopt schedules for implementing conservation program elements and achieving conservation goals to ensure that progress is being made toward adopted conservation goals;

(iii) A reporting system for regular reviews of conservation performance against adopted goals. Performance reports shall be available to customers and the public. Requirements, including reporting frequency, shall be appropriate to system size and complexity;

(iv) Requirements that any system not meeting its water conservation goals shall develop a plan for modifying its conservation program to achieve its goals along with procedures for reporting performance to the department;

(v) If a municipal water supplier determines that further reductions in consumption are not reasonably achievable, it shall identify how current consumption levels will be maintained;

(d) Adopt rules that, to the maximum extent practical, utilize existing mechanisms and simplified procedures in order to minimize the cost and complexity of implementation and to avoid placing unreasonable financial burden on smaller municipal systems.

(5) The department shall establish an advisory committee to assist the department in developing rules for water use efficiency. The advisory committee shall include representatives from public water system customers, environmental

interest groups, business interest groups, a representative cross-section of municipal water suppliers, a water utility conservation professional, tribal governments, the department of ecology, and any other members determined necessary by the department. The department may use the water supply advisory committee created pursuant to RCW 70.119A.160 augmented with additional participants as necessary to comply with this subsection to assist the department in developing rules.

(6) The department shall provide technical assistance upon request to municipal water suppliers and local governments regarding water conservation, which may include development of best management practices for water conservation programs, conservation landscape ordinances, conservation rate structures for public water systems, and general public education programs on water conservation.

(7) To ensure compliance with this section, the department shall establish a compliance process that incorporates a graduated approach employing the full range of compliance mechanisms available to the department.

(8) Prior to completion of rule making required in subsection (4) of this section, municipal water suppliers shall continue to meet the existing conservation requirements of the department and shall continue to implement their current water conservation programs. [2003 1st sp.s. c 5 § 7.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

70.119A.190 Water system acquisition and rehabilitation program—Created. Subject to the availability of amounts appropriated for this specific purpose, the department shall provide financial assistance through a water system acquisition and rehabilitation program, hereby created. The program shall be jointly administered with the public works board and the department of community, trade, and economic development. The agencies shall adopt guidelines for the program using as a model the procedures and criteria of the drinking water revolving loan program authorized under RCW 70.119A.170. All financing provided through the program must be in the form of grants that partially cover project costs. The maximum grant to any eligible entity may not exceed twenty-five percent of the funds allocated to the appropriation in any fiscal year. [2008 c 214 § 2.]

Finding—Purpose—2008 c 214: "The legislature finds that it is the state's policy to maintain the highest quality and reliability of drinking water supplies to all citizens of the state. Small water systems may face greater challenges in this regard because of declining quality in water sources, catastrophic events such as flooding that impair water sources, the age of the system's infrastructure, saltwater intrusion into water sources, inadequate rate base for conducting necessary improvements, and other challenges. In response to these needs, the water system acquisition and rehabilitation program was created through biennial budget law, and through the current biennium has a total of nine million seven-hundred fifty thousand dollars toward assisting dozens of water systems to improve the quality of water supply service to thousands of customers.

It is the purpose of this act to establish an ongoing water system acquisition and rehabilitation program, to direct a review of the program to date, and to provide for recommendations for strengthening the program and increasing the financial assistance available under the program." [2008 c 214 § 1.]

70.119A.900 Short title—1989 c 422. This act shall be known and cited as the "Washington state safe drinking water act." [1989 c 422 § 1.]

Chapter 70.120 RCW

MOTOR VEHICLE EMISSION CONTROL

Sections

70.120.010	Definitions.
70.120.020	Programs.
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70.120.160	Noncompliance areas—Annual review.
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70.120.210	Clean-fuel performance and clean-fuel vehicle emissions specifications.
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70.120.901	Captions not law—1989 c 240.
70.120.902	Effective date—1989 c 240.

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

70.120.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3) "Fleet" means a group of fifteen or more motor vehicles registered in the same name and whose owner has been assigned a fleet identifier code by the department of licensing.

(4) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16 RCW.

(5) "Motor vehicle dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(6) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(7) The terms "air contaminant," "air pollution," "air quality standard," "ambient air," "emission," and "emission standard" have the meanings given them in RCW 70.94.030. [1991 c 199 § 201; 1979 ex.s. c 163 § 1.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 163 § 19.]

70.120.020 Programs. (1) The department shall conduct a public educational program regarding the health effects of air pollution emitted by motor vehicles; the purpose, operation, and effect of emission control devices and systems; and the effect that proper maintenance of motor vehicle engines has on fuel economy and air pollution emission and a public notification program identifying the geographic areas of the state that are designated as being non-compliance areas and emission contributing areas and describing the requirements imposed under this chapter for those areas.

(2)(a) The department shall grant certificates of instruction to persons who successfully complete a course of study, under general requirements established by the director, in the maintenance of motor vehicle engines, the use of engine and exhaust analysis equipment, and the repair and maintenance of emission control devices. The director may establish and implement procedures for granting certification to persons who successfully complete other training programs or who have received certification from public and private organizations which meet the requirements established in this subsection, including programs on clean fuel technology and maintenance.

(b) The department shall make available to the public a list of those persons who have received certificates of instruction under subsection (2)(a) of this section. [1991 c 199 § 202; 1989 c 240 § 5; 1979 ex.s. c 163 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.070 Vehicle inspections—Failed—Certificate of acceptance. (1) Any person:

(a) Whose motor vehicle is tested pursuant to this chapter and fails to comply with the emission standards established for the vehicle; and

(b) Who, following such a test, expends more than one hundred dollars on a 1980 or earlier model year motor vehicle or expends more than one hundred fifty dollars on a 1981 or later model year motor vehicle for repairs solely devoted to meeting the emission standards and that are performed by a certified emission specialist authorized by RCW 70.120.020(2)(a); and

(c) Whose vehicle fails a retest, may be issued a certificate of acceptance if (i) the vehicle has been in use for more than five years or fifty thousand miles, and (ii) any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

To receive the certificate, the person must document compliance with (b) and (c) of this subsection to the satisfaction of the department.

Should any provision of (b) of this subsection be disapproved by the administrator of the United States environmental protection agency, all vehicles shall be required to expend at least four hundred fifty dollars to qualify for a certificate of acceptance.

(2) Persons who fail the initial tests shall be provided with:

(a) Information regarding the availability of federal warranties and certified emission specialists;

(b) Information on the availability and procedure for acquiring license trip-permits;

(c) Information on the availability and procedure for receiving a certificate of acceptance; and

(d) The local phone number of the department's local vehicle specialist. [1998 c 342 § 2; 1991 c 199 § 203; 1989 c 240 § 6; 1980 c 176 § 4; 1979 ex.s. c 163 § 7.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

(2008 Ed.)

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.080 Vehicle inspections—Fleets. The director may authorize an owner or lessee of a fleet of motor vehicles, or the owner's or lessee's agent, to inspect the vehicles in the fleet and issue certificates of compliance for the vehicles in the fleet if the director determines that: (1) The director's inspection procedures will be complied with; and (2) certificates will be issued only to vehicles in the fleet that meet emission and equipment standards adopted under RCW 70.120.150 and only when appropriate.

In addition, the director may authorize an owner or lessee of one or more diesel motor vehicles with a gross vehicle weight rating in excess of eight thousand five hundred pounds, or the owner's or lessee's agent, to inspect the vehicles and issue certificates of compliance for the vehicles. The inspections shall be conducted in compliance with inspection procedures adopted by the department and certificates of compliance shall only be issued to vehicles that meet emission and equipment standards adopted under RCW 70.120.150.

The director shall establish by rule the fee for fleet or diesel inspections provided for in this section. The fee shall be set at an amount necessary to offset the department's cost to administer the fleet and diesel inspection program authorized by this section.

Owners, leaseholders, or their agents conducting inspections under this section shall pay only the fee established in this section and not be subject to fees under RCW 70.120.170(4). [1991 c 199 § 205; 1979 ex.s. c 163 § 8.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.100 Vehicle inspections—Complaints. The department shall investigate complaints received regarding the operation of emission testing stations and shall require corrections or modifications in those operations when deemed necessary.

The department shall also review complaints received regarding the maintenance or repairs secured by owners of motor vehicles for the purpose of complying with the requirements of this chapter. When possible, the department shall assist such owners in determining the merits of the complaints.

The department shall keep a copy of all complaints received, and on request, make copies available to the public. This is not intended to require disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW. [2005 c 274 § 340; 1998 c 342 § 3; 1979 ex.s. c 163 § 10.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.120 Rules. The director shall adopt rules implementing and enforcing this chapter in accordance with chapter 34.05 RCW. The department shall take into account when considering proposed modifications of emission contributing boundaries, as provided for in RCW 70.120.150(6), alterna-

tive transportation control and motor vehicle emission reduction measures that are required by local municipal corporations for the purpose of satisfying federal emission guidelines. [1991 c 199 § 206; 1989 c 240 § 8; 1979 ex.s. c 163 § 13.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.130 Authority. The authority granted by this chapter to the director and the department for controlling vehicle emissions is supplementary to the department's authority to control air pollution pursuant to chapter 70.94 RCW. [1979 ex.s. c 163 § 14.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.150 Vehicle emission and equipment standards—Designation of noncompliance areas and emission contributing areas. The director:

(1) Shall adopt motor vehicle emission and equipment standards to: Ensure that no less than seventy percent of the vehicles tested comply with the standards on the first inspection conducted, meet federal clean air act requirements, and protect human health and the environment.

(2) Shall adopt rules implementing the smoke opacity testing requirement for diesel vehicles that ensure that such test is objective and repeatable and that properly maintained engines that otherwise would meet the applicable federal emission standards, as measured by the new engine certification test, would not fail the smoke opacity test.

(3) Shall designate a geographic area as being a "non-compliance area" for motor vehicle emissions if (a) the department's analysis of emission and ambient air quality data, covering a period of no less than one year, indicates that the standard has or will probably be exceeded, and (b) the department determines that the primary source of the air contaminant is motor vehicle emissions.

(4) Shall reevaluate noncompliance areas if the United States environmental protection agency modifies the relevant air quality standards, and shall discontinue the program if compliance is indicated and if the department determines that the area would continue to be in compliance after the program is discontinued. The director shall notify persons residing in noncompliance areas of the reevaluation.

(5) Shall analyze information regarding the motor vehicle traffic in a noncompliance area to determine the smallest land area within whose boundaries are present registered motor vehicles that contribute significantly to the violation of motor vehicle-related air quality standards in the noncompliance area. The director shall declare the area to be an "emission contributing area." An emission contributing area established for a carbon monoxide or oxides of nitrogen noncompliance area must contain the noncompliance area within its boundaries. An emission contributing area established for an ozone noncompliance area located in this state need not contain the ozone noncompliance area within its boundaries if it can be proven that vehicles registered in the area contribute significantly to violations of the ozone air quality standard in the noncompliance area. An emission contributing area may

be established in this state for violations of federal air quality standards for ozone in an adjacent state if (a) the United States environmental protection agency designates an area to be a "nonattainment area for ozone" under the provisions of the federal Clean Air Act (42 U.S.C. 7401 et seq.), and (b) it can be proven that vehicles registered in this state contribute significantly to the violation of the federal air quality standards for ozone in the adjacent state's nonattainment area.

(6) Shall, after consultation with the appropriate local government entities, designate areas as being noncompliance areas or emission contributing areas, and shall establish the boundaries of such areas by rule. The director may also modify boundaries. In establishing the external boundaries of an emission contributing area, the director shall use the boundaries established for ZIP code service areas by the United States postal service.

(7) May make grants to units of government in support of planning efforts to reduce motor vehicle emissions. [1991 c 199 § 207; 1989 c 240 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.160 Noncompliance areas—Annual review.

(1) The director shall review annually the air quality and forecasted air quality of each area in the state designated as a noncompliance area for motor vehicle emissions.

(2) An area shall no longer be designated as a noncompliance area if the director determines that:

(a) Air quality standards for contaminants derived from motor vehicle emissions are no longer being violated in the noncompliance area; and

(b) The standards would not be violated if the emission inspection system in the emission contributing area was discontinued and the requirements of RCW 46.16.015 no longer applied. [1989 c 240 § 3.]

70.120.170 Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles. (Expires January 1, 2020.)

(1) The department shall administer a system for emission inspections of all motor vehicles, except those described in RCW 46.16.015(2), that are registered within the boundaries of each emission contributing area. Under such system a motor vehicle shall be inspected biennially except where an annual program would be required to meet federal law and prevent federal sanctions. In addition, motor vehicles shall be inspected at each change of registered owner of a licensed vehicle as provided under RCW 46.16.015.

(2) The director shall:

(a) Adopt procedures for conducting emission inspections of motor vehicles. The inspections may include idle and high revolution per minute emission tests. The emission test for diesel vehicles shall consist solely of a smoke opacity test.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions standards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting vehicle emission inspections authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public body may establish or operate contracted inspection stations. Any contracts [must] comply with the procedures established for competitive bids in chapter 43.19 RCW.

(d) Beginning in 2012, authorize businesses other than those contracted to operate inspection stations under (c) of this subsection to conduct vehicle emission inspections. Businesses authorized under this subsection may also inspect and perform, for compensation, repairs on vehicles. The fee limitations under subsection (4) of this section do not apply to the fee charged for a vehicle emissions inspection by a business authorized to conduct vehicle emission inspections under this subsection. The director may establish by rule a fee to be paid to the department for the oversight costs for each vehicle emission inspection performed by a business authorized under this subsection (2)(d).

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1) if the inspections are conducted for the following purposes:

- (a) Auditing;
- (b) Contractor evaluation;
- (c) Collection of data for establishing calibration and performance standards; or
- (d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable statewide or throughout an emission contributing area and shall be no greater than fifteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehicle is inspected shall receive the results of the inspection. If the inspected vehicle complies with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected vehicle does not comply with those standards, one reinspection of the vehicle shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles annually to ensure that the vehicle's emissions comply with the emission standards established by the director. All state agencies outside of emission contributing areas with more than twenty motor vehicles housed at a single facility or contiguous facilities shall test the emissions of those vehicles annually to ensure that the vehicles' emissions comply with standards established by the director. A report of the results of the tests shall be submitted to the department.

(2008 Ed.)

(6) This section expires January 1, 2020. [2005 c 295 § 6; 1998 c 342 § 4; 1991 c 199 § 208; 1989 c 240 § 4.]

Findings—2005 c 295: See note following RCW 70.120A.010.

Effective date—2005 c 295 §§ 5, 6, and 10: See note following RCW 70.94.017.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.190 Used vehicles. (1) Motor vehicle dealers selling a used vehicle not under a new vehicle warranty shall include a notice in each vehicle purchase order form that reads as follows: "The owner of a vehicle may be required to spend up to (a dollar amount established under RCW 70.120.070) for repairs if the vehicle does not meet the vehicle emission standards under this chapter. Unless expressly warranted by the motor vehicle dealer, the dealer is not warranting that this vehicle will pass any emission tests required by federal or state law."

(2) The signature of the purchaser on the notice required under subsection (1) of this section shall constitute a valid disclaimer of any implied warranty by the dealer as to a vehicle's compliance with any emission standards.

(3) The disclosure requirement of subsection (1) of this section applies to all motor vehicle dealers located in counties where state emission inspections are required. [1991 c 199 § 210.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.210 Clean-fuel performance and clean-fuel vehicle emissions specifications. By July 1, 1992, the department shall develop, in cooperation with the departments of general administration and transportation, and Washington State University, aggressive clean-fuel performance and clean-fuel vehicle emissions specifications including clean-fuel vehicle conversion equipment. To the extent possible, such specifications shall be equivalent for all fuel types. In developing such specifications the department shall consider the requirements of the clean air act and the findings of the environmental protection agency, other states, the American petroleum institute, the gas research institute, and the motor vehicles manufacturers association. [1996 c 186 § 518; 1991 c 199 § 212.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Clean-fuel grants: RCW 70.94.960.

70.120.230 Scientific advisory board—Composition of board—Duties. The department shall establish a scientific advisory board to review plans to establish or expand the geographic area where an inspection and maintenance system for motor vehicle emissions is required. The board shall consist of three to five members. All members shall have at least a master's degree in physics, chemistry, or engineering, or a closely related field. No member may be a current employee of a local air pollution control authority, the department, the

United States environmental protection agency, or a company that may benefit from a review by the board.

The board shall review an inspection and maintenance plan at the request of a local air pollution control authority, the department, or by a petition of at least fifty people living within the proposed boundaries of a vehicle emission inspection and maintenance system. The entity or entities requesting a scientific review may include specific issues for the board to consider in its review. The board shall limit its review to matters of science and shall not provide advice on penalties or issues that are strictly legal in nature.

The board shall provide a complete written review to the department. If the board members are not in agreement as to the scientific merit of any issue under review, the board may include a dissenting opinion in its report to the department. The department shall immediately make copies available to the local air pollution control authority and to the public.

The department shall conduct a public hearing, within the area affected by the proposed rule, if any significant aspect of the rule is in conflict with a majority opinion of the board. The department shall include in its responsiveness summary the rationale for including a rule that is not consistent with the review of the board, including a response to the issues raised at the public hearing.

Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1998 c 342 § 5.]

70.120.901 Captions not law—1989 c 240. Section headings as used in this act do not constitute any part of law. [1989 c 240 § 11.]

70.120.902 Effective date—1989 c 240. This act shall take effect January 1, 1990. [1989 c 240 § 14.]

Chapter 70.120A RCW

MOTOR VEHICLE EMISSION STANDARDS

Sections

70.120A.010	Department of ecology to adopt rules to implement California motor vehicle emission standards—Limitations—Advisory group—Exemptions.
70.120A.020	Early credits and banking—Alternative means of compliance.
70.120A.030	Warranty repair service—Manufacturers, repair shops.
70.120A.040	Reports.
70.120A.050	New vehicle greenhouse gas emissions disclosure—Rule-making authority—Report to the legislature.

70.120A.010 Department of ecology to adopt rules to implement California motor vehicle emission standards—Limitations—Advisory group—Exemptions. (1) Pursuant to the federal clean air act, the legislature adopts the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2005, except as provided in this chapter. The department of ecology shall adopt rules to implement the emission standards of the state of California for passenger cars, light duty trucks, and medium duty passenger vehicles, and shall amend the rules from time to time, to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Sec. 7507 (section 177 of the federal clean air act). Notwithstanding other provisions of this chapter, the department of ecol-

ogy shall not adopt the zero emission vehicle program regulations contained in Title 13 section 1962 of the California Code of Regulations effective January 1, 2005. During rule development, the department of ecology shall convene an advisory group composed of industry and consumer group representatives. Any proposed rules or changes to rules shall be subject to review and comment by the advisory group, prior to rule adoption. The order of adoption for the rules required in this section shall include the signature of the governor. The rules shall be effective only for those model years for which the state of Oregon has adopted the California motor vehicle emission standards. This section does not limit the department of ecology's authority to regulate motor vehicle emissions for any other class of vehicle.

(2) Motor vehicles with a model year equal to or later than the first model year for which new vehicles sold to Washington state residents are required to comply with California motor vehicle emission standards are exempt from emission inspections under chapter 70.120 RCW. [2005 c 295 § 2.]

Findings—2005 c 295: "The legislature finds that:

(1) Motor vehicles are the largest source of air pollution in the state of Washington, and motor vehicles contribute approximately fifty-seven percent of criteria air pollutant emissions, eighty percent of air toxics emissions, and fifty-five percent of greenhouse gas emissions;

(2) Air pollution levels routinely measured in the state of Washington continue to harm public health, the environment, and the economy. Air pollution causes or contributes to premature death, cancer, asthma, and heart and lung disease. Over half of the state's population suffers from one or more medical conditions that make them very vulnerable to air pollution. Air pollution increases pain and suffering for vulnerable individuals. Air pollution imposes several hundred million dollars annually in added health care costs for air pollution-associated death and illness, reducing the quality of life and economic security of the citizens of Washington;

(3) Reductions of greenhouse gas emissions from transportation sources are necessary, and it is equitable to seek such reductions because reductions in greenhouse gas emissions have already been initiated in other sectors such as power generation;

(4) Reductions in greenhouse gas emissions made under this act should be credited toward any future federal, state, or regional comprehensive regulatory structure enacted to address reducing greenhouse gas emissions;

(5) Under the federal clean air act, the state of Washington has the option to implement either federal motor vehicle emission standards or California motor vehicle emission standards for passenger cars, light duty trucks, and medium duty passenger vehicles;

(6) Opting into the California motor vehicle standards will provide significant and necessary air quality benefits to residents of the state of Washington; and

(7) Adoption of the California motor vehicle standards will increase consumer choices of cleaner vehicles, provide better warranties to consumers, and provide sufficient air quality benefit to allow additional business and economic growth in the key airsheds of the state while maintaining conformance with federal air quality standards." [2005 c 295 § 1.]

Effective date—2005 c 295 §§ 1, 2, 7, and 11-13: "Sections 1, 2, 7, and 11 through 13 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 6, 2005]." [2005 c 295 § 15.]

70.120A.020 Early credits and banking—Alternative means of compliance. (1) In recognition of the provisions of the federal clean air act which require a minimum phase-in period of three model years for adoption of California motor vehicle emission standards, the implementing rules shall include a system of early credits and banking for manufacturers for zero emission vehicles produced and sold earlier than the implementation date for the standards in Washington. Beginning with the model year in which the new standards

become effective, each manufacturer’s fleet of passenger cars and light duty trucks delivered for sale in the state of Washington shall proportionately conform to the zero emission vehicle requirements of Title 13 of the California Code of Regulations, including early credit and banking provisions set forth in Title 13 of the Code of California Regulations using Washington specific vehicle numbers. A manufacturer shall be given early Washington zero emission vehicle credits proportionally equivalent to the zero emission vehicle credits possessed by the requesting manufacturer for use in the state of California on January 1st of the model year the California standards become effective in Washington.

(2) In addition, an alternative means of compliance with the requirements of subsection (1) of this section shall be created in the implementing rules provided for in RCW 70.120A.010. The alternative means of compliance shall allow a manufacturer to earn Washington zero emission vehicle credits beginning with the 2005 model year. The alternative means of compliance shall be developed to be consistent in concept with the alternative compliance systems developed for the states of Connecticut, New York, and Maine as they adopted the zero emission vehicle provisions of the California motor vehicle standards and shall contain a Washington multiplier consistent with the multipliers in those systems. The implementing rules shall require timely notification by the manufacturer to the department of ecology of an election to use the alternative means of compliance. [2005 c 295 § 3.]

Findings—2005 c 295: See note following RCW 70.120A.010.

70.120A.030 Warranty repair service—Manufacturers, repair shops. Individual automobile manufacturers may certify independent automobile repair shops to perform warranty service on the manufacturers’ vehicles. Upon certification of the independent automobile repair shops, the manufacturers shall compensate the repair shops at the same rate as franchised dealers for covered warranty repair services. [2005 c 295 § 4.]

Findings—2005 c 295: See note following RCW 70.120A.010.

70.120A.040 Reports. The office of financial management shall provide an annual progress report to the appropriate committees of the legislature. The office of financial management, in conjunction with the departments of licensing, revenue, and ecology, shall report on the availability of vehicles meeting the standards, the progress of automobile industries in meeting the requirements of the standards, and any other matters relevant to the success of auto-related industries in implementing these requirements. [2005 c 295 § 9.]

Findings—2005 c 295: See note following RCW 70.120A.010.

70.120A.050 New vehicle greenhouse gas emissions disclosure—Rule-making authority—Report to the legislature. (1) No model year 2010 or subsequent model year new passenger car, light duty truck, or medium duty passenger vehicle may be sold in Washington unless there is securely and conspicuously affixed in a clearly visible location a label on which the manufacturer clearly discloses comparative greenhouse gas emissions for that new vehicle.

(2008 Ed.)

(2) The label required by this section should include a greenhouse gas index or rating system that contains quantitative and graphical information presented in a continuous, easy-to-read scale that compares the greenhouse gas emissions from the vehicle with the average projected greenhouse gas emissions from all passenger cars, light duty trucks, and medium duty passenger vehicles of the same model year. For reference purposes, the index or rating system should also identify the greenhouse gas emissions from the vehicle model of that same model year that has the lowest greenhouse gas emissions.

(3) The index or rating system included in the label under subsection (2) of this section shall be updated as necessary to ensure that the differences in greenhouse gas emissions among vehicles are readily apparent to the consumer.

(4) An automobile manufacturer may apply to the department of ecology for approval of an alternative to the disclosure labeling requirement that is at least as effective in providing notification and disclosure of the vehicle’s greenhouse gas emissions as is the labeling required by this section.

(5) A label that complies with the requirements of the California greenhouse gas vehicle labeling program shall be deemed to meet the requirements of this section and any rules adopted under this section.

(6) The department of ecology may adopt such rules as are necessary to implement this section.

(7) The department of ecology shall provide a status report to the appropriate committees of the legislature on or before December 1, 2008, (a) outlining its approach and progress toward implementing a greenhouse gas vehicle emissions disclosure labeling program for Washington, (b) providing an update on the status of California’s greenhouse gas vehicle labeling program, and (c) making recommendations as necessary for legislation to meet the intent and purpose of chapter 32, Laws of 2008 by the 2010 model year. [2008 c 32 § 2.]

Intent—2008 c 32: "The legislature intends that new passenger cars, light duty trucks, and medium duty passenger vehicles for sale in Washington display clear and easy to understand information disclosing the new vehicle’s greenhouse gas emissions. Further, the legislature intends that disclosure of such emissions serves as a means of educating consumers, other motorists, and the general public about the sources of greenhouse gas, their impact, available options, and in particular the role and contribution of automobiles and other motor vehicles." [2008 c 32 § 1.]

**Chapter 70.121 RCW
MILL TAILINGS—LICENSING AND
PERPETUAL CARE**

Sections

- 70.121.010 Legislative findings.
- 70.121.020 Definitions.
- 70.121.030 Licenses—Renewal—Hearings.
- 70.121.040 Facility operations and decommissioning—Monitoring.
- 70.121.050 Radiation perpetual maintenance fund—Licensee contributions—Disposition.
- 70.121.060 State authority to acquire property for surveillance sites.
- 70.121.070 Status of acquired state property for surveillance sites.
- 70.121.080 Payment for transferred sites for surveillance.
- 70.121.090 Authority for on-site inspections and monitoring.
- 70.121.100 Licensees’ bond requirements.
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- 70.121.140 Amounts owed to state—Lien created.

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Nuclear energy and radiation: Chapter 70.98 RCW.

Radioactive waste storage and transportation act of 1980: Chapter 70.99 RCW.

70.121.010 Legislative findings. The legislature finds that:

(1) The milling of uranium and thorium creates potential hazards to the health of the citizens of the state of Washington in that potentially hazardous radioactive isotopes, decay products of uranium and thorium, naturally occurring in relatively dispersed geologic formations, are brought to one location on the surface and pulverized in the process of mining and milling uranium and thorium.

(2) These radioactive isotopes, in addition to creating a field of gamma radiation in the vicinity of the tailings area, also exude potentially hazardous radioactive gas and particulates into the atmosphere from the tailings areas, and contaminate the milling facilities, thereby creating hazards which will be present for many generations.

(3) The public health and welfare of the citizens demands that the state assure that the public health be protected by requiring that: (a) Prior to the termination of any radioactive materials license, all milling facilities and associated tailings piles will be decommissioned in such a manner as to bring the potential public health hazard to a minimum; and (b) such environmental radiation monitoring as is necessary to verify the status of decommissioned facilities will be conducted. [1979 ex.s. c 110 § 1.]

Effective date—1979 ex.s. c 110: "This act shall take effect on January 1, 1980." [1979 ex.s. c 110 § 18.]

70.121.020 Definitions. Unless the context clearly requires a different meaning, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health.

(3) "Site" means the restricted area as defined by the United States nuclear regulatory commission.

(4) "Tailings" means the residue remaining after extraction of uranium or thorium from the ore whether or not the residue is left in piles, but shall not include ore bodies nor ore stock piles.

(5) "License" means a radioactive materials license issued under chapter 70.98 RCW and the rules adopted under chapter 70.98 RCW.

(6) "Termination of license" means the cancellation of the license after permanent cessation of operations. Temporary interruptions or suspensions of production due to economic or other conditions are not a permanent cessation of operations.

(7) "Milling" means grinding, cutting, working, or concentrating ore which has been extracted from the earth by mechanical (conventional) or chemical (in situ) processes.

(8) "Obligor-licensee" means any person who obtains a license to operate a uranium or thorium mill in the state of Washington or any person who owns the property on which the mill operates and who owes money to the state for the licensing fee, for reclamation of the site, for perpetual sur-

veillance and maintenance of the site, or for any other obligation owed the state under this chapter.

(9) "Statement of claim" means the document recorded or filed pursuant to this chapter, which names an obligor-licensee, names the state as obligee, describes the obligation owed to the state, and describes property owned by the obligor-licensee on which a lien will attach for the benefit of the state, and which creates the lien when filed. [1991 c 3 § 372; 1987 c 184 § 1; 1982 c 78 § 1; 1979 ex.s. c 110 § 2.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.030 Licenses—Renewal—Hearings. (1) Any person who proposes to operate a uranium or thorium mill within the state of Washington after January 1, 1980, shall obtain a license from the department to mill thorium and uranium. The period of the license shall be determined by the secretary and shall be initially valid for not more than two years and renewable thereafter for periods of not more than five years. No license may be granted unless:

(a) The owner or operator of the mill submits to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill agrees to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(2) Any person operating a uranium or thorium mill on January 1, 1980, shall, at the time of application for renewal of his license to mill thorium or uranium, comply with the following conditions for continued operation of the mill:

(a) The owner or operator of the mill shall submit to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill shall agree to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(3) The department shall, after public notice and opportunity for written comment, hold a public hearing to consider the adequacy of the proposed plan to protect the safety and health of the public required by subsections (1) and (2) of this section. The proceedings shall be recorded and transcribed. The public hearing shall provide the opportunity for cross-examination by both the department and the person proposing the plan required under this section. The department shall make a written determination as to the licensing of the mill which is based upon the findings included in the determination and upon the evidence presented during the public comment period. The determination is subject to judicial review. If a declaration of nonsignificance is issued for a license renewal application under rules adopted under chapter 43.21C RCW, the public hearing is not required.

(4) The department shall set a schedule of license and amendment fees predicated on the cost of reviewing the license application and of monitoring for compliance with the conditions of the license. A permit for construction of a uranium or thorium mill may be granted by the secretary prior to licensing. [1979 ex.s. c 110 § 3.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.040 Facility operations and decommissioning—Monitoring. The secretary or his representative shall monitor the operations of the mill for compliance with the conditions of the license by the owner or operator. The mill owner or operator shall be responsible for compliance, both during the lifetime of the facility and at shutdown, including but not limited to such requirements as fencing and posting the site; contouring, covering, and stabilizing the pile; and for decommissioning the facility. [1979 ex.s. c 110 § 4.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.050 Radiation perpetual maintenance fund—Licensee contributions—Disposition. On a quarterly basis on and after January 1, 1980, there shall be levied and the department shall collect a charge of five cents per pound on each pound of uranium or thorium compound milled out of the raw ore. All moneys paid to the department from these charges shall be deposited in a special security fund in the treasury of the state of Washington to be known as the "radiation perpetual maintenance fund". This security fund shall be used by the department when a licensee has ceased to operate and the site may still contain, or have associated with the site at which the licensed activity was conducted in spite of full compliance with RCW 70.121.030, radioactive material which will require further maintenance, surveillance, or other care. If, with respect to a licensee, the department determines that the estimated total of these charges will be less than or greater than that required to defray the estimated cost of administration of this responsibility, the department may prescribe such an increased or decreased charge as is considered necessary for this purpose. If, at termination of the license, the department determines that by the applicable standards and practices then in effect, the charges which have been collected from the licensee and earnings generated therefrom are in excess of the amount required to defray the cost of this responsibility, the department may refund the excess portion to the licensee. If, at termination of the license or cessation of operation, the department determines, by the applicable standards and practices then in effect, that the charges which have been collected from the licensee and earnings generated therefrom are together insufficient to defray the cost of this responsibility, the department may collect the excess portion from the licensee.

Moneys in the radiation perpetual maintenance fund shall be invested by the state investment board in the manner as other state moneys. [1987 c 184 § 2; 1979 ex.s. c 110 § 5.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.060 State authority to acquire property for surveillance sites. In order to provide for the proper care and

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surveillance of sites under RCW 70.121.050, the state may acquire by gift or transfer from any government agency, corporation, partnership, or person, all lands, buildings, and grounds necessary to fulfill the purposes of this chapter. Any such gift or transfer shall be subject to approval by the department. In exercising the authority of this section, the department shall take into consideration the status of the ownership of the land and interests therein and the ability of the licensee to transfer title and custody thereof to the state. [1979 ex.s. c 110 § 6.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.070 Status of acquired state property for surveillance sites. Recognizing the uncertainty of the existence of a person or corporation in perpetuity, and recognizing that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any particular agency or department thereof, all lands, buildings, and grounds acquired by the state under RCW 70.121.060 shall be owned in fee simple by the state and dedicated in perpetuity to the purposes stated in RCW 70.121.060. All radioactive material received at a site and located therein at the time of acquisition of ownership by the state shall become the property of the state. [1979 ex.s. c 110 § 7.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.080 Payment for transferred sites for surveillance. If a person licensed by any governmental agency other than the state or if any other governmental agency desires to transfer a site to the state for the purpose of administering or providing perpetual care, a lump sum payment shall be made to the radiation perpetual maintenance fund. The amount of the deposit shall be determined by the department taking into consideration the factors stated in RCW 70.121.050. [1979 ex.s. c 110 § 8.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.090 Authority for on-site inspections and monitoring. Each licensee under this chapter, as a condition of his license, shall submit to whatever reasonable on-site inspections and on-site monitoring as required in order for the department to carry out its responsibilities and duties under this chapter. Such on-site inspections and monitoring shall be conducted without the necessity of any further approval or any permit or warrant therefor. [1979 ex.s. c 110 § 9.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.100 Licensees' bond requirements. The secretary or the secretary's duly authorized representative shall require the posting of a bond by licensees to be used exclusively to provide funds in the event of abandonment, default, or other inability of the licensee to meet the requirements of the department. The secretary may establish bonding requirements by classes of licensees and by range of monetary amounts. In establishing these requirements, the secretary

shall consider the potential for contamination, injury, cost of disposal, and reclamation of the property. The amount of the bond shall be sufficient to pay the costs of reclamation and perpetual maintenance. [1987 c 184 § 5; 1979 ex.s. c 110 § 10.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.110 Acceptable bonds. A bond shall be accepted by the department if it is a bond issued by a fidelity or surety company admitted to do business in the state of Washington and the fidelity or surety company is found by the state finance commission to be financially secure at licensing and licensing renewals, if it is a personal bond secured by such collateral as the secretary deems satisfactory and in accordance with RCW 70.121.100, or if it is a cash bond. [1987 c 184 § 6; 1979 ex.s. c 110 § 11.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.120 Forfeited bonds—Use of fund. All bonds forfeited shall be paid to the department for deposit in the radiation perpetual maintenance fund. All moneys in this fund may only be expended by the department as necessary for the protection of the public health and safety and shall not be used for normal operating expenses of the department. [1979 ex.s. c 110 § 12.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.130 Exemptions from bonding requirements. All state, local, or other governmental agencies, or subdivisions thereof, are exempt from the bonding requirements of this chapter. [1987 c 184 § 7; 1979 ex.s. c 110 § 13.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.140 Amounts owed to state—Lien created. If a licensee fails to pay the department within a reasonable time money owed to the state under this chapter, the obligation owed to the state shall constitute a lien on all property, both real and personal, owned by the obligor-licensee when the department records or files, pursuant to this section, a statement of claim against the obligor-licensee. The statement of claim against the obligor-licensee shall name the obligor-licensee, name the state as obligee, describe the obligation, and describe the property to be held in security for the obligation.

Statements of claim creating a lien on real property, fixtures, timber, agricultural products, oil, gas, or minerals shall be recorded with the county auditor in each county where the property is located. Statements of claim creating a lien in personal property, whether tangible or intangible, shall be filed with the department of licensing.

A lien recorded or filed pursuant to this section has priority over any lien, interest, or other encumbrance previously or thereafter recorded or filed concerning any property described in the statement of claim, to the extent allowed by federal law.

A lien created pursuant to this section shall continue in force until extinguished by foreclosure or bankruptcy pro-

ceedings or until a release of the lien signed by the secretary is recorded or filed in the place where the statement of claim was recorded or filed. The secretary shall sign and record or file a release only after the obligation owed to the state under this chapter, together with accrued interest and costs of collection has been paid. [1987 c 184 § 3.]

70.121.150 Amounts owed to the state—Collection by attorney general. The attorney general shall use all available methods of obtaining funds owed to the state under this chapter. The attorney general shall foreclose on liens made pursuant to this section, obtain judgments against obligor-licensees and pursue assets of the obligor-licensees found outside the state, consider pursuing the assets of parent corporations and shareholders where an obligor-licensee corporation is an underfinanced corporation, and pursue any other legal remedy available. [1987 c 184 § 4.]

70.121.900 Construction. This chapter is cumulative and not exclusive, and no part of this chapter shall be construed to repeal any existing law specifically enacted for the protection of the public health and safety. [1979 ex.s. c 110 § 14.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.905 Short title. This chapter may be known as the "Mill Tailings Licensing and Perpetual Care Act of 1979". [1979 ex.s. c 110 § 15.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.910 Severability—1979 ex.s. c 110. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 110 § 16.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

Chapter 70.122 RCW NATURAL DEATH ACT

Sections

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70.122.915	Application—1992 c 98.
70.122.920	Severability—1992 c 98.

Futile treatment and emergency medical personnel: RCW 43.70.480.

70.122.010 Legislative findings. The legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their own health care, including the decision to have life-sustaining treatment withheld or withdrawn in instances of a terminal condition or permanent unconscious condition.

The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits.

The legislature further finds that, in the interest of protecting individual autonomy, such prolongation of the process of dying for persons with a terminal condition or permanent unconscious condition may cause loss of patient dignity, and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient. The legislature further believes that physicians and nurses should not withhold or unreasonably diminish pain medication for patients in a terminal condition where the primary intent of providing such medication is to alleviate pain and maintain or increase the patient's comfort.

The legislature further finds that there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use or application of life-sustaining treatment where the patient having the capacity to make health care decisions has voluntarily evidenced a desire that such treatment be withheld or withdrawn.

In recognition of the dignity and privacy which patients have a right to expect, the legislature hereby declares that the laws of the state of Washington shall recognize the right of an adult person to make a written directive instructing such person's physician to withhold or withdraw life-sustaining treatment in the event of a terminal condition or permanent unconscious condition. The legislature also recognizes that a person's right to control his or her health care may be exercised by an authorized representative who validly holds the person's durable power of attorney for health care. [1992 c 98 § 1; 1979 c 112 § 2.]

70.122.020 Definitions. Unless the context clearly requires otherwise, the definitions contained in this section shall apply throughout this chapter.

(1) "Adult person" means a person who has attained the age of majority as defined in RCW 26.28.010 and 26.28.015, and who has the capacity to make health care decisions.

(2) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(3) "Directive" means a written document voluntarily executed by the declarer generally consistent with the guidelines of RCW 70.122.030.

(4) "Health facility" means a hospital as defined in *RCW 70.41.020(2) or a nursing home as defined in RCW 18.51.010, a home health agency or hospice agency as defined in RCW 70.126.010, or a boarding home as defined in RCW 18.20.020.

(5) "Life-sustaining treatment" means any medical or surgical intervention that uses mechanical or other artificial means, including artificially provided nutrition and hydration, to sustain, restore, or replace a vital function, which, when applied to a qualified patient, would serve only to prolong the process of dying. "Life-sustaining treatment" shall

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not include the administration of medication or the performance of any medical or surgical intervention deemed necessary solely to alleviate pain.

(6) "Permanent unconscious condition" means an incurable and irreversible condition in which the patient is medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

(7) "Physician" means a person licensed under chapters 18.71 or 18.57 RCW.

(8) "Qualified patient" means an adult person who is a patient diagnosed in writing to have a terminal condition by the patient's attending physician, who has personally examined the patient, or a patient who is diagnosed in writing to be in a permanent unconscious condition in accordance with accepted medical standards by two physicians, one of whom is the patient's attending physician, and both of whom have personally examined the patient.

(9) "Terminal condition" means an incurable and irreversible condition caused by injury, disease, or illness, that, within reasonable medical judgment, will cause death within a reasonable period of time in accordance with accepted medical standards, and where the application of life-sustaining treatment serves only to prolong the process of dying. [1992 c 98 § 2; 1979 c 112 § 3.]

*Reviser's note: RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

70.122.030 Directive to withhold or withdraw life-sustaining treatment. (1) Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining treatment in a terminal condition or permanent unconscious condition. The directive shall be signed by the declarer in the presence of two witnesses not related to the declarer by blood or marriage and who would not be entitled to any portion of the estate of the declarer upon declarer's decease under any will of the declarer or codicil thereto then existing or, at the time of the directive, by operation of law then existing. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarer is a patient, or any person who has a claim against any portion of the estate of the declarer upon declarer's decease at the time of the execution of the directive. The directive, or a copy thereof, shall be made part of the patient's medical records retained by the attending physician, a copy of which shall be forwarded by the custodian of the records to the health facility when the withholding or withdrawal of life-support treatment is contemplated. The directive may be in the following form, but in addition may include other specific directions:

Health Care Directive

Directive made this . . . day of (month, year).

I , having the capacity to make health care decisions, willfully, and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and do hereby declare that:

(a) If at any time I should be diagnosed in writing to be in a terminal condition by the attending physician, or in a permanent unconscious condition by two physicians, and where the application of life-sustaining treatment would serve only

to artificially prolong the process of my dying, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally. I understand by using this form that a terminal condition means an incurable and irreversible condition caused by injury, disease, or illness, that would within reasonable medical judgment cause death within a reasonable period of time in accordance with accepted medical standards, and where the application of life-sustaining treatment would serve only to prolong the process of dying. I further understand in using this form that a permanent unconscious condition means an incurable and irreversible condition in which I am medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

(b) In the absence of my ability to give directions regarding the use of such life-sustaining treatment, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences of such refusal. If another person is appointed to make these decisions for me, whether through a durable power of attorney or otherwise, I request that the person be guided by this directive and any other clear expressions of my desires.

(c) If I am diagnosed to be in a terminal condition or in a permanent unconscious condition (check one):

I DO want to have artificially provided nutrition and hydration.

I DO NOT want to have artificially provided nutrition and hydration.

(d) If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

(e) I understand the full import of this directive and I am emotionally and mentally capable to make the health care decisions contained in this directive.

(f) I understand that before I sign this directive, I can add to or delete from or otherwise change the wording of this directive and that I may add to or delete from this directive at any time and that any changes shall be consistent with Washington state law or federal constitutional law to be legally valid.

(g) It is my wish that every part of this directive be fully implemented. If for any reason any part is held invalid it is my wish that the remainder of my directive be implemented.

Signed

City, County, and State of Residence

The declarer has been personally known to me and I believe him or her to be capable of making health care decisions.

Witness

Witness

(2) Prior to withholding or withdrawing life-sustaining treatment, the diagnosis of a terminal condition by the attending physician or the diagnosis of a permanent unconscious state by two physicians shall be entered in writing and made a permanent part of the patient's medical records.

(3) A directive executed in another political jurisdiction is valid to the extent permitted by Washington state law and federal constitutional law. [1992 c 98 § 3; 1979 c 112 § 4.]

70.122.040 Revocation of directive. (1) A directive may be revoked at any time by the declarer, without regard to the declarer's mental state or competency, by any of the following methods:

(a) By being canceled, defaced, obliterated, burned, torn, or otherwise destroyed by the declarer or by some person in the declarer's presence and by the declarer's direction.

(b) By a written revocation of the declarer expressing his or her intent to revoke, signed, and dated by the declarer. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation.

(c) By a verbal expression by the declarer of his or her intent to revoke the directive. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when the physician received notification of the revocation.

(d) In the case of a directive that is stored in the health care declarations registry under RCW 70.122.130, by an online method established by the department of health. Failure to use this method of revocation for a directive that is stored in the registry does not invalidate a revocation that is made by another method described under this section.

(2) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual or constructive knowledge of the revocation except as provided in RCW 70.122.051(4).

(3) If the declarer becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarer's condition renders the declarer able to communicate with the attending physician. [2006 c 108 § 4; 1979 c 112 § 5.]

Finding—Intent—2006 c 108: See note following RCW 70.122.130.

70.122.051 Liability of health care provider. (1) For the purposes of this section, "provider" means a physician, advanced registered nurse practitioner, health care provider acting under the direction of a physician or an advanced registered nurse practitioner, or health care facility, as defined in this chapter or in chapter 71.32 RCW, and its personnel.

(2) Any provider who participates in good faith in the withholding or withdrawal of life-sustaining treatment from a qualified patient in accordance with the requirements of this chapter, shall be immune from legal liability, including civil, criminal, or professional conduct sanctions, unless otherwise negligent.

(3) The establishment of a health care declarations registry does not create any new or distinct obligation for a provider to determine whether a patient has a health care declaration.

(4) A provider is not subject to civil or criminal liability or sanctions for unprofessional conduct under the uniform

disciplinary act, chapter 18.130 RCW, when in good faith and without negligence:

(a) The provider provides, does not provide, withdraws, or withholds treatment to a patient in the absence of actual knowledge of the existence of a health care declaration stored in the health care declarations registry established in RCW 70.122.130;

(b) The provider provides, does not provide, withdraws, or withholds treatment pursuant to a health care declaration stored in the health care declarations registry established in RCW 70.122.130 in the absence of actual knowledge of the revocation of the declaration;

(c) The provider provides, does not provide, withdraws, or withholds treatment according to a health care declaration stored in the health care declarations registry established in RCW 70.122.130 in good faith reliance upon the validity of the health care declaration and the declaration is subsequently found to be invalid; or

(d) The provider provides, does not provide, withdraws, or withholds treatment according to the patient's health care declaration stored in the health care declarations registry established in RCW 70.122.130.

(5) Except for acts of gross negligence, willful misconduct, or intentional wrongdoing, the department of health is not subject to civil liability for any claims or demands arising out of the administration or operation of the health care declarations registry established in RCW 70.122.130. [2006 c 108 § 6; 1992 c 98 § 5.]

Finding—Intent—2006 c 108: See note following RCW 70.122.130.

70.122.060 Procedures by physician—Health care facility or personnel may refuse to participate. (1) Prior to the withholding or withdrawal of life-sustaining treatment from a qualified patient pursuant to the directive, the attending physician shall make a reasonable effort to determine that the directive complies with RCW 70.122.030 and, if the patient is capable of making health care decisions, that the directive and all steps proposed by the attending physician to be undertaken are currently in accord with the desires of the qualified patient.

(2) The attending physician or health facility shall inform a patient or patient's authorized representative of the existence of any policy or practice that would preclude the honoring of the patient's directive at the time the physician or facility becomes aware of the existence of such a directive. If the patient, after being informed of such policy or directive, chooses to retain the physician or facility, the physician or facility with the patient or the patient's representative shall prepare a written plan to be filed with the patient's directive that sets forth the physician's or facilities' intended actions should the patient's medical status change so that the directive would become operative. The physician or facility under this subsection has no obligation to honor the patient's directive if they have complied with the requirements of this subsection, including compliance with the written plan required under this subsection.

(3) The directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining treatment. No physician, health facility, or health personnel acting in good faith

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with the directive or in accordance with the written plan in subsection (2) of this section shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection.

(4) No nurse, physician, or other health care practitioner may be required by law or contract in any circumstances to participate in the withholding or withdrawal of life-sustaining treatment if such person objects to so doing. No person may be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the withholding or withdrawal of life-sustaining treatment. [1992 c 98 § 6; 1979 c 112 § 7.]

70.122.070 Effects of carrying out directive—Insurance. (1) The withholding or withdrawal of life-sustaining treatment from a qualified patient pursuant to the patient's directive in accordance with the provisions of this chapter shall not, for any purpose, constitute a suicide or a homicide.

(2) The making of a directive pursuant to RCW 70.122.030 shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(3) No physician, health facility, or other health provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan, shall require any person to execute a directive as a condition for being insured for, or receiving, health care services. [1992 c 98 § 7; 1979 c 112 § 8.]

70.122.080 Effects of carrying out directive on cause of death. The act of withholding or withdrawing life-sustaining treatment, when done pursuant to a directive described in RCW 70.122.030 and which results in the death of the declarer, shall not be construed to be an intervening force or to affect the chain of proximate cause between the conduct of anyone that placed the declarer in a terminal condition or a permanent unconscious condition and the death of the declarer. [1992 c 98 § 8; 1979 c 112 § 10.]

70.122.090 Criminal conduct—Penalties. (1) Any person who willfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarer's consent is guilty of a gross misdemeanor.

(2) Any person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation as provided in RCW 70.122.040 with the intent to cause a withholding or withdrawal of life-sustaining treatment contrary to the wishes of the declarer, and thereby, because of any such act, directly causes life-sustaining treatment to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for murder in the first degree as defined in RCW 9A.32.030. [2003 c 53 § 362; 1992 c 98 § 9; 1979 c 112 § 9.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.122.100 Mercy killing or physician-assisted suicide not authorized. Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or physician-assisted suicide, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. [1992 c 98 § 10; 1979 c 112 § 11.]

70.122.110 Discharge so that patient may die at home. If a qualified patient capable of making health care decisions indicates that he or she wishes to die at home, the patient shall be discharged as soon as reasonably possible. The health care provider or facility has an obligation to explain the medical risks of an immediate discharge to the qualified patient. If the provider or facility complies with the obligation to explain the medical risks of an immediate discharge to a qualified patient, there shall be no civil or criminal liability for claims arising from such discharge. [1992 c 98 § 4.]

70.122.120 Directive's validity assumed. Any person or health facility may assume that a directive complies with this chapter and is valid. [1992 c 98 § 12.]

70.122.130 Health care declarations registry—Rules—Report. (1) The department of health shall establish and maintain a statewide health care declarations registry containing the health care declarations identified in subsection (2) of this section as submitted by residents of Washington. The department shall digitally reproduce and store health care declarations in the registry. The department may establish standards for individuals to submit digitally reproduced health care declarations directly to the registry, but is not required to review the health care declarations that it receives to ensure they comply with the particular statutory requirements applicable to the document. The department may contract with an organization that meets the standards identified in this section.

(2)(a) An individual may submit any of the following health care declarations to the department of health to be digitally reproduced and stored in the registry:

- (i) A directive, as defined by this chapter;
- (ii) A durable power of attorney for health care, as authorized in chapter 11.94 RCW;
- (iii) A mental health advance directive, as defined by chapter 71.32 RCW; or
- (iv) A form adopted pursuant to the department of health's authority in RCW 43.70.480.

(b) Failure to submit a health care declaration to the department of health does not affect the validity of the declaration.

(c) Failure to notify the department of health of a valid revocation of a health care declaration does not affect the validity of the revocation.

(d) The entry of a health care directive in the registry under this section does not:

- (i) Affect the validity of the document;
- (ii) Take the place of any requirements in law necessary to make the submitted document legal; or

(iii) Create a presumption regarding the validity of the document.

(3) The department of health shall prescribe a procedure for an individual to revoke a health care declaration contained in the registry.

(4) The registry must:

(a) Be maintained in a secure database that is accessible through a web site maintained by the department of health;

(b) Send annual electronic messages to individuals that have submitted health care declarations to request that they review the registry materials to ensure that it is current;

(c) Provide individuals who have submitted one or more health care declarations with access to their documents and the ability to revoke their documents at all times; and

(d) Provide the personal representatives of individuals who have submitted one or more health care declarations to the registry, attending physicians, advanced registered nurse practitioners, health care providers licensed by a disciplining authority identified in RCW 18.130.040 who is acting under the direction of a physician or an advanced registered nurse practitioner, and health care facilities, as defined in this chapter or in chapter 71.32 RCW, access to the registry at all times.

(5) In designing the registry and web site, the department of health shall ensure compliance with state and federal requirements related to patient confidentiality.

(6) The department shall provide information to health care providers and health care facilities on the registry web site regarding the different federal and Washington state requirements to ascertain and document whether a patient has an advance directive.

(7) The department of health may accept donations, grants, gifts, or other forms of voluntary contributions to support activities related to the creation and maintenance of the health care declarations registry and statewide public education campaigns related to the existence of the registry. All funds received shall be transferred to the health care declarations registry account, created in RCW 70.122.140.

(8) The department of health may adopt rules as necessary to implement chapter 108, Laws of 2006.

(9) By December 1, 2008, the department shall report to the house and senate committees on health care the following information:

- (a) Number of participants in the registry;
- (b) Number of health care declarations submitted by type of declaration as defined in this section;
- (c) Number of health care declarations revoked and the method of revocation;
- (d) Number of providers and facilities, by type, that have been provided access to the registry;
- (e) Actual costs of operation of the registry;
- (f) Donations received by the department for deposit into the health care declarations registry account, created in RCW 70.122.140 by type of donor. [2006 c 108 § 2.]

Finding—Intent—2006 c 108: "The legislature finds that effective communication between patients, their families, and their caregivers regarding their wishes if they become incapacitated results in health care decisions that are more respectful of patients' desires. Whether the communication is for end-of-life planning or incapacity resulting from mental illness, the state must respect those wishes and support efforts to facilitate such communications and to make that information available when it is needed.

It is the intent of the legislature to establish an electronic registry to

improve access to health care decision-making documents. The registry would support, not supplant, the current systems for advance directives and mental health advance directives by improving access to these documents. It is the legislature's intent that the registry would be consulted by health care providers in every instance where there may be a question about the patient's wishes for periods of incapacity and the existence of a document that may clarify a patient's intentions unless the circumstances are such that consulting the registry would compromise the emergency care of the patient." [2006 c 108 § 1.]

70.122.140 Health care declarations registry account. The health care declarations registry account is created in the state treasury. All receipts from donations made under RCW 70.122.130, and other contributions and appropriations specifically made for the purposes of creating and maintaining the registry established by RCW 70.122.130 and statewide public education campaigns related to the existence of the registry, shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for purposes of the health care declarations registry. [2006 c 108 § 3.]

Finding—Intent—2006 c 108: See note following RCW 70.122.130.

70.122.900 Short title—1979 c 112. This act shall be known and may be cited as the "Natural Death Act". [1979 c 112 § 1.]

70.122.905 Severability—1979 c 112. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. [1979 c 112 § 13.]

70.122.910 Construction. This chapter shall not be construed as providing the exclusive means by which individuals may make decisions regarding their health treatment, including but not limited to, the withholding or withdrawal of life-sustaining treatment, nor limiting the means provided by case law more expansive than chapter 98, Laws of 1992. [1992 c 98 § 11.]

70.122.915 Application—1992 c 98. A directive executed anytime before June 11, 1992, which generally complies with chapter 98, Laws of 1992 is effective under chapter 98, Laws of 1992. [1992 c 98 § 13.]

70.122.920 Severability—1992 c 98. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 98 § 17.]

Chapter 70.123 RCW SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

Sections

70.123.010	Legislative findings.
70.123.020	Definitions.
70.123.030	Departmental duties and responsibilities.
70.123.040	Minimum standards to provide basic survival needs.
70.123.050	Contracts with nonprofit organizations—Purposes.

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70.123.070	Duties and responsibilities of shelters.
70.123.075	Client records.
70.123.076	Disclosure of recipient information.
70.123.080	Department to consult.
70.123.090	Contracts for shelter services.
70.123.100	Funding for shelters.
70.123.110	Assistance to families in shelters.
70.123.120	Liability for withholding services.
70.123.130	Technical assistance grant program—Local communities.
70.123.140	Technical assistance grant for county plans.
70.123.150	Domestic violence prevention account.
70.123.900	Severability—1979 ex.s. c 245.

Domestic violence—Official response: Chapter 10.99 RCW.

Domestic violence prevention: Chapter 26.50 RCW.

Donations of surplus state property: RCW 43.19.1920.

Public records: Chapter 42.56 RCW.

70.123.010 Legislative findings. The legislature finds that domestic violence is an issue of growing concern at all levels of government and that there is a present and growing need to develop innovative strategies and services which will ameliorate and reduce the trauma of domestic violence. Research findings show that domestic violence constitutes a significant percentage of homicides, aggravated assaults, and assaults and batteries in the United States. Domestic violence is a disruptive influence on personal and community life and is often interrelated with a number of other family problems and stresses. Shelters for victims of domestic violence are essential to provide protection to victims from further abuse and physical harm and to help the victim find long-range alternative living situations, if requested. Shelters provide safety, refuge, advocacy, and helping resources to victims who may not have access to such things if they remain in abusive situations.

The legislature therefore recognizes the need for the statewide development and expansion of shelters for victims of domestic violence. [1979 ex.s. c 245 § 1.]

70.123.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Shelter" means a place of temporary refuge, offered on a twenty-four hour, seven day per week basis to victims of domestic violence and their children.

(2) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one cohabitant against another.

(3) "Department" means the department of social and health services.

(4) "Victim" means a cohabitant who has been subjected to domestic violence.

(5) "Cohabitant" means a person who is or was married, in a state registered domestic partnership, or cohabiting with another person in an intimate or dating relationship at the present or at sometime in the past. Any person who has one or more children in common with another person, regardless of whether they have been married, in a domestic partnership with each other, or lived together at any time, shall be treated as a cohabitant.

(6) "Community advocate" means a person employed by a local domestic violence program to provide ongoing assistance to victims of domestic violence in assessing safety needs, documenting the incidents and the extent of violence for possible use in the legal system, making appropriate

social service referrals, and developing protocols and maintaining ongoing contacts necessary for local systems coordination.

(7) "Domestic violence program" means an agency that provides shelter, advocacy, and counseling for domestic violence victims in a supportive environment.

(8) "Legal advocate" means a person employed by a domestic violence program or court system to advocate for victims of domestic violence, within the criminal and civil justice systems, by attending court proceedings, assisting in document and case preparation, and ensuring linkage with the community advocate.

(9) "Secretary" means the secretary of the department of social and health services or the secretary's designee. [2008 c 6 § 303; 1991 c 301 § 9; 1979 ex.s. c 245 § 2.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.030 Departmental duties and responsibilities.

The department of social and health services, in consultation with the state department of health, and individuals or groups having experience and knowledge of the problems of victims of domestic violence, shall:

(1) Establish minimum standards for shelters applying for grants from the department under this chapter. Classifications may be made dependent upon size, geographic location, and population needs;

(2) Receive grant applications for the development and establishment of shelters for victims of domestic violence;

(3) Distribute funds, within forty-five days after approval, to those shelters meeting departmental standards;

(4) Evaluate biennially each shelter receiving departmental funds for compliance with the established minimum standards;

(5) Review the minimum standards each biennium to ensure applicability to community and client needs; and

(6) Administer funds available from the domestic violence prevention account under RCW 70.123.150 and establish minimum standards for preventive, nonshelter community-based services receiving funds administered by the department. Preventive, nonshelter community-based services include services for victims of domestic violence from communities that have been traditionally underserved or unserved and services for children who have witnessed domestic violence. [2005 c 374 § 4; 1989 1st ex.s. c 9 § 235; 1979 ex.s. c 245 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.123.040 Minimum standards to provide basic survival needs. (1) Minimum standards established by the department under RCW 70.123.030 shall ensure that shelters receiving grants under this chapter provide services meeting basic survival needs, where not provided by other means, such as, but not limited to, food, clothing, housing, safety, security, client advocacy, client confidentiality, and counseling. These services shall be problem-oriented and designed to provide necessary assistance to the victims of domestic violence and their children.

(2) The department shall establish minimum standards that ensure that nonshelter community-based services for victims of domestic violence funded under RCW 70.123.150 provide services designed to enhance safety and security by means such as, but not limited to, client advocacy, client confidentiality, and counseling. [2006 c 259 § 3; 1979 ex.s. c 245 § 4.]

70.123.050 Contracts with nonprofit organizations—Purposes. The department shall contract, where appropriate, with public or private nonprofit groups or organizations with experience and expertise in the field of domestic violence to:

(1) Develop and implement an educational program designed to promote public and professional awareness of the problems of domestic violence and of the availability of services for victims of domestic violence. Particular emphasis should be given to the education needs of law enforcement agencies, the legal system, the medical profession, and other relevant professions that are engaged in the prevention, identification, and treatment of domestic violence;

(2) Maintain a directory of temporary shelters and other direct service facilities for the victims of domestic violence which is current, complete, detailed, and available, as necessary, to provide useful referral services to persons seeking help on an emergency basis;

(3) Create a statewide toll-free telephone number that would provide information and referral to victims of domestic violence;

(4) Provide opportunities to persons working in the area of domestic violence to exchange information; and

(5) Provide training opportunities for both volunteer workers and staff personnel. [1979 ex.s. c 245 § 5.]

70.123.070 Duties and responsibilities of shelters. Shelters receiving state funds under this chapter shall:

(1) Make available shelter services to any person who is a victim of domestic violence and to that person's children;

(2) Encourage victims, with the financial means to do so, to reimburse the shelter for the services provided;

(3) Recruit, to the extent feasible, persons who are former victims of domestic violence to work as volunteers or staff personnel. An effort shall also be made to provide bilingual services;

(4) Provide prevention and treatment programs to victims of domestic violence, their children and, where possible, the abuser;

(5) Provide a day program or drop-in center to assist victims of domestic violence who have found other shelter but who have a need for support services. [1979 ex.s. c 245 § 7.]

70.123.075 Client records. (1) Client records maintained by domestic violence programs shall not be subject to discovery in any judicial proceeding unless:

(a) A written pretrial motion is made to a court stating that discovery is requested of the client's domestic violence records;

(b) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why discovery is requested of the domestic violence program's records;

(c) The court reviews the domestic violence program's records in camera to determine whether the domestic violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records; and

(d) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

(2) For purposes of this section "domestic violence program" means a program that provides shelter, advocacy, or counseling services for domestic violence victims. [1994 c 233 § 1; 1991 c 301 § 10.]

Effective date—1994 c 233: "This act shall take effect July 1, 1994." [1994 c 233 § 3.]

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.076 Disclosure of recipient information. (1) Except as authorized in subsections (2) and (3) of this section, or pursuant to court order under RCW 70.123.075, a domestic violence program, an individual who assists a domestic violence program in the delivery of services, or an agent, employee, or volunteer of a domestic violence program shall not disclose information about a recipient of shelter, advocacy, or counseling services without the informed authorization of the recipient. In the case of an unemancipated minor, the minor and the parent or guardian must provide the authorization. For the purposes of this section, a "domestic violence program" means an agency that provides shelter, advocacy, or counseling for domestic violence victims in a supportive environment.

(2)(a) A recipient of shelter, advocacy, or counseling services may authorize a domestic violence program to disclose information about the recipient. The authorization must be in writing, signed by the recipient, or if an unemancipated minor is the recipient, signed by the minor and the parent or guardian, and must contain a reasonable time limit on the duration of the recipient's authorization. If the authorization does not contain a date upon which the authorization to disclose information expires, the recipient's authorization expires ninety days after the date it was signed.

(b) The domestic violence program's disclosure of information shall be only to the extent authorized by the recipient. The domestic violence program, if requested, shall provide a copy of the disclosed information to the recipient.

(c) Except as provided under this chapter, an authorization is not a waiver of the recipient's rights or privileges under other statutes, rules of evidence, or common law.

(3) If disclosure of a recipient's information is required by statute or court order, the domestic violence program shall make reasonable attempts to provide notice to the recipient affected by the disclosure of information. If personally identifying information is or will be disclosed, the domestic violence program shall take steps necessary to protect the privacy and safety of the persons affected by the disclosure of the information.

(4) To comply with tribal, federal, state, or territorial reporting, evaluation, or data collection requirements, domestic violence programs may share data in the aggregate that does not contain personally identifying information and

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that: (a) Pertains to services to their clients; or (b) is demographic information. [2006 c 259 § 4.]

70.123.080 Department to consult. The department shall consult in all phases with persons and organizations having experience and expertise in the field of domestic violence. [1979 ex.s. c 245 § 8.]

70.123.090 Contracts for shelter services. The department is authorized, under this chapter and the rules adopted to effectuate its purposes, to make available grants awarded on a contract basis to public or private nonprofit agencies, organizations, or individuals providing shelter services meeting minimum standards established by the department. Consideration as to need, geographic location, population ratios, and the extent of existing services shall be made in the award of grants. The department shall provide technical assistance to any nonprofit organization desiring to apply for the contracts if the organization does not possess the resources and expertise necessary to develop and transmit an application without assistance. [1979 ex.s. c 245 § 9.]

70.123.100 Funding for shelters. The department shall seek, receive, and make use of any funds which may be available from federal or other sources in order to augment state funds appropriated for the purpose of this chapter, and shall make every effort to qualify for federal funding. [1997 c 160 § 1; 1979 ex.s. c 245 § 10.]

70.123.110 Assistance to families in shelters. General assistance or temporary assistance for needy families payments shall be made to otherwise eligible individuals who are residing in a secure shelter, a housing network or other shelter facility which provides shelter services to persons who are victims of domestic violence. Provisions shall be made by the department for the confidentiality of the shelter addresses where victims are residing. [1997 c 59 § 9; 1979 ex.s. c 245 § 11.]

70.123.120 Liability for withholding services. A shelter shall not be held liable in any civil action for denial or withdrawal of services provided pursuant to the provisions of this chapter. [1979 ex.s. c 245 § 12.]

70.123.130 Technical assistance grant program—Local communities. The department of social and health services shall establish a technical assistance grant program to assist local communities in determining how to respond to domestic violence. The goals of the program shall be to coordinate and expand existing services to:

(1) Serve any individual affected by domestic violence with the primary focus being the safety of the victim;

(2) Assure an integrated, comprehensive, accountable community response that is adequately funded and sensitive to the diverse needs of the community;

(3) Create a continuum of services that range from prevention, crisis intervention, and counseling through shelter, advocacy, legal intervention, and representation to longer term support, counseling, and training; and

(4) Coordinate the efforts of government, the legal system, the private sector, and a range of service providers, such as doctors, nurses, social workers, teachers, and child care workers. [1991 c 301 § 11.]

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.140 Technical assistance grant for county plans. (1) A county or group of counties may apply to the department for a technical assistance grant to develop a comprehensive county plan for dealing with domestic violence. The county authority may contract with a local nonprofit entity to develop the plan.

(2) County comprehensive plans shall be developed in consultation with the department, domestic violence programs, schools, law enforcement, and health care, legal, and social service providers that provide services to persons affected by domestic violence.

(3) County comprehensive plans shall be based on the following principles:

- (a) The safety of the victim is primary;
 - (b) The community needs to be well-educated about domestic violence;
 - (c) Those who want to and who should intervene need to know how to do so effectively;
 - (d) Adequate services, both crisis and long-term support, should exist throughout all parts of the county;
 - (e) Police and courts should hold the batterer accountable for his or her crimes;
 - (f) Treatment for batterers should be provided by qualified counselors; and
 - (g) Coordination teams are needed to ensure that the system continues to work over the coming decades.
- (4) County comprehensive plans shall provide for the following:
- (a) Public education about domestic violence;
 - (b) Training for professionals on how to recognize domestic violence and assist those affected by it;
 - (c) Development of protocols among agencies so that professionals respond to domestic violence in an effective, consistent manner;
 - (d) Development of services to victims of domestic violence and their families, including shelters, safe homes, transitional housing, community and legal advocates, and children's services; and
 - (e) Local and regional teams to oversee implementation of the system, ensure that efforts continue over the years, and assist with day-to-day and system-wide coordination. [1991 c 301 § 12.]

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.150 Domestic violence prevention account. The domestic violence prevention account is created in the state treasury. All receipts from fees imposed for deposit in the domestic violence prevention account under RCW 36.18.016 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for funding nonshelter community-based services for victims of domestic violence. [2005 c 374 § 3.]

70.123.900 Severability—1979 ex.s. c 245. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 245 § 15.]

Chapter 70.124 RCW ABUSE OF PATIENTS

Sections

70.124.010	Legislative findings.
70.124.020	Definitions.
70.124.030	Reports of abuse or neglect.
70.124.040	Reports to department or law enforcement agency—Action required.
70.124.050	Investigations required—Seeking restraining orders authorized.
70.124.060	Liability of persons making reports.
70.124.070	Failure to report is gross misdemeanor.
70.124.080	Department reports of abused or neglected patients.
70.124.090	Publicizing objectives.
70.124.100	Retaliation against whistleblowers and residents—Remedies—Rules.
70.124.900	Severability—1979 ex.s. c 228.

Persons over sixty, abuse: Chapter 74.34 RCW.

70.124.010 Legislative findings. (1) The Washington state legislature finds and declares that a reporting system is needed to protect state hospital patients from abuse. Instances of nonaccidental injury, neglect, death, sexual abuse, and cruelty to such patients have occurred, and in the instance where such a patient is deprived of his or her right to conditions of minimal health and safety, the state is justified in emergency intervention based upon verified information. Therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities.

(2) It is the intent of the legislature that: (a) As a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of the patients; and (b) such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious, or erroneous information or actions. [1999 c 176 § 20; 1981 c 174 § 1; 1979 ex.s. c 228 § 1.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

70.124.020 Definitions. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Court" means the superior court of the state of Washington.

(2) "Law enforcement agency" means the police department, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, pharmacy, physical therapy, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery. The term "practitioner" includes a nurse's aide and a duly accredited Christian Science practitioner.

(4) "Department" means the state department of social and health services.

(5) "Social worker" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of patients, or providing social services to patients, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(6) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(8) "Abuse or neglect" or "patient abuse or neglect" means the nonaccidental physical injury or condition, sexual abuse, or negligent treatment of a state hospital patient under circumstances which indicate that the patient's health, welfare, or safety is harmed thereby.

(9) "Negligent treatment" means an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the patient's health, welfare, or safety.

(10) "State hospital" means any hospital operated and maintained by the state for the care of the mentally ill under chapter 72.23 RCW. [1999 c 176 § 21; 1997 c 392 § 519; 1996 c 178 § 24; 1981 c 174 § 2; 1979 ex.s. c 228 § 2.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Effective date—1996 c 178: See note following RCW 18.35.110.

70.124.030 Reports of abuse or neglect. (1) When any practitioner, social worker, psychologist, pharmacist, employee of a state hospital, or employee of the department has reasonable cause to believe that a state hospital patient has suffered abuse or neglect, the person shall report such incident, or cause a report to be made, to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(2) Any other person who has reasonable cause to believe that a state hospital patient has suffered abuse or neglect may report such incident to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(3) The department or any law enforcement agency receiving a report of an incident of abuse or neglect involving a state hospital patient who has died or has had physical injury or injuries inflicted other than by accidental means or who has been subjected to sexual abuse shall report the incident to the proper county prosecutor for appropriate action. [1999 c 176 § 22; 1981 c 174 § 3; 1979 ex.s. c 228 § 3.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

70.124.040 Reports to department or law enforcement agency—Action required. (1) Where a report is required under RCW 70.124.030, an immediate oral report must be made by telephone or otherwise to either a law enforcement agency or to the department and, upon request,

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must be followed by a report in writing. The reports must contain the following information, if known:

(a) The name and address of the person making the report;

(b) The name and address of the state hospital patient;

(c) The name and address of the patient's relatives having responsibility for the patient;

(d) The nature and extent of the alleged injury or injuries;

(e) The nature and extent of the alleged neglect;

(f) The nature and extent of the alleged sexual abuse;

(g) Any evidence of previous injuries, including their nature and extent; and

(h) Any other information that may be helpful in establishing the cause of the patient's death, injury, or injuries, and the identity of the perpetrator or perpetrators.

(2) Each law enforcement agency receiving such a report shall, in addition to taking the action required by RCW 70.124.050, immediately relay the report to the department, and to other law enforcement agencies, including the medic-aid fraud control unit of the office of the attorney general, as appropriate. For any report it receives, the department shall likewise take the required action and in addition relay the report to the appropriate law enforcement agency or agencies. The appropriate law enforcement agency or agencies must receive immediate notification when the department, upon receipt of such report, has reasonable cause to believe that a criminal act has been committed. [1999 c 176 § 23. Prior: 1997 c 392 § 520; 1997 c 386 § 30; 1981 c 174 § 4; 1979 ex.s. c 228 § 4.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

70.124.050 Investigations required—Seeking restraining orders authorized. Upon the receipt of a report concerning the possible occurrence of abuse or neglect, it is the duty of the law enforcement agency and the department to commence an investigation within twenty-four hours of such receipt and, where appropriate, submit a report to the appropriate prosecuting attorney. The local prosecutor may seek a restraining order to prohibit continued patient abuse. In all cases investigated by the department a report to the complainant shall be made by the department. [1983 1st ex.s. c 41 § 24; 1979 ex.s. c 228 § 5.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

70.124.060 Liability of persons making reports. (1) A person other than a person alleged to have committed the abuse or neglect participating in good faith in the making of a report pursuant to this chapter, or testifying as to alleged patient abuse or neglect in a judicial proceeding, is, in so doing, immune from any liability, civil or criminal, arising out of such reporting or testifying under any law of this state or its political subdivisions, and if such person is an employee of a state hospital it is an unfair practice under chapter 49.60 RCW for the employer to discharge, expel, or

otherwise discriminate against the employee for such reporting activity.

(2) Conduct conforming with the reporting requirements of this chapter is not a violation of the confidential communication privilege of RCW 5.60.060 (3) or (4) or 18.83.110. Nothing in this chapter supersedes or abridges remedies provided in chapter 4.92 RCW. [1999 c 176 § 24; 1993 c 510 § 25; 1981 c 174 § 5; 1979 ex.s. c 228 § 6.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Severability—1993 c 510: See note following RCW 49.60.010.

70.124.070 Failure to report is gross misdemeanor.

A person who is required to make or to cause to be made a report pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to make such report or fails to cause such report to be made is guilty of a gross misdemeanor. [1997 c 392 § 521; 1979 ex.s. c 228 § 7.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.124.080 Department reports of abused or neglected patients. The department shall forward to the appropriate state licensing authority a copy of any report received pursuant to this chapter which alleges that a person who is professionally licensed by this state has abused or neglected a patient. [1979 ex.s. c 228 § 8.]

70.124.090 Publicizing objectives. In the adoption of rules under the authority of this chapter, the department shall provide for the publication and dissemination to state hospitals and state hospital employees and the posting where appropriate by state hospitals of informational, educational, or training materials calculated to aid and assist in achieving the objectives of this chapter. [1999 c 176 § 25; 1981 c 174 § 6; 1979 ex.s. c 228 § 9.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

70.124.100 Retaliation against whistleblowers and residents—Remedies—Rules. (1) An employee who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department about suspected abuse, neglect, financial exploitation, or abandonment by any person in a state hospital may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2)(a) An attempt to discharge a resident from a state hospital or any type of discriminatory treatment of a resident by whom, or upon whose behalf, a complaint substantiated by the department has been submitted to the department or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution

of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a functional assessment conducted by the department that shows that the resident's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or employee of a state hospital or any person licensed under Title 18 RCW, who in good faith reports alleged abuse, neglect, financial exploitation, or abandonment to the department or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a state hospital from exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a state hospital from: (a) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (b) for facilities with six or fewer residents, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases where a whistleblower has been terminated or had hours of employment reduced due to the inability of a facility to meet payroll.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

(6) No resident who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination shall for that reason alone be considered abandoned, abused, or neglected, nor shall anything in this chapter be construed to authorize, permit, or require medical treatment contrary to the stated or clearly implied objection of such a person.

(7) The department shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes. [1999 c 176 § 26; 1997 c 392 § 201.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.124.900 Severability—1979 ex.s. c 228. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 228 § 12.]

Chapter 70.125 RCW

VICTIMS OF SEXUAL ASSAULT ACT

Sections

70.125.010	Short title.
70.125.020	Legislative findings—Program objectives.
70.125.030	Definitions.
70.125.040	Coordinating office—Biennial statewide plan.
70.125.050	Statewide program services.
70.125.055	Financial assistance to rape crisis centers.
70.125.060	Personal representative may accompany victim during treatment or proceedings.
70.125.065	Records of rape crisis centers not available as part of discovery—Exceptions.
70.125.080	Community sexual assault programs—Victim advocates.

Public records: Chapter 42.56 RCW.

Victims of crimes

compensation, assistance: Chapter 7.68 RCW.

survivors, witnesses: Chapter 7.69 RCW.

70.125.010 Short title. This chapter may be known and cited as the Victims of Sexual Assault Act. [1979 ex.s. c 219 § 1.]

Severability—1979 ex.s. c 219: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 219 § 22.]

70.125.020 Legislative findings—Program objectives. (1) The legislature hereby finds and declares that:

(a) Sexual assault has become one of the most rapidly increasing violent crimes over the last decade;

(b) There is a lack of essential information and data concerning sexual assault;

(c) There is a lack of adequate training for law enforcement officers concerning sexual assault, the victim, the offender, and the investigation;

(d) There is a lack of community awareness and knowledge concerning sexual assault and the physical and psychological impact upon the victim;

(e) There is a lack of public information concerning sexual assault prevention and personal self-protection;

(f) Because of the lack of information, training, and services, the victims of sexual assault are not receiving the assistance they require in dealing with the physical and psychological trauma of a sexual assault;

(g) The criminal justice system and health care system should maintain close contact and cooperation with each other and with community rape crisis centers to expedite the disposition of sexual assault cases; and

(h) Persons who are victims of sexual assault will benefit directly from increased public awareness and education, increased prosecutions, and a criminal justice system which treats them in a humane manner.

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(2) Therefore, a statewide sexual assault education, training, and consultation program should be developed. Such a statewide program should seek to improve treatment of victims through information-gathering, education, training, community awareness programs, and by increasing the efficiency of the criminal justice and health care systems as they relate to sexual assault. Such a program should serve a consultative and facilitative function for organizations which provide services to victims and potential victims of sexual assault. [1979 ex.s. c 219 § 2.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.030 Definitions. As used in this chapter and unless the context indicates otherwise:

(1) "Core services" means treatment services for victims of sexual assault including information and referral, crisis intervention, medical advocacy, legal advocacy, support, system coordination, and prevention for potential victims of sexual assault.

(2) "Department" means the department of community, trade, and economic development.

(3) "Law enforcement agencies" means police and sheriff's departments of this state.

(4) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a community sexual assault program or specialized treatment service provider.

(5) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

(6) "Community sexual assault program" means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.

(7) "Sexual assault" means one or more of the following:

- Rape or rape of a child;
- Assault with intent to commit rape or rape of a child;
- Incest or indecent liberties;
- Child molestation;
- Sexual misconduct with a minor;
- Custodial sexual misconduct;
- Crimes with a sexual motivation; or
- An attempt to commit any of the aforementioned offenses.

(8) "Specialized services" means treatment services for victims of sexual assault including support groups, therapy, and specialized sexual assault medical examination.

(9) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault. [2000 c 54 § 1; 1999 c 45 § 6; 1996 c 123 § 6; 1988 c 145 § 19; 1979 ex.s. c 219 § 3.]

Transfer of powers and duties—1996 c 123: "The powers and duties of the department of social and health services under this chapter shall be transferred to the department of community, trade, and economic development on July 1, 1996. The department of social and health services shall transfer all unspent appropriated funds, records, and documents necessary to facilitate a successful transfer." [1996 c 123 § 9.]

Effective date—1996 c 123: See note following RCW 43.280.010.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.040 Coordinating office—Biennial statewide plan. The department shall establish a centralized office within the department to coordinate activities of programs relating to sexual assault and to facilitate coordination and dissemination of information to personnel in fields relating to sexual assault.

The department shall develop, with the cooperation of the criminal justice training commission, the medical profession, and existing rape crisis centers, a biennial statewide plan to aid organizations which provide services to victims of sexual assault. [1985 c 34 § 1; 1979 ex.s. c 219 § 4.]

Effective date—1985 c 34: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 34 § 4.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.050 Statewide program services. The statewide program established under RCW 70.125.040 shall include but not be limited to provision of the following services: PROVIDED, That the department shall utilize existing rape crisis centers and contract, where appropriate, with these centers to provide the services identified in this section:

(1) Assistance to the criminal justice training commission in developing and offering training and education programs for criminal justice personnel on the scope and nature of the sexual assault problem;

(2) Assistance to health care personnel in training for the sensitive handling and correct legal procedures of sexual assault cases;

(3) Development of public education programs to increase public awareness concerning sexual assault in coordination with the activities of the attorney general's crime prevention efforts; and

(4) Technical assistance and advice to rape crisis centers, including the organization of existing community resources, volunteer training, identification of potential funding sources, evaluation, and education. Assistance shall be given for the development of additional programs in areas of the state where such services do not exist. [1979 ex.s. c 219 § 5.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.055 Financial assistance to rape crisis centers. The department may distribute financial assistance to rape crisis centers to supplement crisis, advocacy, and counseling services provided directly to victims. [1985 c 34 § 2.]

Effective date—1985 c 34: See note following RCW 70.125.040.

70.125.060 Personal representative may accompany victim during treatment or proceedings. If the victim of a sexual assault so desires, a personal representative of the victim's choice may accompany the victim to the hospital or other health care facility, and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings. [1979 ex.s. c 219 § 6.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.065 Records of rape crisis centers not available as part of discovery—Exceptions. Records maintained by rape crisis centers shall not be made available to

any defense attorney as part of discovery in a sexual assault case unless:

(1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the rape crisis center's records;

(2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the rape crisis center's records;

(3) The court reviews the rape crisis center's records in camera to determine whether the rape crisis center's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and

(4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings. [1981 c 145 § 9.]

70.125.080 Community sexual assault programs—Victim advocates. (1) Community sexual assault programs that are eligible for funding from the department under this chapter may apply for grants for the purpose of hiring, training, and supervising victim advocates to provide core services to assist victims and their families through the investigation, prosecution, and treatment process that resulted from a sexual assault. The department shall seek, receive, and make use of any funds which may be available from federal or other sources to augment state funds appropriated for the purpose of this section, and shall make every effort to qualify for federal funding. [1996 c 123 § 7; 1991 c 267 § 3.]

Transfer of powers and duties—1996 c 123: See note following RCW 70.125.030.

Effective date—1996 c 123: See note following RCW 43.280.010.

Findings—Effective date—1991 c 267: See notes following RCW 43.101.270.

Victims of crimes: Chapter 7.69 RCW.

Chapter 70.126 RCW

HOME HEALTH CARE AND HOSPICE CARE

Sections

70.126.001	Legislative finding.
70.126.010	Definitions.
70.126.020	Home health care—Services and supplies included, not included.
70.126.030	Hospice care—Provider, plan, services included.
70.126.060	Application of chapter.

Optional coverage required by certain insurers: RCW 48.21.220, 48.21A.090, 48.44.320.

70.126.001 Legislative finding. The legislature finds that the cost of medical care in general and hospital care in particular has risen dramatically in recent years, and that in 1981, such costs rose faster than in any year since World War II. The purpose of RCW 70.126.001 through *70.126.050 is to support the provision of less expensive and more appropriate levels of care, home health care and hospice care, in order to avoid hospitalization or shorten hospital stays. [1983 c 249 § 4.]

*Reviser's note: RCW 70.126.040 and 70.126.050 were repealed by 1988 c 245 § 34, effective July 1, 1989.

Effective date—Implementation—1983 c 249: "This act shall take effect on July 1, 1984. The department of social and health services shall immediately take such steps as are necessary to insure that this act is implemented on its effective date." [1983 c 249 § 11.]

70.126.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Hospice" means a private or public agency or organization that administers and provides hospice care and is licensed by the department of social and health services as a hospice care agency.

(2) "Hospice care" means care prescribed and supervised by the attending physician and provided by the hospice to the terminally ill in accordance with the standards of RCW 70.126.030.

(3) "Home health agency" means a private or public agency or organization that administers and provides home health care and is licensed by the department of social and health services as a home health care agency.

(4) "Home health care" means services, supplies, and medical equipment that meet the standards of RCW 70.126.020, prescribed and supervised by the attending physician, and provided through a home health agency and rendered to members in their residences when hospitalization would otherwise be required.

(5) "Home health aide" means a person employed by a home health agency or a hospice who is providing part-time or intermittent care under the supervision of a registered nurse, a physical therapist, occupational therapist, or speech therapist. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or household services that are needed to achieve the medically desired results.

(6) "Home health care plan of treatment" means a written plan of care established and periodically reviewed by a physician that describes medically necessary home health care to be provided to a patient for treatment of illness or injury.

(7) "Hospice plan of care" means a written plan of care established and periodically reviewed by a physician that describes hospice care to be provided to a terminally ill patient for palliation or medically necessary treatment of an illness or injury.

(8) "Physician" means a physician licensed under chapter 18.57 or 18.71 RCW. [1988 c 245 § 29; 1984 c 22 § 4; 1983 c 249 § 5.]

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

70.126.020 Home health care—Services and supplies included, not included. (1) Home health care shall be provided by a home health agency and shall:

(a) Be delivered by a registered nurse, physical therapist, occupational therapist, speech therapist, or home health aide on a part-time or intermittent basis;

(b) Include, as applicable under the written plan, supplies and equipment such as:

(i) Drugs and medicines that are legally obtainable only upon a physician's written prescription, and insulin;

(ii) Rental of durable medical apparatus and medical equipment such as wheelchairs, hospital beds, respirators, splints, trusses, braces, or crutches needed for treatment;

(iii) Supplies normally used for hospital inpatients and dispensed by the home health agency such as oxygen, catheters, needles, syringes, dressings, materials used in aseptic techniques, irrigation solutions, and intravenous fluids.

(2) The following services may be included when medically necessary, ordered by the attending physician, and included in the approved plan of treatment:

(a) Licensed practical nurses;

(b) Respiratory therapists;

(c) Social workers holding a master's degree;

(d) Ambulance service that is certified by the physician as necessary in the approved plan of treatment because of the patient's physical condition or for unexpected emergency situations.

(3) Services not included in home health care include:

(a) Nonmedical, custodial, or housekeeping services except by home health aides as ordered in the approved plan of treatment;

(b) "Meals on Wheels" or similar food services;

(c) Nutritional guidance;

(d) Services performed by family members;

(e) Services not included in an approved plan of treatment;

(f) Supportive environmental materials such as handrails, ramps, telephones, air conditioners, and similar appliances and devices. [1984 c 22 § 5; 1983 c 249 § 6.]

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

70.126.030 Hospice care—Provider, plan, services included. (1) Hospice care shall be provided by a hospice and shall meet the standards of RCW 70.126.020(1) (a) and (b)(ii) and (iii).

(2) A written hospice care plan shall be approved by a physician and shall be reviewed at designated intervals.

(3) The following services for necessary medical or palliative care shall be included when ordered by the attending physician and included in the approved plan of treatment:

(a) Short-term care as an inpatient;

(b) Care of the terminally ill in an individual's home on an outpatient basis as included in the approved plan of treatment;

(c) Respite care that is continuous care in the most appropriate setting for a maximum of five days per three-month period of hospice care. [1984 c 22 § 6; 1983 c 249 § 7.]

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

70.126.060 Application of chapter. The provisions of this chapter apply only for the purposes of determining benefits to be included in the offering of optional coverage for home health and hospice care services, as provided in RCW

48.21.220, 48.21A.090, and 48.44.320 and do not apply for the purposes of licensure. [1988 c 245 § 30.]

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Chapter 70.127 RCW

IN-HOME SERVICES AGENCIES

(Formerly: Home health, hospice, and home care agencies—Licensure)

Sections

70.127.005	Legislative intent.
70.127.010	Definitions.
70.127.020	Licenses required after July 1, 1990—Penalties.
70.127.030	Use of certain terms limited to licensees.
70.127.040	Persons, activities, or entities not subject to regulation under chapter.
70.127.041	Home care quality authority not subject to regulation.
70.127.050	Volunteer organizations—Use of phrase "volunteer hospice."
70.127.080	Licenses—Application procedure and requirements.
70.127.085	State licensure survey.
70.127.090	License or renewal—Fees—Sliding scale.
70.127.100	Licenses—Issuance—Prerequisites—Transfer or assignment—Surveys.
70.127.120	Rules for recordkeeping, services, staff and volunteer policies, complaints.
70.127.125	Interpretive guidelines for services.
70.127.130	Legend drugs and controlled substances—Rules.
70.127.140	Bill of rights—Billing statements.
70.127.150	Durable power of attorney—Prohibition for licensees, contractees, or employees.
70.127.170	Licenses—Denial, restriction, conditions, modification, suspension, revocation—Civil penalties.
70.127.180	Surveys and in-home visits—Notice of violations—Enforcement action.
70.127.190	Disclosure of compliance information.
70.127.200	Unlicensed agencies—Department may seek injunctive or other relief—Injunctive relief does not prohibit criminal or civil penalties—Fines.
70.127.213	Unlicensed operation of an in-home services agency—Cease and desist orders—Adjudicative proceedings—Fines.
70.127.216	Unlicensed operation of an in-home services agency—Consumer protection act.
70.127.280	Hospice care centers—Applicants—Rules.
70.127.902	Severability—1988 c 245.

70.127.005 Legislative intent. The legislature finds that the availability of home health, hospice, and home care services has improved the quality of life for Washington's citizens. However, the delivery of these services bring risks because the in-home location of services makes their actual delivery virtually invisible. Also, the complexity of products, services, and delivery systems in today's health care delivery system challenges even informed and healthy individuals. The fact that these services are delivered to the state's most vulnerable population, the ill or disabled who are frequently also elderly, adds to these risks.

It is the intent of the legislature to protect the citizens of Washington state by licensing home health, hospice, and home care agencies. This legislation is not intended to unreasonably restrict entry into the in-home service marketplace. Standards established are intended to be the minimum necessary to ensure safe and competent care, and should be demonstrably related to patient safety and welfare. [1988 c 245 § 1.]

70.127.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrator" means an individual responsible for managing the operation of an agency.

(2) "Department" means the department of health.

(3) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(4) "Family" means individuals who are important to, and designated by, the patient or client and who need not be relatives.

(5) "Home care agency" means a person administering or providing home care services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A home care agency that provides delegated tasks of nursing under RCW 18.79.260(3)(e) is not considered a home health agency for the purposes of this chapter.

(6) "Home care services" means nonmedical services and assistance provided to ill, disabled, or vulnerable individuals that enable them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services or delegated tasks of nursing under RCW 18.79.260(3)(e).

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home medical supplies" or "equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(11) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

(12) "Hospice care center" means a homelike, noninstitutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280.

(13) "Hospice services" means symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

(14) "In-home services agency" means a person licensed to administer or provide home health, home care, hospice services, or hospice care center services directly or through a contract arrangement to individuals in a place of temporary or permanent residence.

(15) "Person" means any individual, business, firm, partnership, corporation, company, association, joint stock association, public or private agency or organization, or the legal successor thereof that employs or contracts with two or more individuals.

(16) "Plan of care" means a written document based on assessment of individual needs that identifies services to meet these needs.

(17) "Quality improvement" means reviewing and evaluating appropriateness and effectiveness of services provided under this chapter.

(18) "Service area" means the geographic area in which the department has given prior approval to a licensee to provide home health, hospice, or home care services.

(19) "Survey" means an inspection conducted by the department to evaluate and monitor an agency's compliance with this chapter. [2003 c 140 § 7; 2000 c 175 § 1; 1999 c 190 § 1; 1993 c 42 § 1; 1991 c 3 § 373; 1988 c 245 § 2.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: "This act takes effect January 1, 2002." [2000 c 175 § 24.]

Severability—1993 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 42 § 14.]

Effective dates—1993 c 42: "(1) Sections 1 through 10 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1993.

(2) Section 11 of this act shall take effect January 1, 1994." [1993 c 42 § 15.]

70.127.020 Licenses required after July 1, 1990—

Penalties. (1) After July 1, 1990, a license is required for a person to advertise, operate, manage, conduct, open, or maintain an in-home services agency.

(2) An in-home services agency license is required for a nursing home, hospital, or other person that functions as a home health, hospice, hospice care center, or home care agency.

(3) Any person violating this section is guilty of a misdemeanor. Each day of a continuing violation is a separate violation.

(4) If any corporation conducts any activity for which a license is required by this chapter without the required license, it may be punished by forfeiture of its corporate charter.

(5) All fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be deposited in the department's local fee account. [2003 c 53 § 363; 2000 c 175 § 2; 1988 c 245 § 3.]

(2008 Ed.)

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.030 Use of certain terms limited to licensees.

It is unlawful for any person to use the words:

(1) "Home health agency," "home health care services," "visiting nurse services," "home health," or "home health services" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter;

(2) "Hospice agency," "hospice," "hospice services," "hospice care," or "hospice care center" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter;

(3) "Home care agency," "home care services," or "home care" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter; or

(4) "In-home services agency," "in-home services," or any similar term to indicate that a person is a home health, home care, hospice care center, or hospice agency in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter. [2000 c 175 § 3; 1988 c 245 § 4.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.040 Persons, activities, or entities not subject to regulation under chapter. The following are not subject to regulation for the purposes of this chapter:

(1) A family member providing home health, hospice, or home care services;

(2) A person who provides only meal services in an individual's permanent or temporary residence;

(3) An individual providing home care through a direct agreement with a recipient of care in an individual's permanent or temporary residence;

(4) A person furnishing or delivering home medical supplies or equipment that does not involve the provision of services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use;

(5) A person who provides services through a contract with a licensed agency;

(6) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

(7) Facilities and institutions, including but not limited to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41 RCW, adult family homes under chapter 70.128 RCW, boarding homes under chapter 18.20 RCW, developmental disability residential programs under chapter 71A.12 RCW, other entities licensed under chapter 71.12 RCW, or other licensed facilities and institutions, only when providing services to persons residing within the facility or institution;

(8) Local and combined city-county health departments providing services under chapters 70.05 and 70.08 RCW;

(9) An individual providing care to ill, disabled, or vulnerable individuals through a contract with the department of social and health services;

(10) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;

(11) In-home assessments of an ill, disabled, or vulnerable individual that does not result in regular ongoing care at home;

(12) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents;

(13) A medicare-approved dialysis center operating a medicare-approved home dialysis program;

(14) A person providing case management services. For the purposes of this subsection, "case management" means the assessment, coordination, authorization, planning, training, and monitoring of home health, hospice, and home care, and does not include the direct provision of care to an individual;

(15) Pharmacies licensed under RCW 18.64.043 that deliver prescription drugs and durable medical equipment that does not involve the use of professional services beyond those authorized to be performed by licensed pharmacists pursuant to chapter 18.64 RCW and those necessary to set up and monitor the proper functioning of the equipment and educate the person on its proper use;

(16) A volunteer hospice complying with the requirements of RCW 70.127.050; and

(17) A person who provides home care services without compensation. [2003 c 275 § 3; 2003 c 140 § 8; 2000 c 175 § 4; 1993 c 42 § 2; 1988 c 245 § 5.]

Reviser's note: This section was amended by 2003 c 140 § 8 and by 2003 c 275 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.041 Home care quality authority not subject to regulation. The authority established by chapter 3, Laws of 2002 is not subject to regulation for purposes of this chapter. [2002 c 3 § 13 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

70.127.050 Volunteer organizations—Use of phrase "volunteer hospice." (1) An entity that provides hospice care without receiving compensation for delivery of any of its services is exempt from licensure pursuant to RCW 70.127.020(1) if it notifies the department, on forms provided by the department, of its name, address, name of owner, and a statement affirming that it provides hospice care without receiving compensation for delivery of any of its services. This form must be filed with the department within sixty days after being informed in writing by the department of this

requirement for obtaining exemption from licensure under this chapter.

(2) For the purposes of this section, it is not relevant if the entity compensates its staff. For the purposes of this section, the word "compensation" does not include donations.

(3) Notwithstanding the provisions of RCW 70.127.030(2), an entity that provides hospice care without receiving compensation for delivery of any of its services is allowed to use the phrase "volunteer hospice."

(4) Nothing in this chapter precludes an entity providing hospice care without receiving compensation for delivery of any of its services from obtaining a hospice license if it so chooses, but that entity would be exempt from the requirements set forth in RCW 70.127.080(1)(d). [2000 c 175 § 5; 1993 c 42 § 3; 1988 c 245 § 6.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.080 Licenses—Application procedure and requirements. (1) An applicant for an in-home services agency license shall:

(a) File a written application on a form provided by the department;

(b) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(c) Cooperate with on-site survey conducted by the department except as provided in RCW 70.127.085;

(d) Provide evidence of and maintain professional liability, public liability, and property damage insurance in an amount established by the department, based on industry standards. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(e) Provide documentation of an organizational structure, and the identity of the applicant, officers, administrator, directors of clinical services, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(f) File with the department for approval a description of the service area in which the applicant will operate and a description of how the applicant intends to provide management and supervision of services throughout the service area. The department shall adopt rules necessary to establish criteria for approval that are related to appropriate management and supervision of services throughout the service area. In developing the rules, the department may not establish criteria that:

(i) Limit the number or type of agencies in any service area; or

(ii) Limit the number of persons any agency may serve within its service area unless the criteria are related to the need for trained and available staff to provide services within the service area;

(g) File with the department a list of the home health, hospice, and home care services provided directly and under contract;

(h) Pay to the department a license fee as provided in RCW 70.127.090;

(i) Comply with RCW 43.43.830 through 43.43.842 for criminal background checks; and

(j) Provide any other information that the department may reasonably require.

(2) A certificate of need under chapter 70.38 RCW is not required for licensure except for the operation of a hospice care center. [2000 c 175 § 6; 1999 c 190 § 2; 1993 c 42 § 4; 1988 c 245 § 9.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.085 State licensure survey. (1) Notwithstanding the provisions of RCW 70.127.080(1)(c), an in-home services agency that is certified by the federal medicare program, or accredited by the community health accreditation program, or the joint commission on accreditation of health care organizations as a home health or hospice agency is not subject to a state licensure survey if:

(a) The department determines that the applicable survey standards of the certification or accreditation program are substantially equivalent to those required by this chapter;

(b) An on-site survey has been conducted for the purposes of certification or accreditation during the previous twenty-four months; and

(c) The department receives directly from the certifying or accrediting entity or from the licensee applicant copies of the initial and subsequent survey reports and other relevant reports or findings that indicate compliance with licensure requirements.

(2) Notwithstanding the provisions of RCW 70.127.080(1)(c), an in-home services agency providing services under contract with the department of social and health services or area agency on aging to provide home care services and that is monitored by the department of social and health services or area agency on aging is not subject to a state licensure survey by the department of health if:

(a) The department determines that the department of social and health services or an area agency on aging monitoring standards are substantially equivalent to those required by this chapter;

(b) An on-site monitoring has been conducted by the department of social and health services or an area agency on aging during the previous twenty-four months;

(c) The department of social and health services or an area agency on aging includes in its monitoring a sample of private pay clients, if applicable; and

(d) The department receives directly from the department of social and health services copies of monitoring reports and other relevant reports or findings that indicate compliance with licensure requirements.

(3) The department retains authority to survey those services areas not addressed by the national accrediting body, department of social and health services, or an area agency on aging.

(4) In reviewing the federal, the joint commission on accreditation of health care organizations, the community health accreditation program, or the department of social and health services survey standards for substantial equivalency to those set forth in this chapter, the department is directed to provide the most liberal interpretation consistent with the intent of this chapter. In the event the department determines at any time that the survey standards are not substantially

equivalent to those required by this chapter, the department is directed to notify the affected licensees. The notification shall contain a detailed description of the deficiencies in the alternative survey process, as well as an explanation concerning the risk to the consumer. The determination of substantial equivalency for alternative survey process and lack of substantial equivalency are agency actions and subject to RCW 34.05.210 through 34.05.395 and 34.05.510 through 34.05.675.

(5) The department is authorized to perform a validation survey on in-home services agencies who previously received a survey through accreditation or contracts with the department of social and health services or an area agency on aging under subsection (2) of this section. The department is authorized to perform a validation survey on no greater than ten percent of each type of certification or accreditation survey.

(6) This section does not affect the department's enforcement authority for licensed agencies. [2000 c 175 § 7; 1993 c 42 § 11.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.090 License or renewal—Fees—Sliding scale.

(1) Application and renewal fee: An application for a license or any renewal shall be accompanied by a fee as established by the department under RCW 43.70.250. The department shall adopt by rule licensure fees based on a sliding scale using such factors as the number of agency full-time equivalents, geographic area served, number of locations, or type and volume of services provided. For agencies receiving a licensure survey that requires more than two on-site surveys by the department per licensure period, an additional fee as determined by the department by rule shall be charged for each additional on-site survey. The department may set different licensure fees for each licensure category. Agencies receiving a license without necessity of an on-site survey by the department under this chapter shall pay the same licensure or transfer fee as other agencies in their licensure category.

(2) Change of ownership fee: The department shall charge a reasonable fee for processing changes in ownership. The fee for transfer of ownership may not exceed fifty percent of the base licensure fee.

(3) Late fee: The department may establish a late fee for failure to apply for licensure or renewal as required by this chapter. [2000 c 175 § 8; 1999 c 190 § 3; 1993 c 42 § 5; 1988 c 245 § 10.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.100 Licenses—Issuance—Prerequisites—Transfer or assignment—Surveys. Upon receipt of an application under RCW 70.127.080 for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. A license issued under this chapter shall not be transferred or assigned without thirty days prior notice to the department and the department's approval. A license, unless suspended

or revoked, is effective for a period of two years, however an initial license is only effective for twelve months. The department shall conduct a survey within each licensure period and may conduct a licensure survey after ownership transfer. [2000 c 175 § 9; 1993 c 42 § 6; 1988 c 245 § 11.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.120 Rules for recordkeeping, services, staff and volunteer policies, complaints. The department shall adopt rules consistent with RCW 70.127.005 necessary to implement this chapter under chapter 34.05 RCW. In order to ensure safe and adequate care, the rules shall address at a minimum the following:

(1) Maintenance and preservation of all records relating directly to the care and treatment of individuals by licensees;

(2) Establishment and implementation of a procedure for the receipt, investigation, and disposition of complaints regarding services provided;

(3) Establishment and implementation of a plan for ongoing care of individuals and preservation of records if the licensee ceases operations;

(4) Supervision of services;

(5) Establishment and implementation of written policies regarding response to referrals and access to services;

(6) Establishment and implementation of written personnel policies, procedures and personnel records for paid staff that provide for prehire screening, minimum qualifications, regular performance evaluations, including observation in the home, participation in orientation and in-service training, and involvement in quality improvement activities. The department may not establish experience or other qualifications for agency personnel or contractors beyond that required by state law;

(7) Establishment and implementation of written policies and procedures for volunteers who have direct patient/client contact and that provide for background and health screening, orientation, and supervision;

(8) Establishment and implementation of written policies for obtaining regular reports on patient satisfaction;

(9) Establishment and implementation of a quality improvement process;

(10) Establishment and implementation of policies related to the delivery of care including:

(a) Plan of care for each individual served;

(b) Periodic review of the plan of care;

(c) Supervision of care and clinical consultation as necessary;

(d) Care consistent with the plan;

(e) Admission, transfer, and discharge from care; and

(f) For hospice services:

(i) Availability of twenty-four hour seven days a week hospice registered nurse consultation and in-home services as appropriate;

(ii) Interdisciplinary team communication as appropriate and necessary; and

(iii) The use and availability of volunteers to provide family support and respite care; and

(11) Establishment and implementation of policies related to agency implementation and oversight of nurse del-

egation as defined in RCW 18.79.260(3)(e). [2003 c 140 § 9; 2000 c 175 § 10; 1993 c 42 § 8; 1988 c 245 § 13.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.125 Interpretive guidelines for services. The department is directed to continue to develop, with opportunity for comment from licensees, interpretive guidelines that are specific to each type of service and consistent with legislative intent. [2000 c 175 § 11; 1993 c 42 § 7.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.130 Legend drugs and controlled substances—Rules. Licensees shall conform to the standards of RCW 69.41.030 and 69.50.308. Rules adopted by the department concerning the use of legend drugs or controlled substances shall reference and be consistent with board of pharmacy rules. [1993 c 42 § 9; 1988 c 245 § 14.]

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.140 Bill of rights—Billing statements. (1) An in-home services agency shall provide each individual or designated representative with a written bill of rights affirming each individual's right to:

(a) A listing of the in-home services offered by the in-home services agency and those being provided;

(b) The name of the individual supervising the care and the manner in which that individual may be contacted;

(c) A description of the process for submitting and addressing complaints;

(d) Submit complaints without retaliation and to have the complaint addressed by the agency;

(e) Be informed of the state complaint hotline number;

(f) A statement advising the individual or representative of the right to ongoing participation in the development of the plan of care;

(g) A statement providing that the individual or representative is entitled to information regarding access to the department's listing of providers and to select any licensee to provide care, subject to the individual's reimbursement mechanism or other relevant contractual obligations;

(h) Be treated with courtesy, respect, privacy, and freedom from abuse and discrimination;

(i) Refuse treatment or services;

(j) Have property treated with respect;

(k) Privacy of personal information and confidentiality of health care records;

(l) Be cared for by properly trained staff with coordination of services;

(m) A fully itemized billing statement upon request, including the date of each service and the charge. Licensees providing services through a managed care plan shall not be required to provide itemized billing statements; and

(n) Be informed about advanced directives and the agency's responsibility to implement them.

(2) An in-home services agency shall ensure rights under this section are implemented and updated as appropriate. [2000 c 175 § 12; 1988 c 245 § 15.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.150 Durable power of attorney—Prohibition for licensees, contractees, or employees. No licensee, contractee, or employee may hold a durable power of attorney on behalf of any individual who is receiving care from the licensee. [2000 c 175 § 13; 1988 c 245 § 16.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.170 Licenses—Denial, restriction, conditions, modification, suspension, revocation—Civil penalties. Pursuant to chapter 34.05 RCW and RCW 70.127.180(3), the department may deny, restrict, condition, modify, suspend, or revoke a license under this chapter or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, or require a refund of any amounts billed to, and collected from, the consumer or third-party payor in any case in which it finds that the licensee, or any applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or licensee's assets:

(1) Failed or refused to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Was the holder of a license issued pursuant to this chapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled and the licensee has continued to operate;

(3) Has knowingly or with reason to know made a misrepresentation of, false statement of, or failed to disclose, a material fact to the department in an application for the license or any data attached thereto or in any record required by this chapter or matter under investigation by the department, or during a survey, or concerning information requested by the department;

(4) Refused to allow representatives of the department to inspect any book, record, or file required by this chapter to be maintained or any portion of the licensee's premises;

(5) Willfully prevented, interfered with, or attempted to impede in any way the work of any representative of the department and the lawful enforcement of any provision of this chapter. This includes but is not limited to: Willful misrepresentation of facts during a survey, investigation, or administrative proceeding or any other legal action; or use of threats or harassment against any patient, client, or witness, or use of financial inducements to any patient, client, or witness to prevent or attempt to prevent him or her from providing evidence during a survey or investigation, in an administrative proceeding, or any other legal action involving the department;

(6) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of this chapter or the rules adopted under this chapter;

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(7) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after the assessment becomes final;

(8) Used advertising that is false, fraudulent, or misleading;

(9) Has repeated incidents of personnel performing services beyond their authorized scope of practice;

(10) Misrepresented or was fraudulent in any aspect of the conduct of the licensee's business;

(11) Within the last five years, has been found in a civil or criminal proceeding to have committed any act that reasonably relates to the person's fitness to establish, maintain, or administer an agency or to provide care in the home of another;

(12) Was the holder of a license to provide care or treatment to ill, disabled, or vulnerable individuals that was denied, restricted, not renewed, surrendered, suspended, or revoked by a competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the denial, restriction, nonrenewal, surrender, suspension, or revocation;

(13) Violated any state or federal statute, or administrative rule regulating the operation of the agency;

(14) Failed to comply with an order issued by the secretary or designee;

(15) Aided or abetted the unlicensed operation of an in-home services agency;

(16) Operated beyond the scope of the in-home services agency license;

(17) Failed to adequately supervise staff to the extent that the health or safety of a patient or client was at risk;

(18) Compromised the health or safety of a patient or client, including, but not limited to, the individual performing services beyond their authorized scope of practice;

(19) Continued to operate after license revocation, suspension, or expiration, or operating outside the parameters of a modified, conditioned, or restricted license;

(20) Failed or refused to comply with chapter 70.02 RCW;

(21) Abused, neglected, abandoned, or financially exploited a patient or client as these terms are defined in RCW 74.34.020;

(22) Misappropriated the property of an individual;

(23) Is unqualified or unable to operate or direct the operation of the agency according to this chapter and the rules adopted under this chapter;

(24) Obtained or attempted to obtain a license by fraudulent means or misrepresentation; or

(25) Failed to report abuse or neglect of a patient or client in violation of chapter 74.34 RCW. [2003 c 140 § 10; 2000 c 175 § 14; 1988 c 245 § 18.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.180 Surveys and in-home visits—Notice of violations—Enforcement action. (1) The department may at any time conduct a survey of all records and operations of a licensee in order to determine compliance with this chapter. The department may conduct in-home visits to observe patient/client care and services. The right to conduct a survey

shall extend to any premises and records of persons whom the department has reason to believe are providing home health, hospice, or home care services without a license.

(2) Following a survey, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the reasons for noncompliance.

(3) The licensee may be subject to formal enforcement action under RCW 70.127.170 if the department determines: (a) The licensee has previously been subject to a formal enforcement action for the same or similar type of violation of the same statute or rule, or has been given previous notice of the same or similar type of violation of the same statute or rule; (b) the licensee failed to achieve compliance with a statute, rule, or order by the date established in a previously issued notice or order; (c) the violation resulted in actual serious physical or emotional harm or immediate threat to the health, safety, welfare, or rights of one or more individuals; or (d) the violation has a potential for serious physical or emotional harm or immediate threat to the health, safety, welfare, or rights of one or more individuals. [2000 c 175 § 15; 1988 c 245 § 19.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.190 Disclosure of compliance information.

All information received by the department through filed reports, surveys, and in-home visits conducted under this chapter shall not be disclosed publicly in any manner that would identify individuals receiving care under this chapter. [2000 c 175 § 16; 1988 c 245 § 20.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.200 Unlicensed agencies—Department may seek injunctive or other relief—Injunctive relief does not prohibit criminal or civil penalties—Fines. (1) Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a home health, hospice, hospice care center, or home care agency without an in-home services agency license under this chapter.

(2) The injunction shall not relieve the person operating an in-home services agency without a license from criminal prosecution, or the imposition of a civil fine under RCW 70.127.213(2), but the remedy by injunction shall be in addition to any criminal liability or civil fine. A person that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be deposited in the department's local fee account. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. All fines, forfeitures, and penalties collected or assessed by a court because of a violation of RCW 70.127.020 shall be deposited in the department's local fee account. [2000 c 175 § 17; 1988 c 245 § 21.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.213 Unlicensed operation of an in-home services agency—Cease and desist orders—Adjudicative proceedings—Fines. (1) The department may issue a notice of intention to issue a cease and desist order to any person whom the department has reason to believe is engaged in the unlicensed operation of an in-home services agency. The person to whom the notice of intent is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intent to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the department may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(2) If the department makes a final determination that a person has engaged or is engaging in unlicensed operation of an in-home services agency, the department may issue a cease and desist order. In addition, the department may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed operation of an in-home services agency. The proceeds of such fines shall be deposited in the department's local fee account.

(3) If the department makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the department may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the department. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the department may enter a permanent cease and desist order, which may include a civil fine.

(4) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so operating an in-home services agency without a license from criminal prosecution, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed operation and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW. [2000 c 175 § 19.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.216 Unlicensed operation of an in-home services agency—Consumer protection act. The legislature finds that the operation of an in-home services agency without a license in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an in-home services agency without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2000 c 175 § 20.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.280 Hospice care centers—Applicants—

Rules. (1) Applicants desiring to operate a hospice care center are subject to the following:

(a) The application may only be made by a licensed hospice agency. The agency shall list which of the following service categories will be provided:

- (i) General inpatient care;
- (ii) Continuous home care;
- (iii) Routine home care; or
- (iv) Inpatient respite care;

(b) A certificate of need is required under chapter 70.38 RCW;

(c) A hospice agency may operate more than one hospice care center in its service area;

(d) For hospice agencies that operate a hospice care center, no more than forty-nine percent of patient care days, in the aggregate on a biennial basis, may be provided in the hospice care center;

(e) The maximum number of beds in a hospice care center is twenty;

(f) The maximum number of individuals per room is one, unless the individual requests a roommate;

(g) A hospice care center may either be owned or leased by a hospice agency. If the agency leases space, all delivery of interdisciplinary services, to include staffing and management, shall be done by the hospice agency; and

(h) A hospice care center may either be freestanding or a separate portion of another building.

(2) The department is authorized to develop rules to implement this section. The rules shall be specific to each hospice care center service category provided. The rules shall at least specifically address the following:

(a) Adequate space for family members to visit, meet, cook, share meals, and stay overnight with patients or clients;

(b) A separate external entrance, clearly identifiable to the public when part of an existing structure;

(c) Construction, maintenance, and operation of a hospice care center;

(d) Means to inform the public which hospice care center service categories are provided; and

(e) A registered nurse present twenty-four hours a day, seven days a week for hospice care centers delivering general inpatient services.

(3) Hospice agencies which as of January 1, 2000, operate the functional equivalent of a hospice care center through licensure as a hospital, under chapter 70.41 RCW, shall be exempt from the certificate of need requirement for hospice care centers if they apply for and receive a license as an in-home services agency to operate a hospice home care center by July 1, 2002. [2000 c 175 § 21.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.902 Severability—1988 c 245. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 245 § 39.]

(2008 Ed.)

**Chapter 70.128 RCW
ADULT FAMILY HOMES**

Sections

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70.128.005 Findings—Intent. The legislature finds that adult family homes are an important part of the state's long-term care system. Adult family homes provide an alternative to institutional care and promote a high degree of independent living for residents. Persons with functional limitations have broadly varying service needs. Adult family homes that can meet those needs are an essential component of a long-term system. The legislature further finds that different populations living in adult family homes, such as the developmentally disabled and the elderly, often have significantly different needs and capacities from one another.

It is the legislature's intent that department rules and policies relating to the licensing and operation of adult family homes recognize and accommodate the different needs and capacities of the various populations served by the homes. Furthermore, the development and operation of adult family

homes that can provide quality personal care and special care services should be encouraged.

The legislature finds that many residents of community-based long-term care facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and residents' needs increase. The legislature intends that current training standards be enhanced.

The legislature finds that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of vulnerable adults residing in adult family homes. The health, safety, and well-being of vulnerable adults must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, or whether to take other licensing actions. [2001 c 319 § 1; 2000 c 121 § 4; 1995 c 260 § 1; 1989 c 427 § 14.]

70.128.007 Purpose. The purposes of this chapter are to:

- (1) Encourage the establishment and maintenance of adult family homes that provide a humane, safe, and residential home environment for persons with functional limitations who need personal and special care;
- (2) Establish standards for regulating adult family homes that adequately protect residents;
- (3) Encourage consumers, families, providers, and the public to become active in assuring their full participation in development of adult family homes that provide high quality and cost-effective care;
- (4) Provide for appropriate care of residents in adult family homes by requiring that each resident have a care plan that promotes the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice; and
- (5) Accord each resident the right to participate in the development of the care plan and in other major decisions involving the resident and their care. [2001 c 319 § 5; 1995 1st sp.s. c 18 § 19; 1989 c 427 § 15.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Adult family home" means a residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.
- (2) "Provider" means any person who is licensed under this chapter to operate an adult family home. For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company.
- (3) "Department" means the department of social and health services.
- (4) "Resident" means an adult in need of personal or special care in an adult family home who is not related to the provider.

(5) "Adults" means persons who have attained the age of eighteen years.

(6) "Home" means an adult family home.

(7) "Imminent danger" means serious physical harm to or death of a resident has occurred, or there is a serious threat to resident life, health, or safety.

(8) "Special care" means care beyond personal care as defined by the department, in rule.

(9) "Capacity" means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults in the home and who received special care.

(10) "Resident manager" means a person employed or designated by the provider to manage the adult family home.

(11) "Adult family home licensee" means a provider as defined in this section who does not receive payments from the medicaid and state-funded long-term care programs. [2007 c 184 § 7. Prior: 2001 c 319 § 6; 2001 c 319 § 2; 1995 c 260 § 2; 1989 c 427 § 16.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

70.128.030 Exemptions. The following residential facilities shall be exempt from the operation of this chapter:

- (1) Nursing homes licensed under chapter 18.51 RCW;
- (2) Boarding homes licensed under chapter 18.20 RCW;
- (3) Facilities approved and certified under chapter 71A.22 RCW;
- (4) Residential treatment centers for the mentally ill licensed under chapter 71.24 RCW;
- (5) Hospitals licensed under chapter 70.41 RCW;
- (6) Homes for the developmentally disabled licensed under chapter 74.15 RCW. [1989 c 427 § 17.]

70.128.040 Adoption of rules and standards—Negotiated rule making. (1) The department shall adopt rules and standards with respect to adult family homes and the operators thereof to be licensed under this chapter to carry out the purposes and requirements of this chapter. The rules and standards relating to applicants and operators shall address the differences between individual providers and providers that are partnerships, corporations, associations, or companies. The rules and standards shall also recognize and be appropriate to the different needs and capacities of the various populations served by adult family homes such as but not limited to persons who are developmentally disabled or elderly. In developing rules and standards the department shall recognize the residential family-like nature of adult family homes and not develop rules and standards which by their complexity serve as an overly restrictive barrier to the development of the adult family homes in the state. Procedures and forms established by the department shall be developed so they are easy to understand and comply with. Paper work requirements shall be minimal. Easy to understand materials shall be developed for applicants and providers explaining licensure requirements and procedures.

(2)(a) In developing the rules and standards, the department shall consult with all divisions and administrations within the department serving the various populations living in adult family homes, including the division of developmental disabilities and the aging and adult services administra-

tion. Involvement by the divisions and administration shall be for the purposes of assisting the department to develop rules and standards appropriate to the different needs and capacities of the various populations served by adult family homes. During the initial stages of development of proposed rules, the department shall provide notice of development of the rules to organizations representing adult family homes and their residents, and other groups that the department finds appropriate. The notice shall state the subject of the rules under consideration and solicit written recommendations regarding their form and content.

(b) In addition, the department shall engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with the exclusive representative of the adult family home licensees selected in accordance with RCW 70.128.043 and with other affected interests before adopting requirements that affect adult family home licensees.

(3) Except where provided otherwise, chapter 34.05 RCW shall govern all department rule-making and adjudicative activities under this chapter. [2007 c 184 § 8; 1995 c 260 § 3; 1989 c 427 § 18.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

70.128.043 Negotiated rule making—Statewide unit of licensees—Intent. (1) Solely for the purposes of negotiated rule making pursuant to RCW 34.05.310(2)(a) and 70.128.040, a statewide unit of all adult family home licensees is appropriate. As of July 22, 2007, the exclusive representative of adult family home licensees in the statewide unit shall be the organization certified by the American arbitration association as the sole representative after the association conducts a cross-check comparing authorization cards against the department of social and health services' records and finds that majority support for the organization exists. If adult family home licensees seek to select a different representative thereafter, the adult family home licensees may request that the American arbitration association conduct an election and certify the results of the election.

(2) In enacting this section, the legislature intends to provide state action immunity under federal and state antitrust laws for the joint activities of licensees and their exclusive representative to the extent such activities are authorized by this chapter. [2007 c 184 § 6.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

70.128.050 License—Required as of July 1, 1990. After July 1, 1990, no person shall operate or maintain an adult family home in this state without a license under this chapter. [1989 c 427 § 19.]

70.128.055 Operating without a license—Misdemeanor. A person operating or maintaining an adult family home without a license under this chapter is guilty of a misdemeanor. Each day of a continuing violation after conviction is considered a separate offense. [1991 c 40 § 1.]

70.128.057 Operating without a license—Injunction or civil penalty. Notwithstanding the existence or use of any other remedy, the department may, in the manner provided

by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of an adult family home without a license under this chapter. [1995 1st sp.s. c 18 § 20; 1991 c 40 § 2.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.058 Operating without a license—Application of consumer protection act. The legislature finds that the operation of an adult family home without a license in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an adult family home without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1995 1st sp.s. c 18 § 21.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.060 License—Generally. (1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter, unless (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

(3) The license fee shall be submitted with the application.

(4) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(5) The department shall not issue a license to a provider if the department finds that the provider or spouse of the provider or any partner, officer, director, managerial employee, or majority owner has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(6) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(7) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(8) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(9) The license fee shall be set at fifty dollars per year for each home. A fifty dollar processing fee shall also be charged each home when the home is initially licensed.

(10) A provider who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of an adult family home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the provider, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the provider relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

(11) The department shall establish, by rule, the circumstances requiring a change in the licensed provider, which include, but are not limited to, a change in ownership or control of the adult family home or provider, a change in the provider's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new provider is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not compromised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license. [2004 c 140 § 3; 2001 c 193 § 9; 1995 c 260 § 4; 1989 c 427 § 20.]

70.128.064 Priority processing for license applications—Provisional license. In order to prevent disruption to current residents, at the request of the current licensed provider, the department shall give processing priority to the application of a person seeking to be licensed as the new provider for the adult family home. The department may issue a provisional license when a currently licensed adult family home provider has applied to be licensed as the new provider for a currently licensed adult family home, the application has been initially processed, and all that remains to complete the application process is an on-site inspection. [2001 c 319 § 10.]

70.128.065 Multiple facility operators—Requirements. A multiple facility operator must successfully demonstrate to the department financial solvency and management experience for the homes under its ownership and the

ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes. [1996 c 81 § 6.]

Reviser's note: 1996 c 81 directed that this section be added to chapter 18.48 RCW. However, it appears that placement is erroneous and the appropriate placement is in chapter 70.128 RCW.

Effective date—1996 c 81: See note following RCW 70.128.120.

70.128.070 License—Inspections—Correction of violations. (1) A license shall remain valid unless voluntarily surrendered, suspended, or revoked in accordance with this chapter.

(2)(a) Homes applying for a license shall be inspected at the time of licensure.

(b) Homes licensed by the department shall be inspected at least every eighteen months, subject to available funds. However, an adult family home may be allowed to continue without inspection for two years if the adult family home had no inspection citations for the past three consecutive inspections and has received no written notice of violations resulting from complaint investigations during that same time period.

(c) The department may make an unannounced inspection of a licensed home at any time to assure that the home and provider are in compliance with this chapter and the rules adopted under this chapter.

(3) If the department finds that the home is not in compliance with this chapter, it shall require the home to correct any violations as provided in this chapter. [2004 c 143 § 1; 1998 c 272 § 4; 1995 1st sp.s. c 18 § 22; 1989 c 427 § 22.]

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.080 License and inspection report—Availability for review. An adult family home shall have readily available for review by the department, residents, and the public:

(1) Its license to operate; and

(2) A copy of each inspection report received by the home from the department for the past three years. [1995 1st sp.s. c 18 § 23; 1989 c 427 § 21.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.090 Inspections—Generally. (1) During inspections of an adult family home, the department shall have access and authority to examine areas and articles in the home used to provide care or support to residents, including residents' records, accounts, and the physical premises, including the buildings, grounds, and equipment. The personal records of the provider are not subject to department inspection nor is the separate bedroom of the provider, not used in direct care of a client, subject to review. The department may inspect all rooms during the initial licensing of the home. However, during a complaint investigation, the department shall have access to the entire premises and all pertinent records when necessary to conduct official business. The

department also shall have the authority to interview the provider and residents of an adult family home.

(2) Whenever an inspection is conducted, the department shall prepare a written report that summarizes all information obtained during the inspection, and if the home is in violation of this chapter, serve a copy of the inspection report upon the provider at the same time as a notice of violation. This notice shall be mailed to the provider within ten working days of the completion of the inspection process. If the home is not in violation of this chapter, a copy of the inspection report shall be mailed to the provider within ten calendar days of the inspection of the home. All inspection reports shall be made available to the public at the department during business hours.

(3) The provider shall develop corrective measures for any violations found by the department's inspection. The department shall upon request provide consultation and technical assistance to assist the provider in developing effective corrective measures. The department shall include a statement of the provider's corrective measures in the department's inspection report. [2001 c 319 § 7; 1995 1st sp.s. c 18 § 24; 1989 c 427 § 30.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.100 Immediate suspension of license when conditions warrant. The department has the authority to immediately suspend a license if it finds that conditions there constitute an imminent danger to residents. [1989 c 427 § 32.]

70.128.105 Injunction if conditions warrant. The department may commence an action in superior court to enjoin the operation of an adult family home if it finds that conditions there constitute an imminent danger to residents. [1991 c 40 § 3.]

70.128.110 Prohibition against recommending unlicensed home—Report and investigation of unlicensed home. (1) No public agency contractor or employee shall place, refer, or recommend placement of a person into an adult family home that is operating without a license.

(2) Any public agency contractor or employee who knows that an adult family home is operating without a license shall report the name and address of the home to the department. The department shall investigate any report filed under this section. [1989 c 427 § 23.]

70.128.120 Adult family home provider, resident manager—Minimum qualifications. Each adult family home provider and each resident manager shall have the following minimum qualifications, except that only providers are required to meet the provisions of subsection (10) of this section:

(1) Twenty-one years of age or older;

(2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or general educational development

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(GED) certificate or any English or translated government documentation of the following:

(a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;

(b) A foreign college, foreign university, or United States community college two-year diploma;

(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;

(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;

(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;

(3) Good moral and responsible character and reputation;

(4) Literacy in the English language, however, a person not literate in the English language may meet the requirements of this subsection by assuring that there is a person on staff and available who is able to communicate or make provisions for communicating with the resident in his or her primary language and capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans;

(5) Management and administrative ability to carry out the requirements of this chapter;

(6) Satisfactory completion of department-approved basic training and continuing education training as specified by the department in rule, based on recommendations of the community long-term care training and education steering committee and working in collaboration with providers, consumers, caregivers, advocates, family members, educators, and other interested parties in the rule-making process;

(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not been convicted of any crime listed in RCW 43.43.830 and 43.43.842;

(9) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, at least three hundred twenty hours of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home; and

(10) Prior to being granted a license, providers applying after January 1, 2007, must complete a department-approved forty-eight hour adult family home administration and business planning class. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose. [2006 c 249 § 1; 2002 c 223 § 1; 2001 c 319 § 8; 2000 c 121 § 5; 1996 c 81

§ 1; 1995 1st sp.s. c 18 § 117; 1995 c 260 § 5; 1989 c 427 § 24.]

Effective date—2002 c 223 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 223 § 7.]

Effective date—1996 c 81: "This act shall take effect July 1, 1996." [1996 c 81 § 7.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.122 Adult family homes licensed by Indian tribes. The legislature recognizes that adult family homes located within the boundaries of a federally recognized Indian reservation may be licensed by the Indian tribe. The department may pay for care for persons residing in such homes, if there has been a tribal or state criminal background check of the provider and any staff, and the client is otherwise eligible for services administered by the department. [1995 1st sp.s. c 18 § 25.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.125 Resident rights. RCW 70.129.005 through 70.129.030, 70.129.040(1), and 70.129.050 through 70.129.170 apply to this chapter and persons regulated under this chapter. [1994 c 214 § 24.]

Severability—Conflict with federal requirements—Captions not law—1994 c 214: See RCW 70.129.900 through 70.129.902.

70.128.130 Adult family homes—Requirements. (1) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(2) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(3) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have smoke detectors in each bedroom where a resident is located, shall have fire extinguishers on each floor of the home, and shall not keep nonambulatory patients above the first floor of the home.

(4) Adult family homes shall have clean, functioning, and safe household items and furnishings.

(5) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(6) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent authorized by law.

(7) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract

with a qualified resident manager to reside at the adult family home. The department may exempt, for good cause, a provider from the requirements of this subsection by rule.

(8) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not have been convicted of a crime listed under RCW 43.43.830 or 43.43.842. Except that a person may be conditionally employed pending the completion of a criminal conviction background inquiry.

(9) A provider shall offer activities to residents under care as defined by the department in rule.

(10) An adult family home provider must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule. [2000 c 121 § 6; 1995 c 260 § 6; 1989 c 427 § 26.]

70.128.135 Compliance with chapter 70.24 RCW. Adult family homes shall comply with the provisions of chapter 70.24 RCW. [2001 c 319 § 9.]

70.128.140 Compliance with local codes and state and local fire safety regulations. Each adult family home shall meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as they pertain to a single-family residence. It is the responsibility of the home to check with local authorities to ensure all local codes are met. [1995 1st sp.s. c 18 § 26; 1989 c 427 § 27.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.150 Adult family homes to work with local quality assurance projects—Interference with representative of ombudsman program—Penalty. Whenever possible adult family homes are encouraged to contact and work with local quality assurance projects such as the volunteer ombudsman with the goal of assuring high quality care is provided in the home.

An adult family home may not willfully interfere with a representative of the long-term care ombudsman program in the performance of official duties. The department shall impose a penalty of not more than one thousand dollars for any such willful interference. [1995 1st sp.s. c 18 § 27; 1989 c 427 § 28.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.160 Department authority to take actions in response to noncompliance or violations. (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that an adult family home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated an adult family home without a license or under a revoked license;

(c) Knowingly or with reason to know made a false statement of material fact on his or her application for license or

any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a license; or

(e) Suspend admissions to the adult family home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any person until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed.

(4) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue in effect pending any hearing. [2001 c 193 § 5; 1995 1st sp.s. c 18 § 28; 1989 c 427 § 31.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.163 Temporary management program—Purposes—Voluntary participation—Temporary management duties, duration—Rules. (1) When the department has summarily suspended a license, the licensee may, subject

to the department's approval, elect to participate in a temporary management program. All provisions of this section shall apply.

The purposes of a temporary management program are as follows:

(a) To mitigate dislocation and transfer trauma of residents while the department and licensee may pursue dispute resolution or appeal of a summary suspension of license;

(b) To facilitate the continuity of safe and appropriate resident care and services;

(c) To preserve a residential option that meets a specialized service need and/or is in a geographical area that has a lack of available providers; and

(d) To provide residents with the opportunity for orderly discharge.

(2) Licensee participation in the temporary management program is voluntary. The department shall have the discretion to approve any temporary manager and the temporary management arrangements. The temporary management shall assume the total responsibility for the daily operations of the home.

(3) The temporary management shall contract with the licensee as an independent contractor and is responsible for ensuring that all minimum licensing requirements are met. The temporary management shall protect the health, safety, and well-being of the residents for the duration of the temporary management and shall perform all acts reasonably necessary to ensure that residents' needs are met. The licensee is responsible for all costs related to administering the temporary management program and contracting with the temporary management. The temporary management agreement shall at a minimum address the following:

(a) Provision of liability insurance to protect residents and their property;

(b) Preservation of resident trust funds;

(c) The timely payment of past due or current accounts, operating expenses, including but not limited to staff compensation, and all debt that comes due during the period of the temporary management;

(d) The responsibilities for addressing all other financial obligations that would interfere with the ability of the temporary manager to provide adequate care and services to residents; and

(e) The authority of the temporary manager to manage the home, including the hiring, managing, and firing of employees for good cause, and to provide adequate care and services to residents.

(4) The licensee and department shall provide written notification immediately to all residents, legal representatives, interested family members, and the state long-term care ombudsman program, of the temporary management and the reasons for it. This notification shall include notice that residents may move from the home without notifying the licensee in advance, and without incurring any charges, fees, or costs otherwise available for insufficient advance notice, during the temporary management period.

(5) The temporary management period under this section concludes twenty-eight days after issuance of the formal notification of enforcement action or conclusion of administrative proceedings, whichever date is later. Nothing in this section precludes the department from revoking its approval of

the temporary management and/or exercising its licensing enforcement authority under this chapter. The department's decision whether to approve or to revoke a temporary management arrangement is not subject to the administrative procedure act, chapter 34.05 RCW.

(6) The department is authorized to adopt rules implementing this section. In implementing this section, the department shall consult with consumers, advocates, the adult family home advisory committee established under *chapter 18.48 RCW, and organizations representing adult family homes. The department may recruit and approve qualified, licensed providers interested in serving as temporary managers. [2001 c 193 § 6.]

*Reviser's note: Chapter 18.48 RCW was repealed in its entirety by 2002 c 223 § 2.

70.128.167 Disputed violations, enforcement remedies—Informal dispute resolution process. (1) The licensee or its designee has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the department during a licensing inspection or complaint investigation. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification, deletion, or removal of a violation, or parts of a violation, or enforcement remedy imposed by the department.

(2) The informal dispute resolution process provided by the department shall include, but is not necessarily limited to, an opportunity for review by a department employee who did not participate in, or oversee, the determination of the violation or enforcement remedy under dispute. The department shall develop, or further develop, an informal dispute resolution process consistent with this section.

(3) A request for an informal dispute resolution shall be made to the department within ten working days from the receipt of a written finding of a violation or enforcement remedy. The request shall identify the violation or violations and enforcement remedy or remedies being disputed. The department shall convene a meeting, when possible, within ten working days of receipt of the request for informal dispute resolution, unless by mutual agreement a later date is agreed upon.

(4) If the department determines that a violation or enforcement remedy should not be cited or imposed, the department shall delete the violation or immediately rescind or modify the enforcement remedy. Upon request, the department shall issue a clean copy of the revised report, statement of deficiencies, or notice of enforcement action.

(5) The request for informal dispute resolution does not delay the effective date of any enforcement remedy imposed by the department, except that civil monetary fines are not payable until the exhaustion of any formal hearing and appeal rights provided under this chapter. The licensee shall submit to the department, within the time period prescribed by the department, a plan of correction to address any undisputed violations, and including any violations that still remain following the informal dispute resolution. [2001 c 193 § 8.]

70.128.170 Homes relying on prayer for healing—Application of chapter. Nothing in this chapter or the rules adopted under it may be construed as authorizing the supervi-

sion, regulation, or control of the remedial care or treatment of residents in any adult family home conducted by and for the adherents of a church or religious denomination who rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents. [1989 c 427 § 33.]

70.128.175 Definitions. (1) Unless the context clearly requires otherwise, these definitions shall apply throughout this section and RCW 35.63.140, 35A.63.149, 36.70.755, 35.22.680, and 36.32.560:

(a) "Adult family home" means a regular family abode in which a person or persons provides personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(b) "Residential care facility" means a facility that cares for at least five, but not more than fifteen functionally disabled persons, that is not licensed pursuant to chapter 70.128 RCW.

(c) "Department" means the department of social and health services.

(2) An adult family home shall be considered a residential use of property for zoning and public and private utility rate purposes. Adult family homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single family dwellings. [1997 c 392 § 401; 1995 1st sp.s. c 18 § 29; 1989 1st ex.s. c 9 § 815.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.128.200 Toll-free telephone number for complaints—Discrimination or retaliation prohibited. (1) The department shall maintain a toll-free telephone number for receiving complaints regarding adult family homes.

(2) An adult family home shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number.

(3) No adult family home shall discriminate or retaliate in any manner against a resident on the basis or for the reason that such resident or any other person made a complaint to the department or the long-term care ombudsman or cooperated with the investigation of such a complaint. [1995 1st sp.s. c 18 § 30.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.210 Training standards review—Delivery system—Issues reviewed—Report to the legislature. (1) The department of social and health services shall review, in coordination with the department of health, the nursing care quality assurance commission, adult family home providers, boarding home providers, in-home personal care providers, and long-term care consumers and advocates, training standards for providers, resident managers, and resident care-giv-

ing staff. The departments and the commission shall submit to the appropriate committees of the house of representatives and the senate by December 1, 1998, specific recommendations on training standards and the delivery system, including necessary statutory changes and funding requirements. Any proposed enhancements shall be consistent with this section, shall take into account and not duplicate other training requirements applicable to adult family homes and staff, and shall be developed with the input of adult family home and resident representatives, health care professionals, and other vested interest groups. Training standards and the delivery system shall be relevant to the needs of residents served by the adult family home and recipients of long-term in-home personal care services and shall be sufficient to ensure that providers, resident managers, and caregiving staff have the skills and knowledge necessary to provide high quality, appropriate care.

(2) The recommendations on training standards and the delivery system developed under subsection (1) of this section shall be based on a review and consideration of the following: Quality of care; availability of training; affordability, including the training costs incurred by the department of social and health services and private providers; portability of existing training requirements; competency testing; practical and clinical course work; methods of delivery of training; standards for management; uniform caregiving staff training; necessary enhancements for special needs populations; and resident rights training. Residents with special needs include, but are not limited to, residents with a diagnosis of mental illness, dementia, or developmental disability. Development of training recommendations for developmental disabilities services shall be coordinated with the study requirements in section 6, chapter 272, Laws of 1998.

(3) The department of social and health services shall report to the appropriate committees of the house of representatives and the senate by December 1, 1998, on the cost of implementing the proposed training standards for state-funded residents, and on the extent to which that cost is covered by existing state payment rates. [1998 c 272 § 3.]

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

70.128.220 Elder care—Professionalization of providers. Adult family homes have developed rapidly in response to the health and social needs of the aging population in community settings, especially as the aging population has increased in proportion to the general population. The growing demand for elder care with a new focus on issues affecting senior citizens, including persons with developmental disabilities, mental illness, or dementia, has prompted a growing professionalization of adult family home providers to address quality care and quality of life issues consistent with standards of accountability and regulatory safeguards for the health and safety of the residents. The establishment of an advisory committee to the department of social and health services under RCW 70.128.225 formalizes a stable process for discussing and considering these issues among residents and their advocates, regulatory officials, and adult family home providers. The dialogue among all stakeholders interested in maintaining a healthy option for the aging population in community settings assures the highest

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regard for the well-being of these residents within a benign and functional regulatory environment. The secretary shall be advised by an advisory committee on adult family homes established under RCW 70.128.225. [2002 c 223 § 3; 1998 c 272 § 9.]

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

70.128.225 Advisory committee. (1) In an effort to ensure a cooperative process among the department, adult family home provider representatives, and resident and family representatives on matters pertaining to the adult family home program, the secretary, or his or her designee, shall designate an advisory committee. The advisory committee must include: Representatives from the industry including four adult family home providers, at least two of whom are affiliated with recognized adult family home associations; one representative from the state long-term care ombudsman program; one representative from the statewide resident council program; one representative from a general authority Washington law enforcement agency as defined in RCW 10.93.020; and two representatives of families and other consumers. The secretary shall appoint a chairperson for the committee from the committee membership for a term of one year. In appointing the chairperson, the secretary shall consult with members of the committee. Depending on the topic to be discussed, the department may invite other representatives in addition to the named members of the advisory committee. The secretary, or his or her designee, shall periodically, but not less than quarterly, convene a meeting of the advisory committee to encourage open dialogue on matters affecting the adult family home program. It is, minimally, expected that the department will discuss with the advisory committee the department's inspection, enforcement, and quality improvement activities, in addition to seeking their comments and recommendations on matters described under subsection (2) of this section.

(2) The secretary, or his or her designee, shall seek comments and recommendations from the advisory committee prior to the adoption of rules and standards, implementation of adult family home provider programs, or development of methods and rates of payment.

(3) Establishment of the advisory committee shall not prohibit the department of social and health services from utilizing other advisory activities that the department of social and health services deems necessary for program development.

(4) Members of the advisory committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 from license fees collected under chapter 70.128 RCW. [2007 c 40 § 1; 2002 c 223 § 4.]

70.128.230 Long-term caregiver training. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has

been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care or within one hundred twenty days of September 1, 2002, whichever is later. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without indirect supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers. Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test. Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully chal-

lenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) Adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW 70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(11) The department shall adopt rules by September 1, 2002, for the implementation of this section.

(12) The orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, and shall be applied to (a) employees hired subsequent to September 1, 2002; or (b) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section. However, until September 1, 2002, nothing in this section affects the current training requirements under RCW 70.128.120 and 70.128.130. [2002 c 233 § 3; 2000 c 121 § 3.]

Effective date—2002 c 233: See note following RCW 18.20.270.

70.128.240 Approval system—Department-approved training—Adoption of rules. By March 1, 2002, the department must, by rule, create an approval system for those seeking to conduct department-approved training under RCW 70.128.230, *70.128.120 (5) and (6), and 70.128.130(10). The department shall adopt rules based on recommendations of the community long-term care training and education steering committee established in **RCW 74.39A.190. [2000 c 121 § 7.]

Reviser's note: *(1) RCW 70.128.120 was amended by 2001 c 319 § 8, changing subsections (5) and (6) to subsections (6) and (7).

** (2) RCW 74.39A.190 was repealed by 2007 c 361 § 10.

70.128.250 Required training and continuing education—Food safety training and testing. The department shall implement, as part of the required training and continuing education, food safety training and testing integrated into the curriculum that meets the standards established by the state board of health pursuant to chapter 69.06 RCW. Individual food handler permits are not required for persons who begin working in an adult family home after June 30, 2005, and successfully complete the basic and modified-basic caregiver training, provided they receive information or training regarding safe food handling practices from the employer prior to providing food handling or service for the clients. Documentation that the information or training has been provided to the individual must be kept on file by the employer.

Licensed adult family home providers or employees who hold individual food handler permits prior to June 30, 2005, will be required to maintain continuing education of .5 hours per year in order to maintain food handling and safety training. Licensed adult family home providers or employees who hold individual food handler permits prior to June 30, 2005, will not be required to renew the permit provided the continuing education requirement as stated above is met. [2005 c 505 § 6.]

70.128.900 Severability—1989 c 427. See RCW 74.39.900.

Chapter 70.129 RCW

LONG-TERM CARE RESIDENT RIGHTS

Sections

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70.129.005 Intent—Basic rights. The legislature recognizes that long-term care facilities are a critical part of the state’s long-term care services system. It is the intent of the legislature that individuals who reside in long-term care facilities receive appropriate services, be treated with courtesy, and continue to enjoy their basic civil and legal rights.

It is also the intent of the legislature that long-term care facility residents have the opportunity to exercise reasonable control over life decisions. The legislature finds that choice, participation, privacy, and the opportunity to engage in reli-

gious, political, civic, recreational, and other social activities foster a sense of self-worth and enhance the quality of life for long-term care residents.

The legislature finds that the public interest would be best served by providing the same basic resident rights in all long-term care settings. Residents in nursing facilities are guaranteed certain rights by federal law and regulation, 42 U.S.C. 1396r and 42 C.F.R. part 483. It is the intent of the legislature to extend those basic rights to residents in veterans’ homes, boarding homes, and adult family homes.

The legislature intends that a facility should care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident’s quality of life. A resident should have a safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible. [1994 c 214 § 1.]

Zoning—1994 c 214: "Nothing in this act shall affect the classifying of an adult family home for the purposes of zoning." [1994 c 214 § 30.]

70.129.007 Rights are minimal—Other rights not diminished. The rights set forth in this chapter are the minimal rights guaranteed to all residents of long-term care facilities, and are not intended to diminish rights set forth in other state or federal laws that may contain additional rights. [1994 c 214 § 20.]

70.129.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Department" means the department of state government responsible for licensing the provider in question.
- (2) "Facility" means a long-term care facility.
- (3) "Long-term care facility" means a facility that is licensed or required to be licensed under chapter 18.20, 72.36, or 70.128 RCW.
- (4) "Resident" means the individual receiving services in a long-term care facility, that resident’s attorney-in-fact, guardian, or other legal representative acting within the scope of their authority.
- (5) "Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident’s body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident’s medical symptoms.
- (6) "Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident’s medical symptoms.
- (7) "Representative" means a person appointed under RCW 7.70.065.
- (8) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations. [1997 c 392 § 203; 1994 c 214 § 2.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.129.020 Exercise of rights. The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident and assist the resident which include:

(1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States and the state of Washington.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by a court of competent jurisdiction, a representative may exercise the resident's rights to the extent provided by law. [1994 c 214 § 3.]

70.129.030 Notice of rights and services—Admission of individuals. (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident or his or her legal representative has the right:

(a) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or portions of them upon request and two working days' advance notice to the facility.

(3) The facility shall only admit or retain individuals whose needs it can safely and appropriately serve in the facility with appropriate available staff and through the provision of reasonable accommodations required by state or federal law. Except in cases of genuine emergency, the facility shall not admit an individual before obtaining a thorough assessment of the resident's needs and preferences. The assessment shall contain, unless unavailable despite the best efforts of the facility, the resident applicant, and other interested parties, the following minimum information: Recent medical history; necessary and contraindicated medications; a licensed medical or other health professional's diagnosis, unless the individual objects for religious reasons; significant known behaviors or symptoms that may cause concern or require special care; mental illness, except where protected by confidentiality laws; level of personal care needs; activities and service preferences; and preferences regarding other issues important to the resident applicant, such as food and daily routine.

(4) The facility must inform each resident in writing in a language the resident or his or her representative understands before admission, and at least once every twenty-four months thereafter of: (a) Services, items, and activities customarily available in the facility or arranged for by the facility as per-

mitted by the facility's license; (b) charges for those services, items, and activities including charges for services, items, and activities not covered by the facility's per diem rate or applicable public benefit programs; and (c) the rules of facility operations required under RCW 70.129.140(2). Each resident and his or her representative must be informed in writing in advance of changes in the availability or the charges for services, items, or activities, or of changes in the facility's rules. Except in emergencies, thirty days' advance notice must be given prior to the change. However, for facilities licensed for six or fewer residents, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities, then the charges for those services, items, or activities may be changed upon fourteen days' advance written notice.

(5) The facility must furnish a written description of residents rights that includes:

(a) A description of the manner of protecting personal funds, under RCW 70.129.040;

(b) A posting of names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the state ombudsmen program, and the protection and advocacy systems; and

(c) A statement that the resident may file a complaint with the appropriate state licensing agency concerning alleged resident abuse, neglect, and misappropriation of resident property in the facility.

(6) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the resident's legal representative or an interested family member when there is:

(i) An accident involving the resident which requires or has the potential for requiring physician intervention;

(ii) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).

(b) The facility must promptly notify the resident or the resident's representative shall make reasonable efforts to notify an interested family member, if known, when there is:

(i) A change in room or roommate assignment; or

(ii) A decision to transfer or discharge the resident from the facility.

(c) The facility must record and update the address and phone number of the resident's representative or interested family member, upon receipt of notice from them. [1998 c 272 § 5; 1997 c 386 § 31; 1994 c 214 § 4.]

Effective date—1998 c 272 § 5: "Section 5 of this act takes effect July 1, 1998." [1998 c 272 § 23.]

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

70.129.040 Protection of resident's funds—Financial affairs rights. (1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) Upon written authorization of a resident, if the facility agrees to manage the resident's personal funds, the facility must hold, safeguard, manage, and account for the personal

funds of the resident deposited with the facility as specified in this section.

(a) The facility must deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing account or accounts that is separate from any of the facility's operating accounts, and that credits all interest earned on residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(b) The facility must maintain a resident's personal funds that do not exceed one hundred dollars in a noninterest-bearing account, interest-bearing account, or petty cash fund.

(3) The facility must establish and maintain a system that assures a full and complete and separate accounting of each resident's personal funds entrusted to the facility on the resident's behalf.

(a) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(b) The individual financial record must be available on request to the resident or his or her legal representative.

(4) Upon the death of a resident with a personal fund deposited with the facility the facility must convey within forty-five days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; but in the case of a resident who received long-term care services paid for by the state, the funds and accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery. The department shall establish a release procedure for use for burial expenses. [1995 1st sp.s. c 18 § 66; 1994 c 214 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.129.050 Privacy and confidentiality of personal and medical records. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. This does not require the facility to provide a private room for each resident however, a resident cannot be prohibited by the facility from meeting with guests in his or her bedroom if no roommates object.

(2) The resident may approve or refuse the release of personal and clinical records to an individual outside the facility unless otherwise provided by law. [1994 c 214 § 6.]

70.129.060 Grievances. A resident has the right to:

(1) Voice grievances. Such grievances include those with respect to treatment that has been furnished as well as that which has not been furnished; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents. [1994 c 214 § 7.]

70.129.070 Examination of survey or inspection results—Contact with client advocates. A resident has the right to:

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(1) Examine the results of the most recent survey or inspection of the facility conducted by federal or state surveyors or inspectors and plans of correction in effect with respect to the facility. A notice that the results are available must be publicly posted with the facility's state license, and the results must be made available for examination by the facility in a place readily accessible to residents; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies. [1994 c 214 § 8.]

70.129.080 Mail and telephone—Privacy in communications. The resident has the right to privacy in communications, including the right to:

- (1) Send and promptly receive mail that is unopened;
- (2) Have access to stationery, postage, and writing implements at the resident's own expense; and
- (3) Have reasonable access to the use of a telephone where calls can be made without being overheard. [1994 c 214 § 9.]

70.129.090 Advocacy, access, and visitation rights. (1) The resident has the right and the facility must not interfere with access to any resident by the following:

- (a) Any representative of the state;
- (b) The resident's individual physician;
- (c) The state long-term care ombudsman as established under chapter 43.190 RCW;
- (d) The agency responsible for the protection and advocacy system for developmentally disabled individuals as established under part C of the developmental disabilities assistance and bill of rights act;

(e) The agency responsible for the protection and advocacy system for mentally ill individuals as established under the protection and advocacy for mentally ill individuals act;

(f) Subject to reasonable restrictions to protect the rights of others and to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident and others who are visiting with the consent of the resident;

(g) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the rehabilitation act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law.

(2) The facility must provide reasonable access to a resident by his or her representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the state ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with state and federal law. [1994 c 214 § 10.]

70.129.100 Personal property—Storage space. (1) The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing,

as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(2) The facility shall, upon request, provide the resident with a lockable container or other lockable storage space for small items of personal property, unless the resident's individual room is lockable with a key issued to the resident. [1994 c 214 § 11.]

70.129.105 Waiver of liability and resident rights limited. No long-term care facility or nursing facility licensed under chapter 18.51 RCW shall require or request residents to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of residents' rights set forth in this chapter or in the applicable licensing or certification laws. [1997 c 392 § 211; 1994 c 214 § 17.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.129.110 Disclosure, transfer, and discharge requirements. (1) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The safety of individuals in the facility is endangered;

(c) The health of individuals in the facility would otherwise be endangered;

(d) The resident has failed to make the required payment for his or her stay; or

(e) The facility ceases to operate.

(2) All long-term care facilities shall fully disclose to potential residents or their legal representative the service capabilities of the facility prior to admission to the facility. If the care needs of the applicant who is medicaid eligible are in excess of the facility's service capabilities, the department shall identify other care settings or residential care options consistent with federal law.

(3) Before a long-term care facility transfers or discharges a resident, the facility must:

(a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;

(b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (5) of this section.

(4)(a) Except when specified in this subsection, the notice of transfer or discharge required under subsection (3) of this section must be made by the facility at least thirty days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge when:

(i) The safety of individuals in the facility would be endangered;

(ii) The health of individuals in the facility would be endangered;

(iii) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(iv) A resident has not resided in the facility for thirty days.

(5) The written notice specified in subsection (3) of this section must include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombudsman;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the developmental disabilities assistance and bill of rights act; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the protection and advocacy for mentally ill individuals act.

(6) A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of a gender-appropriate bed in the facility. [1997 c 392 § 205; 1994 c 214 § 12.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.129.120 Restraints—Physical or chemical. The resident has the right to be free from physical restraint or chemical restraint. This section does not require or prohibit facility staff from reviewing the judgment of the resident's physician in prescribing psychopharmacologic medications. [1994 c 214 § 13.]

70.129.130 Abuse, punishment, seclusion—Background checks. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(1) The facility must not use verbal, mental, sexual, or physical abuse, including corporal punishment or involuntary seclusion.

(2) Subject to available resources, the department of social and health services shall provide background checks required by RCW 43.43.842 for employees of facilities licensed under chapter 18.20 RCW without charge to the facility. [1994 c 214 § 14.]

70.129.140 Quality of life—Rights. (1) The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) Within reasonable facility rules designed to protect the rights and quality of life of residents, the resident has the right to:

(a) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(b) Interact with members of the community both inside and outside the facility;

(c) Make choices about aspects of his or her life in the facility that are significant to the resident;

(d) Wear his or her own clothing and determine his or her own dress, hair style, or other personal effects according to individual preference;

(e) Unless adjudged incompetent or otherwise found to be legally incapacitated, participate in planning care and treatment or changes in care and treatment;

(f) Unless adjudged incompetent or otherwise found to be legally incapacitated, to direct his or her own service plan and changes in the service plan, and to refuse any particular service so long as such refusal is documented in the record of the resident.

(3)(a) A resident has the right to organize and participate in resident groups in the facility.

(b) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(c) The facility must provide a resident or family group, if one exists, with meeting space.

(d) Staff or visitors may attend meetings at the group's invitation.

(e) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(f) The resident has the right to refuse to perform services for the facility except as voluntarily agreed by the resident and the facility in the resident's service plan.

(4) A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(5) A resident has the right to:

(a) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(b) Receive notice before the resident's room or roommate in the facility is changed.

(6) A resident has the right to share a double room with his or her spouse or domestic partner when residents who are married to each other or in a domestic partnership with each other live in the same facility and both spouses or both domestic partners consent to the arrangement. [2008 c 6 § 304; 1994 c 214 § 15.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

70.129.150 Disclosure of fees and notice requirements—Deposits. (1) Prior to admission, all long-term care facilities or nursing facilities licensed under chapter 18.51 RCW that require payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission to the long-term care facility or nursing facility, shall

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provide the resident, or his or her representative, full disclosure in writing in a language the resident or his or her representative understands, a statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees. The facility shall also disclose to the person, or his or her representative, the facility's advance notice or transfer requirements, prior to admission. In addition, the long-term care facility or nursing facility shall also fully disclose in writing prior to admission what portion of the deposits, admissions fees, prepaid charges, or minimum stay fees will be refunded to the resident or his or her representative if the resident leaves the long-term care facility or nursing facility. Receipt of the disclosures required under this subsection must be acknowledged in writing. If the facility does not provide these disclosures, the deposits, admissions fees, prepaid charges, or minimum stay fees may not be kept by the facility. If a resident dies or is hospitalized or is transferred to another facility for more appropriate care and does not return to the original facility, the facility shall refund any deposit or charges already paid less the facility's per diem rate for the days the resident actually resided or reserved or retained a bed in the facility notwithstanding any minimum stay policy or discharge notice requirements, except that the facility may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private-pay resident's move, not to exceed five days' per diem charges, unless the resident has given advance notice in compliance with the admission agreement. All long-term care facilities or nursing facilities covered under this section are required to refund any and all refunds due the resident or his or her representative within thirty days from the resident's date of discharge from the facility. Nothing in this section applies to provisions in contracts negotiated between a nursing facility or long-term care facility and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(2) Where a long-term care facility or nursing facility requires the execution of an admission contract by or on behalf of an individual seeking admission to the facility, the terms of the contract shall be consistent with the requirements of this section, and the terms of an admission contract by a long-term care facility shall be consistent with the requirements of this chapter. [1997 c 392 § 206; 1994 c 214 § 16.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.129.160 Ombudsman implementation duties. The long-term care ombudsman shall monitor implementation of this chapter and determine the degree to which veterans' homes, nursing facilities, adult family homes, and boarding homes ensure that residents are able to exercise their rights. The long-term care ombudsman shall consult with the departments of health and social and health services, long-term care facility organizations, resident groups, and senior and disabled citizen organizations. [1998 c 245 § 113; 1994 c 214 § 18.]

70.129.170 Nonjudicial remedies through regulatory authorities encouraged—Remedies cumulative. The leg-

islature intends that long-term care facility or nursing home residents, their family members or guardians, the long-term care ombudsman, protection and advocacy personnel identified in *RCW 70.129.110(4) (e) and (f), and others who may seek to assist long-term care facility or nursing home residents, use the least formal means available to satisfactorily resolve disputes that may arise regarding the rights conferred by the provisions of chapter 70.129 RCW and RCW 18.20.180, 18.51.009, 72.36.037, and 70.128.125. Wherever feasible, direct discussion with facility personnel or administrators should be employed. Failing that, and where feasible, recourse may be sought through state or federal long-term care or nursing home licensing or other regulatory authorities. However, the procedures suggested in this section are cumulative and shall not restrict an agency or person from seeking a remedy provided by law or from obtaining additional relief based on the same facts, including any remedy available to an individual at common law. Chapter 214, Laws of 1994 is not intended to, and shall not be construed to, create any right of action on the part of any individual beyond those in existence under any common law or statutory doctrine. Chapter 214, Laws of 1994 is not intended to, and shall not be construed to, operate in derogation of any right of action on the part of any individual in existence on June 9, 1994. [1994 c 214 § 19.]

***Reviser's note:** RCW 70.129.110 was amended by 1997 c 392 § 205, changing subsection (4) to subsection (5).

70.129.900 Severability—1994 c 214. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 214 § 26.]

70.129.901 Conflict with federal requirements—1994 c 214. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [1994 c 214 § 27.]

70.129.902 Captions not law. Captions as used in this act constitute no part of the law. [1994 c 214 § 28.]

Chapter 70.132 RCW BEVERAGE CONTAINERS

Sections

70.132.010	Legislative findings.
70.132.020	Definitions.
70.132.030	Sale of containers with detachable metal rings or tabs prohibited.
70.132.040	Enforcement—Rules.
70.132.050	Penalty.
70.132.900	Effective date—Implementation—1982 c 113.

70.132.010 Legislative findings. The legislature finds that beverage containers designed to be opened through the use of detachable metal rings or tabs are hazardous to the health and welfare of the citizens of this state and detrimental to certain wildlife. The detachable parts are susceptible to ingestion by human beings and wildlife. The legislature intends to eliminate the danger posed by these unnecessary containers by prohibiting their retail sale in this state. [1982 c 113 § 1.]

70.132.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Beverage" means beer or other malt beverage or mineral water, soda water, or other drink in liquid form and intended for human consumption. The term does not include milk-based, soy-based, or similar products requiring heat and pressure in the canning process.

(2) "Beverage container" means a separate and sealed can containing a beverage.

(3) "Department" means the department of ecology created under chapter 43.21A RCW. [1983 c 257 § 1; 1982 c 113 § 2.]

70.132.030 Sale of containers with detachable metal rings or tabs prohibited. No person may sell or offer to sell at retail in this state any beverage container so designed and constructed that a metal part of the container is detachable in opening the container through use of a metal ring or tab. Nothing in this section prohibits the sale of a beverage container which container's only detachable part is a piece of pressure sensitive or metallic tape. [1982 c 113 § 3.]

70.132.040 Enforcement—Rules. The department shall administer and enforce this chapter. The department shall adopt rules interpreting and implementing this chapter. Any rule adopted under this section shall be adopted under the administrative procedure act, chapter 34.05 RCW. [1982 c 113 § 4.]

70.132.050 Penalty. Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, any person who violates any provision of this chapter or any rule adopted under this chapter is subject to a civil penalty not exceeding five hundred dollars for each violation. Each day of a continuing violation is a separate violation. [1995 c 403 § 632; 1982 c 113 § 5.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

70.132.900 Effective date—Implementation—1982 c 113. This act shall take effect on July 1, 1983. The director of the department of ecology is authorized to take such steps prior to such date as are necessary to ensure that this act is implemented on its effective date. [1982 c 113 § 7.]

Chapter 70.136 RCW

HAZARDOUS MATERIALS INCIDENTS

Sections

70.136.010	Legislative intent.
70.136.020	Definitions.
70.136.030	Incident command agencies—Designation by political subdivisions.
70.136.035	Incident command agencies—Assistance from state patrol.
70.136.040	Incident command agencies—Emergency assistance agreements.
70.136.050	Persons and agencies rendering emergency aid in hazardous materials incidents—Immunity from liability—Limitations.
70.136.055	Person causing hazardous materials incident—Responsibility for incident clean-up—Liability.
70.136.060	Written emergency assistance agreements—Terms and conditions—Records.
70.136.070	Verbal emergency assistance agreements—Good Samaritan law—Notification—Form.

Emergency management: Chapter 38.52 RCW.

Hazardous waste disposal: Chapter 70.105 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Transport of hazardous materials, state patrol authority over: Chapter 46.48 RCW.

70.136.010 Legislative intent. It is the intent of the legislature to promote and encourage advance planning, cooperation, and mutual assistance between applicable political subdivisions of the state and persons with equipment, personnel, and expertise in the handling of hazardous materials incidents, by establishing limitations on liability for those persons responding in accordance with the provisions of RCW 70.136.020 through 70.136.070. [1982 c 172 § 1.]

Reviser's note: Although 1982 c 172 directed that sections 1 through 7 of that enactment be added to chapter 4.24 RCW, codification of these sections as a new chapter in Title 70 RCW appears more appropriate.

70.136.020 Definitions. The definitions set forth in this section apply throughout RCW 70.136.010 through 70.136.070.

(1) "Hazardous materials" means:

(a) Materials which, if not contained may cause unacceptable risks to human life within a specified area adjacent to the spill, seepage, fire, explosion, or other release, and will, consequently, require evacuation;

(b) Materials that, if spilled, could cause unusual risks to the general public and to emergency response personnel responding at the scene;

(c) Materials that, if involved in a fire will pose unusual risks to emergency response personnel;

(d) Materials requiring unusual storage or transportation conditions to assure safe containment; or

(e) Materials requiring unusual treatment, packaging, or vehicles during transportation to assure safe containment.

(2) "Applicable political subdivisions of the state" means cities, towns, counties, fire districts, and those port authorities with emergency response capabilities.

(3) "Person" means an individual, partnership, corporation, or association.

(4) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the

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United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

(5) "Hazardous materials incident" means an incident creating a danger to persons, property, or the environment as a result of spillage, seepage, fire, explosion, or release of hazardous materials, or the possibility thereof.

(6) "Governing body" means the elected legislative council, board, or commission or the chief executive of the applicable political subdivision of the state with public safety responsibility.

(7) "Incident command agency" means the predesignated or appointed agency charged with coordinating all activities and resources at the incident scene.

(8) "Representative" means an agent from the designated hazardous materials incident command agency with the authority to secure the services of persons with hazardous materials expertise or equipment.

(9) "Profit" means compensation for rendering care, assistance, or advice in excess of expenses actually incurred. [1987 c 238 § 1; 1982 c 172 § 2.]

70.136.030 Incident command agencies—Designation by political subdivisions. The governing body of each applicable political subdivision of this state shall designate a hazardous materials incident command agency within its respective boundaries, and file this designation with the director of community, trade, and economic development. In designating an incident command agency, the political subdivision shall consider the training, manpower, expertise, and equipment of various available agencies as well as the Uniform Fire Code and other existing codes and regulations. Along state and interstate highway corridors, the Washington state patrol shall be the designated incident command agency unless by mutual agreement that role has been assumed by another designated incident command agency. If a political subdivision has not designated an incident command agency within six months after July 26, 1987, the Washington state patrol shall then assume the role of incident command agency by action of the chief until a designation has been made. [1995 c 399 § 197; 1987 c 238 § 2; 1986 c 266 § 50; 1985 c 7 § 132; 1984 c 165 § 1; 1982 c 172 § 4.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.136.035 Incident command agencies—Assistance from state patrol. In political subdivisions where an incident command agency has been designated, the Washington state patrol shall continue to respond with a supervisor to provide assistance to the incident command agency. [1987 c 238 § 3.]

70.136.040 Incident command agencies—Emergency assistance agreements. Hazardous materials incident command agencies, so designated by all applicable political subdivisions of the state, are authorized and encouraged, prior to a hazardous materials incident, to enter individually or jointly into written hazardous materials emergency assistance agreements with any person whose knowledge or expertise is deemed potentially useful. [1982 c 172 § 3.]

70.136.050 Persons and agencies rendering emergency aid in hazardous materials incidents—Immunity from liability—Limitations. An incident command agency in the good faith performance of its duties, is not liable for civil damages resulting from any act or omission in the performance of its duties, other than acts or omissions constituting gross negligence or wilful or wanton misconduct.

Any person or public agency whose assistance has been requested by an incident command agency, who has entered into a written hazardous materials assistance agreement before or at the scene of the incident pursuant to RCW 70.136.060 and 70.136.070, and who, in good faith, renders emergency care, assistance, or advice with respect to a hazardous materials incident, is not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or wilful or wanton misconduct. [1987 c 238 § 4; 1984 c 165 § 2; 1982 c 172 § 5.]

70.136.055 Person causing hazardous materials incident—Responsibility for incident clean-up—Liability. See RCW 4.24.314.

70.136.060 Written emergency assistance agreements—Terms and conditions—Records. Hazardous materials emergency assistance agreements which are executed prior to a hazardous materials incident shall include the following terms and conditions:

- (1) The person or public agency requested to assist shall not be obligated to assist;
- (2) The person or public agency requested to assist may act only under the direction of the incident command agency or its representative;
- (3) The person or public agency requested to assist may withdraw its assistance if it deems the actions or directions of the incident command agency to be contrary to accepted hazardous materials response practices;
- (4) The person or public agency requested to assist shall not profit from rendering the assistance;
- (5) Any person responsible for causing the hazardous materials incident shall not be covered by the liability standard defined in RCW 70.136.050.

It is the responsibility of both parties to ensure that mutually agreeable procedures are established for identifying the incident command agency when assistance is requested, for recording the name of the person or public agency whose assistance is requested, and the time and date of the request, which records shall be retained for three years by the incident command agency. A copy of the official incident command agency designation shall be a part of the assistance agreement specified in this section. [1987 c 238 § 5; 1982 c 172 § 6.]

70.136.070 Verbal emergency assistance agreements—Good Samaritan law—Notification—Form. (1) Verbal hazardous materials emergency assistance agreements may be entered into at the scene of an incident where execution of a written agreement prior to the incident is not possible. A notification of the terms of this section shall be presented at the scene by the incident command agency or its representative to the person or public agency whose assistance is requested. The incident command agency and the

person or public agency whose assistance is requested shall both sign the notification which appears in subsection (2) of this section, indicating the date and time of signature. If a requesting incident command agency deliberately misrepresents individual or agency status, that agency shall assume full liability for any damages resulting from the actions of the person or public agency whose assistance is requested, other than those damages resulting from gross negligence or wilful or wanton misconduct.

(2) The notification required by subsection (1) of this section shall be in substantially the following form:

NOTIFICATION OF "GOOD SAMARITAN" LAW

You have been requested to provide emergency assistance by a representative of a hazardous materials incident command agency. To encourage your assistance, the Washington state legislature has passed "Good Samaritan" legislation (RCW 70.136.050) to protect you from potential liability. The law reads, in part:

"Any person or public agency whose assistance has been requested by an incident command agency, who has entered into a written hazardous materials assistance agreement . . . at the scene of the incident pursuant to . . . RCW 70.136.070, and who, in good faith, renders emergency care, assistance, or advice with respect to a hazardous materials incident, is not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or wilful or wanton misconduct."

The law requires that you be advised of certain conditions to ensure your protection:

- 1. You are not obligated to assist and you may withdraw your assistance at any time.
- 2. You cannot profit from assisting.
- 3. You must agree to act under the direction of the incident command agency.
- 4. You are not covered by this law if you caused the initial accident.

I have read and understand the above.

(Name)

Date Time

I am a representative of a designated hazardous materials incident command agency and I am authorized to make this request for assistance.

(Name)

(Agency)

Date Time

[1987 c 238 § 6; 1982 c 172 § 7.]

**Chapter 70.138 RCW
INCINERATOR ASH RESIDUE**

Sections

- 70.138.010 Legislative findings.
- 70.138.020 Definitions.
- 70.138.030 Review and approval of management plans—Disposal permits.
- 70.138.040 Civil penalties.
- 70.138.050 Violations—Orders.

- 70.138.060 Enforcement—Injunctive relief.
 70.138.070 Criminal penalties.
 70.138.900 Application of chapter to certain incinerators.
 70.138.901 Short title.
 70.138.902 Severability—1987 c 528.

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

70.138.010 Legislative findings. The legislature finds:

(1) Solid wastes generated in the state are to be managed in the following order of descending priority: (a) Waste reduction; (b) recycling; (c) treatment; (d) energy recovery or incineration; (e) solidification/stabilization; and (f) landfill.

(2) Special incinerator ash residues from the incineration of municipal solid waste that would otherwise be regulated as hazardous wastes need a separate regulatory scheme in order to (a) ease the permitting and reporting requirements of chapter 70.105 RCW, the state hazardous waste management act, and (b) supplement the environmental protection provisions of chapter 70.95 RCW, the state solid waste management act.

(3) Raw garbage poses significant environmental and public health risks. Municipal solid waste incineration constitutes a higher waste management priority than the land disposal of untreated municipal solid waste due to its reduction of waste volumes and environmental health risks.

It is therefore the purpose of this chapter to establish management requirements for special incinerator ash that otherwise would be regulated as hazardous waste under chapter 70.105 RCW, the hazardous waste management act. [1987 c 528 § 1.]

70.138.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or the director's designee.

(3) "Dispose" or "disposal" means the treatment, utilization, processing, or final deposit of special incineration ash.

(4) "Generate" means any act or process which produces special incinerator ash or which first causes special incinerator ash to become subject to regulation.

(5) "Management" means the handling, storage, collection, transportation, and disposal of special incinerator ash.

(6) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(7) "Facility" means all structures, other appurtenances, improvements, and land used for recycling, storing, treating, or disposing of special incinerator ash.

(8) "Special incinerator ash" means ash residues resulting from the operation of incinerator or energy recovery facilities managing municipal solid waste, including solid waste from residential, commercial, and industrial establishments, if the ash residues (a) would otherwise be regulated as hazardous wastes under chapter 70.105 RCW; and (b) are not regulated as a hazardous waste under the federal resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq. [1987 c 528 § 2.]

70.138.030 Review and approval of management plans—Disposal permits. (1) Prior to managing special

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incinerator ash, persons who generate special incinerator ash shall develop plans for managing the special incinerator ash. These plans shall:

(a) Identify procedures for all aspects relating to the management of the special incinerator ash that are necessary to protect employees, human health, and the environment;

(b) Identify alternatives for managing solid waste prior to incineration for the purpose of (i) reducing the toxicity of the special incinerator ash; and (ii) reducing the quantity of the special incinerator ash;

(c) Establish a process for submittal of an annual report to the department disclosing the results of a testing program to identify the toxic properties of the special incinerator ash as necessary to ensure that the procedures established in the plans submitted pursuant to this chapter are adequate to protect employees, human health, and the environment; and

(d) Comply with the rules established by the department in accordance with this section.

(2) Prior to managing any special incinerator ash, any person required to develop a plan pursuant to subsection (1) of this section shall submit the plan to the department for review and approval. Prior to approving a plan, the department shall find that the plan complies with the provisions of this chapter, including any rules adopted under this chapter. Approval may be conditioned upon additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(3) The department shall give notice of receipt of a proposed plan to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall approve, approve with conditions, or reject the plan submitted pursuant to this section within ninety days of submittal.

(4) Prior to accepting any special incinerator ash for disposal, persons owning or operating facilities for the disposal of the incinerator ash shall apply to the department for a permit. The department shall issue a permit if the disposal will provide adequate protection of human health and the environment. Prior to issuance of any permit, the department shall find that the facility meets the requirements of chapter 70.95 RCW and any rules adopted under this chapter. The department may place conditions on the permit to include additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(5) The department shall give notice of its receipt of a permit application to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall issue, issue with conditions, or deny the permit within ninety days of submittal.

(6) The department shall adopt rules to implement the provisions of this chapter. The rules shall (a) establish minimum requirements for the management of special incinerator ash as necessary to protect employees, human health, and the environment, (b) clearly define the elements of the plans required by this chapter, and (c) require special incinerator

ash to be disposed at facilities that are operating in compliance with this chapter. [1987 c 528 § 3.]

70.138.040 Civil penalties. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, any person who violates any provision of a department regulation or regulatory order relating to the management of special incinerator ash shall incur in addition to any other penalty provided by law, a penalty in an amount up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review by the hearings board is filed. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. [1995 c 403 § 633; 1987 c 528 § 4.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

70.138.050 Violations—Orders. Whenever a person violates any provision of this chapter or any permit or regulation the department may issue an order appropriate under the circumstances to assure compliance with the chapter, permit, or regulation. Such an order must be served personally or by

registered mail upon any person to whom it is directed. [1987 c 528 § 5.]

70.138.060 Enforcement—Injunctive relief. The department, with the assistance of the attorney general, may bring any appropriate action at law or in equity, including action for injunctive relief as may be necessary to enforce the provisions of this chapter or any permit or regulation issued thereunder. [1987 c 528 § 6.]

70.138.070 Criminal penalties. Any person found guilty of wilfully violating, without sufficient cause, any of the provisions of this chapter, or permit or order issued pursuant to this chapter is guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to one year, or by both. Each day of violation may be deemed a separate violation. [1987 c 528 § 7.]

70.138.900 Application of chapter to certain incinerators. This chapter shall not apply to municipal solid waste incinerators that are in operation on May 19, 1987, until a special incinerator waste disposal permit is issued in the county where the municipal solid waste incinerator is located, or July 1, 1989, whichever is sooner. [1987 c 528 § 12.]

70.138.901 Short title. This chapter shall be known as the special incinerator ash disposal act. [1987 c 528 § 11.]

70.138.902 Severability—1987 c 528. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 528 § 14.]

Chapter 70.140 RCW

AREA-WIDE SOIL CONTAMINATION

Sections

70.140.010	Findings.
70.140.020	Definitions.
70.140.030	Children in schools and child care facilities—Department duties—School and child care facility duties.
70.140.040	Department assistance—Best management practice guidelines—Grants—Interagency agreements authorized—Reports.
70.140.050	Department of health to provide assistance.
70.140.060	Department of social and health services to provide assistance.
70.140.070	Livestock, agricultural land exempt from chapter.
70.140.080	Existing authority of department not affected.

70.140.010 Findings. The legislature finds that state and local agencies are currently implementing actions to reduce children's exposure to soils that contain hazardous substances. The legislature further finds that it is in the public interest to enhance those efforts in western Washington in areas located within the central Puget Sound smelter plume. [2005 c 306 § 1.]

70.140.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Area-wide soil contamination" means low to moderate arsenic and lead soil contamination dispersed over a large geographic area.

(2) "Child care facility" means a child day-care center or a family day-care provider as those terms are defined under *RCW 74.15.020.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology.

(5) "Low to moderate soil contamination" means low level arsenic or lead concentrations where a child's exposure to soil contamination at a school or a child care facility may be reduced through best management practices.

(6) "School" means a public or private kindergarten, elementary, or secondary school. [2005 c 306 § 2.]

*Reviser's note: RCW 74.15.020 was amended by 2006 c 265 § 401, removing the definitions for "child day-care center" and "family day-care provider."

70.140.030 Children in schools and child care facilities—Department duties—School and child care facility duties. (1) The department, in cooperation with the department of social and health services, the department of health, the office of the superintendent of public instruction, and local health districts, shall assist schools and child care facilities west of the crest of the Cascade mountains to reduce the potential for children's exposure to area-wide soil contamination.

(2) The department shall:

(a) Identify schools and child care facilities that are located within the central Puget Sound smelter plume based on available information;

(b) Conduct qualitative evaluations to determine the potential for children's exposure to area-wide soil contamination;

(c) If the qualitative evaluation determines that children may be routinely exposed to area-wide soil contamination at a property, conduct soil samples at that property by December 31, 2009; and

(d) If soil sample results confirm the presence of area-wide soil contamination, notify schools and child care facilities regarding the test results and the steps necessary for implementing best management practices.

(3) If a school or a child care facility with area-wide soil contamination does not implement best management practices within six months of receiving written notification from the department, the superintendent or board of directors of a school or the owner or operator of a child care facility must notify parents and guardians in writing of the results of soil tests. The written notice shall be prepared by the department.

(4) The department shall recognize schools and child care facilities that successfully implement best management practices with a voluntary certification letter confirming that the facility has successfully implemented best management practices.

(5) Schools and child care facilities must work with the department to provide the department with site access for soil sampling at times that are the most convenient for all parties. [2005 c 306 § 3.]

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70.140.040 Department assistance—Best management practice guidelines—Grants—Interagency agreements authorized—Reports. (1) The department shall assist schools and owners and operators of child care facilities located within the central Puget Sound smelter plume. Such assistance may include the following:

(a) Technical assistance in conducting qualitative evaluations to determine where area-wide soil contamination exposures could occur;

(b) Technical and financial assistance in testing soils where evaluations indicate potential for contamination; and

(c) Technical and financial assistance to implement best management practices.

(2) The department shall develop best management practice guidelines for schools and day care facilities with area-wide soil contamination. The guidelines shall recommend a range of methods for reducing exposure to contaminated soil, considering the concentration, extent, and location of contamination and the nature and frequency of child use of the area.

(3) The department shall develop a grant program to assist schools and child care facilities with implementing best management practices.

(4) The department, within available funds, may provide grants to schools and child care facilities for the purpose of implementing best management practices.

(5) The department, within available funds, may provide financial assistance to the department of health and the department of social and health services to implement this chapter.

(6) The department may, through an interagency agreement, authorize a local health jurisdiction to administer any activity in this chapter that is otherwise not assigned to a local health jurisdiction by this chapter.

(7) The department shall evaluate actions to reduce child exposure to contaminated soils and submit progress reports to the governor and to the appropriate committees of the legislature by December 31, 2006, and December 31, 2008. [2005 c 306 § 4.]

70.140.050 Department of health to provide assistance. The department of health shall assist the department in implementing this chapter, including but not limited to developing best management practices and guidelines. [2005 c 306 § 5.]

70.140.060 Department of social and health services to provide assistance. The department of social and health services shall assist the department by providing information on the location of child care facilities and contacts for these facilities. [2005 c 306 § 6.]

70.140.070 Livestock, agricultural land exempt from chapter. This chapter does not apply to land devoted primarily to the commercial production of livestock or agricultural commodities. [2005 c 306 § 7.]

70.140.080 Existing authority of department not affected. Nothing in this chapter is intended to change ongoing actions or the authority of the department or other agen-

cies to require actions to address soil contamination under existing laws. [2005 c 306 § 8.]

Chapter 70.142 RCW
CHEMICAL CONTAMINANTS AND
WATER QUALITY

Sections

- 70.142.010 Establishment of standards for chemical contaminants in drinking water by state board of health.
- 70.142.020 Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health.
- 70.142.030 Monitoring requirements—Considerations.
- 70.142.040 Establishment of water quality standards by local health department in large counties.
- 70.142.050 Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.142.010 Establishment of standards for chemical contaminants in drinking water by state board of health.

(1) In order to protect public health from chemical contaminants in drinking water, the state board of health shall conduct public hearings and, where technical data allow, establish by rule standards for allowable concentrations. For purposes of this chapter, the words "chemical contaminants" are limited to synthetic organic chemical contaminants and to any other contaminants which in the opinion of the board constitute a threat to public health. If adequate data to support setting of a standard is available, the state board of health shall adopt by rule a maximum contaminant level for water provided to consumers' taps. Standards set for contaminants known to be toxic shall consider both short-term and chronic toxicity. Standards set for contaminants known to be carcinogenic shall be consistent with risk levels established by the state board of health.

(2) The board shall consider the best available scientific information in establishing the standards. The board may review and revise the standards. State and local standards for chemical contaminants may be more strict than the federal standards. [1984 c 187 § 1.]

70.142.020 Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health. The state board of health shall conduct public hearings and establish by rule monitoring requirements for chemical contaminants in public water supplies. Results of tests conducted pursuant to such requirements shall be submitted to the department of health and to the local health department. The state board of health may review and revise monitoring requirements for chemical contaminants. [1991 c 3 § 374; 1984 c 187 § 2.]

70.142.030 Monitoring requirements—Considerations. The state board of health in determining monitoring requirements for public water supply systems shall take into consideration economic impacts as well as public health risks. [1984 c 187 § 5.]

70.142.040 Establishment of water quality standards by local health department in large counties. Each local

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health department serving a county with a population of one hundred twenty-five thousand or more may establish water quality standards for its jurisdiction more stringent than standards established by the state board of health. Each local health department establishing such standards shall base the standards on the best available scientific information. [1991 c 363 § 145; 1984 c 187 § 3.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

70.142.050 Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers. Public water supply systems as defined by RCW 70.119.020 that the state board of health or local health department determines do not comply with the water quality standards applicable to the system shall immediately initiate preparation of a corrective plan designed to meet or exceed the minimum standards for submission to the department of health. The owner of such system shall within one year take any action required to bring the water into full compliance with the standards. The department of health may require compliance as promptly as necessary to abate an immediate public health threat or may extend the period of compliance if substantial new construction is required: PROVIDED FURTHER, That the extension shall be granted only upon a determination by the department, after a public hearing, that the extension will not pose an imminent threat to public health. Each such system shall include a notice identifying the water quality standards exceeded, and the amount by which the water tested exceeded the standards, in all customer bills mailed after such determination. The notification shall continue until water quality tests conducted in accordance with this chapter establish that the system meets or exceeds the minimum standards. [1991 c 3 § 375; 1984 c 187 § 4.]

Chapter 70.146 RCW
WATER POLLUTION CONTROL
FACILITIES FINANCING

Sections

- 70.146.010 Purpose—Legislative intent.
- 70.146.020 Definitions.
- 70.146.030 Water quality account—Progress report.
- 70.146.040 Level of grant or loan not precedent.
- 70.146.050 Compliance schedule for secondary treatment.
- 70.146.060 Water quality account distributions—Limitations.
- 70.146.070 Grants or loans for water pollution control facilities—Considerations.
- 70.146.075 Extended grant payments.
- 70.146.080 Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues.
- 70.146.090 Grants and loans to local governments—Statement of environmental benefits—Development of outcome-focused performance measures.
- 70.146.100 Water quality capital account—Expenditures.
- 70.146.110 Puget Sound partners.
- 70.146.120 Administering funds—Preference to an evergreen community.
- 70.146.900 Severability—1986 c 3.

70.146.010 Purpose—Legislative intent. The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to

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provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that distribution of moneys for water pollution control facilities under this chapter be made on an equitable basis taking into consideration legal mandates, local effort, ratepayer impacts, and past distributions of state and federal moneys for water pollution control facilities.

It is the intent of this chapter that the cost of any water pollution control facility attributable to increased or additional capacity that exceeds one hundred ten percent of existing needs at the time of application for assistance under this chapter shall be entirely a local or private responsibility. It is the intent of this chapter that industrial pretreatment be paid by industries and that the water quality account shall not be used for such purposes. [1986 c 3 § 1.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Account" means the water quality account in the state treasury.

(2) "Department" means the department of ecology.

(3) "Eligible cost" means the cost of that portion of a water pollution control facility that can be financed under this chapter excluding any portion of a facility's cost attributable to capacity that is in excess of that reasonably required to address one hundred ten percent of the applicant's needs for water pollution control existing at the time application is submitted for assistance under this chapter.

(4) "Water pollution control facility" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(5) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To prevent or mitigate pollution of underground water; (b) to control nonpoint sources of water pollution; (c) to restore the water quality of fresh water lakes; and (d) to maintain or improve water quality through the use of water pollution control facilities or other means. During the 1995-1997 fiscal biennium, "water pollution control activities" includes activities by state agencies to protect public drinking water supplies and sources.

(6) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other

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political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(7) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(8) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(9) "Sole source aquifer" means the sole or principal source of public drinking water for an area designated by the administrator of the environmental protection agency pursuant to Public Law 93-523, Sec. 1424(b). [1995 2nd sp.s. c 18 § 920; 1993 sp.s. c 24 § 923; 1987 c 436 § 5; 1986 c 3 § 2.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.030 Water quality account—Progress report.

(1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a manner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.24.026(2)(d), and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. For the period July 1, 2007, to June 30, 2009, moneys in the account may be used to process applications received by the department that seek to make changes to or transfer existing water rights and for other water resources and water quality activities, for water conveyance projects, shoreline technical assistance[,] Puget Sound education and outreach[,] and for grants and technical assistance to public bodies for watershed

planning under chapter 90.82 RCW. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31st of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both. [2007 c 522 § 955. Prior: 2005 c 518 § 940; 2005 c 514 § 1108; 2004 c 277 § 909; 2003 1st sp.s. c 25 § 934; 2002 c 371 § 921; 2001 2nd sp.s. c 7 § 922; 1996 c 37 § 2; 1995 2nd sp.s. c 18 § 921; 1991 sp.s. c 13 § 61; prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Severability—Effective dates—2004 c 277: See notes following RCW 89.08.550.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.040 Level of grant or loan not precedent. No grant or loan made in this chapter for fiscal year 1987 shall be construed to establish a precedent for levels of grants or loans made from the water quality account thereafter. [1986 c 3 § 6.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.050 Compliance schedule for secondary treatment. The department of ecology may provide for a phased in compliance schedule for secondary treatment which addresses local factors that may impede compliance with secondary treatment requirements of the federal clean water act.

In determining the length of time to be granted for compliance, the department shall consider the criteria specified in the federal clean water act. [1986 c 3 § 8.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.060 Water quality account distributions—Limitations. During the period from July 1, 1987, until June 30, 1995, the following limitations shall apply to the department's total distribution of funds appropriated from the water quality account:

(1) Not more than fifty percent for water pollution control facilities which discharge directly into marine waters;

(2) Not more than twenty percent for water pollution control activities that prevent or mitigate pollution of underground waters and facilities that protect federally designated sole source aquifers with at least two-thirds for the Spokane-Rathdrum Prairie Aquifer;

(3) Not more than ten percent for water pollution control activities that protect freshwater lakes and rivers including but not limited to Lake Chelan and the Yakima and Columbia rivers;

(4) Not more than ten percent for activities which control nonpoint source water pollution;

(5) Ten percent and such sums as may be remaining from the categories specified in subsections (1) through (4) of this section for water pollution control activities or facilities as determined by the department; and

(6) Two and one-half percent of the total amounts of moneys under subsections (1) through (5) of this section from February 21, 1986, until December 31, 1995, shall be appropriated biennially to the state conservation commission for the purposes of this chapter. Not less than ten percent of the moneys received by the state conservation commission under the provisions of this section shall be expended on research activities.

The distribution under this section shall not be required to be met in any single fiscal year.

Funds provided for facilities and activities under this chapter may be used for payments to a service provider under a service agreement pursuant to RCW 70.150.060. If funds are to be used for such payments, the department may make periodic disbursements to a public body or may make a single lump sum disbursement. Disbursements of funds with respect to a facility owned or operated by a service provider shall be equivalent in value to disbursements that would otherwise be made if that facility were owned or operated by a public body. Payments under this chapter for waste disposal and management facilities made to public bodies entering into service agreements pursuant to RCW 70.150.060 shall not exceed amounts paid to public bodies not entering into service agreements. [1987 c 527 § 1; 1987 c 436 § 7; 1986 c 3 § 9.]

Reviser's note: This section was amended by 1987 c 436 § 7 and by 1987 c 527 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.070 Grants or loans for water pollution control facilities—Considerations. (1) When making grants or loans for water pollution control facilities, the department shall consider the following:

(a) The protection of water quality and public health;

(b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;

(c) Actions required under federal and state permits and compliance orders;

(d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;

(e) Except as otherwise conditioned by RCW 70.146.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

(f) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;

(g) Except as otherwise provided in RCW 70.146.120, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the project is sponsored by an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030;

(h) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and

(i) The recommendations of the Puget Sound partnership, created in RCW 90.71.210, and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a grant or loan.

(3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) After January 1, 2010, any project designed to address the effects of water pollution on Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2008 c 299 § 26. Prior: 2007 c 341 § 60; 2007 c 341 § 26; 1999 c 164 § 603; 1997 c 429 § 30; 1991 sp.s. c 32 § 24; 1986 c 3 § 10.]

Short title—2008 c 299: See note following RCW 35.105.010.

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Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603: See note following RCW 82.60.020.

Effective date—1997 c 429 §§ 29 and 30: See note following RCW 43.155.070.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.075 Extended grant payments. (1) The department of ecology may enter into contracts with local jurisdictions which provide for extended grant payments under which eligible costs may be paid on an advanced or deferred basis.

(2) Extended grant payments shall be in equal annual payments, the total of which does not exceed, on a net present value basis, fifty percent of the total eligible cost of the project incurred at the time of design and construction. The duration of such extended grant payments shall be for a period not to exceed twenty years. The total of federal and state grant moneys received for the eligible costs of the project shall not exceed fifty percent of the eligible costs.

(3) Any moneys appropriated by the legislature from the water quality account shall be first used by the department of ecology to satisfy the conditions of the extended grant payment contracts. [1987 c 516 § 1.]

70.146.080 Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues. Within thirty days after June 30, 1987, and within thirty days after each succeeding fiscal year thereafter, the state treasurer shall determine the tax receipts deposited into the water quality account for the preceding fiscal year. If the tax receipts deposited into the account in each of the fiscal years 1988 and 1989 are less than forty million dollars, the state treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total receipts in each fiscal year up to forty million dollars.

For the biennium ending June 30, 1991, if the tax receipts deposited into the water quality account and the earnings on investment of balances credited to the account are less than ninety million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to ninety million dollars. The determination and transfer shall be made by July 31, 1991.

For fiscal year 1992 and for fiscal years 1995 and 1996 and thereafter, if the tax receipts deposited into the water quality account for each fiscal year are less than forty-five million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to forty-five million dollars. However, during the 2007-2009 fiscal biennium, the legislature may specify the transfer of a different amount in the operating budget bill. Determinations and transfers shall be made by July 31 for the preceding fiscal year. [2007 c 522 § 956; 2005 c 518 § 941; 2003 1st sp.s. c 25 § 935; 1994 sp.s. c 6 §

902; 1993 sp.s. c 24 § 924; 1991 sp.s. c 16 § 923; 1986 c 3 § 11.]

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—1994 sp.s. c 6: See notes following RCW 28A.310.020.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Severability—Effective date—1991 sp.s. c 16: See notes following RCW 9.46.100.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.090 Grants and loans to local governments—Statement of environmental benefits—Development of outcome-focused performance measures. In providing grants and loans to local governments, the department shall require recipients to incorporate the environmental benefits of the project into their applications, and the department shall utilize the statement of environmental benefits in its grant and loan prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant and loan program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section. [2001 c 227 § 6.]

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

70.146.100 Water quality capital account—Expenditures. (1) The water quality capital account is created in the state treasury. Moneys in the water quality capital account may be spent only after appropriation.

(2) Expenditures from the water quality capital account may only be used: (a) To make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other moneys are made available on a cost-sharing basis, for the capital component of water pollution control facilities and activities; (b) for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities; or (c) to defray any part of the capital component of the payments made by a public body to a service provider under a service agreement entered into under RCW 70.150.060. [2007 c 233 § 1.]

Effective date—2007 c 233: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 233 § 2.]

70.146.110 Puget Sound partners. When making grants or loans for water pollution control facilities under RCW 70.146.070, the department shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the action

agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 27.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

70.146.120 Administering funds—Preference to an evergreen community. When administering funds under this chapter, the department shall give preference only to an evergreen community recognized under RCW 35.105.030 in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community. [2008 c 299 § 31.]

Short title—2008 c 299: See note following RCW 35.105.010.

70.146.900 Severability—1986 c 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 3 § 16.]

Chapter 70.148 RCW

UNDERGROUND PETROLEUM STORAGE TANKS

Sections

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70.148.005 Finding—Intent. (Expires June 1, 2013.)

(1) The legislature finds that:

(a) Final regulations adopted by the United States environmental protection agency (EPA) require owners and operators of underground petroleum storage tanks to demonstrate financial responsibility for accidental releases of petroleum as a precondition to continued ownership and operation of such tanks;

(b) Financial responsibility is demonstrated through the purchase of pollution liability insurance or an acceptable alternative such as coverage under a state financial responsibility program, in the amount of at least five hundred thousand dollars per occurrence and one million dollars annual

aggregate depending upon the nature, use, and number of tanks owned or operated;

(c) Many owners and operators of underground petroleum storage tanks cannot purchase pollution liability insurance either because private insurance is unavailable at any price or because owners and operators cannot meet the rigid underwriting standards of existing insurers, nor can many owners and operators meet the strict regulatory standards imposed for alternatives to the purchase of insurance; and

(d) Without a state financial responsibility program for owners and operators of underground petroleum storage tanks, many tank owners and operators will be forced to discontinue the ownership and operation of these tanks.

(2) The purpose of this chapter is to create a state financial responsibility program meeting EPA standards for owners and operators of underground petroleum storage tanks in a manner that:

(a) Minimizes state involvement in pollution liability claims management and insurance administration;

(b) Protects the state of Washington from unwanted and unanticipated liability for accidental release claims;

(c) Creates incentives for private insurers to provide needed liability insurance; and

(d) Parallels generally accepted principles of insurance and risk management.

To that end, this chapter establishes a temporary program to provide pollution liability reinsurance at a price that will encourage a private insurance company or risk retention group to sell pollution liability insurance in accordance with the requirements of this chapter to owners and operators of underground petroleum storage tanks, thereby allowing the owners and operators to comply with the financial responsibility regulations of the EPA.

(3) It is not the intent of this chapter to permit owners and operators of underground petroleum storage tanks to obtain pollution liability insurance without regard to the quality or condition of their storage tanks or without regard to the risk management practices of tank owners and operators, nor is it the intent of this chapter to provide coverage or funding for past or existing petroleum releases. Further, it is the intent of the legislature that the program follow generally accepted insurance underwriting and actuarial principles and to deviate from those principles only to the extent necessary and within the tax revenue limits provided, to make pollution liability insurance reasonably affordable and available to owners and operators who meet the requirements of this chapter, particularly to those owners and operators whose underground storage tanks meet a vital economic need within the affected community. [1990 c 64 § 1; 1989 c 383 § 1.]

70.148.010 Definitions. (Expires June 1, 2013.)

Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action, bodily injury, or property damage neither expected nor intended by the owner or operator.

(2) "Director" means the Washington pollution liability insurance program director.

(3) "Bodily injury" means bodily injury, sickness, or disease sustained by any person, including death at any time resulting from the injury, sickness, or disease.

(4) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with any statute, ordinance, rule, regulation, directive, order, or similar legal requirement of the United States, the state of Washington, or any political subdivision of the United States or the state of Washington in effect at the time of an accidental release. "Corrective action" includes, when agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release. "Corrective action" does not include:

(a) Replacement or repair of storage tanks or other receptacles;

(b) Replacement or repair of piping, connections, and valves of storage tanks or other receptacles;

(c) Excavation or backfilling done in conjunction with (a) or (b) of this subsection; or

(d) Testing for a suspected accidental release if the results of the testing indicate that there has been no accidental release.

(5) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or any political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(6) "Washington pollution liability insurance program" or "program" means the reinsurance program created by this chapter.

(7) "Insured" means the owner or operator who is provided insurance coverage in accordance with this chapter.

(8) "Insurer" means the insurance company or risk retention group licensed or qualified to do business in Washington and authorized by the director to provide insurance coverage in accordance with this chapter.

(9) "Loss reserve" means the amount traditionally set aside by commercial liability insurers for costs and expenses related to claims that have been made. "Loss reserve" does not include losses that have been incurred but not reported to the insurer.

(10) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from an underground storage tank.

(11) "Operator" means a person in control of, or having responsibility for, the daily operation of an underground storage tank.

(12) "Owner" means a person who owns an underground storage tank.

(13) "Person" means an individual, trust, firm, joint stock company, corporation (including government corpora-

tion), partnership, association, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, interstate body, the federal government, or any department or agency of the federal government.

(14) "Petroleum" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure, which means at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute and includes gasoline, kerosene, heating oils, and diesel fuels.

(15) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(16) "Release" means the emission, discharge, disposal, dispersal, seepage, or escape of petroleum from an underground storage tank into or upon land, groundwater, surface water, subsurface soils, or the atmosphere.

(17) "Surplus reserve" means the amount traditionally set aside by commercial property and casualty insurance companies to provide financial protection from unexpected losses and to serve, in part, as a measure of an insurance company's net worth.

(18) "Tank" means a stationary device, designed to contain an accumulation of petroleum, that is constructed primarily of nonearthen materials such as wood, concrete, steel, or plastic that provides structural support.

(19) "Underground storage tank" means any one or a combination of tanks including underground pipes connected to the tank, that is used to contain an accumulation of petroleum and the volume of which (including the volume of the underground pipes connected to the tank) is ten percent or more beneath the surface of the ground. [1990 c 64 § 2; 1989 c 383 § 2.]

70.148.020 Pollution liability insurance program trust account. (Expires June 1, 2013.) (1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the pollution liability insurance and underground storage tank community assistance programs. Expenditures for payment of administrative and operating costs of the agency are subject to the allotment procedures under chapter 43.88 RCW and may be made only after appropriation by statute. No appropriation is required for other expenditures from the account.

(2) Each calendar quarter, the director shall report to the insurance commissioner the loss and surplus reserves required for the calendar quarter. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) Each calendar quarter the director shall determine the amount of reserves necessary to fund commitments made to provide financial assistance under RCW 70.148.130 to the extent that the financial assistance reserves do not jeopardize

the operations and liabilities of the pollution liability insurance program. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter. The director may immediately establish an initial financial assistance reserve of five million dollars from available revenues. The director may not expend more than fifteen million dollars for the financial assistance program.

(4) During the 2005-2007 fiscal biennium, the legislature may transfer from the pollution liability insurance program trust account to the state general fund such amounts as reflect the excess fund balance of the account.

(5) This section expires June 1, 2013. [2006 c 276 § 1; 2005 c 518 § 942; 1999 c 73 § 1; 1998 c 245 § 114; 1991 sp.s. c 13 § 90; 1991 c 4 § 7; 1990 c 64 § 3; 1989 c 383 § 3.]

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.025 Reinsurance for heating oil pollution liability protection program. (Expires June 1, 2013.) The director shall provide reinsurance through the pollution liability insurance program trust account to the heating oil pollution liability protection program under chapter 70.149 RCW. [1995 c 20 § 12.]

Severability—1995 c 20: See RCW 70.149.901.

70.148.030 Pollution liability insurance program—Generally—Ad hoc committees. (Expires June 1, 2013.) (1) The Washington pollution liability insurance program is created as an independent agency of the state. The administrative head and appointing authority of the program shall be the director who shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The salary for this office shall be set by the governor pursuant to RCW 43.03.040. The director shall appoint a deputy director. The director, deputy director, and up to three other employees are exempt from the civil service law, chapter 41.06 RCW.

(2) The director shall employ such other staff as are necessary to fulfill the responsibilities and duties of the director. The staff is subject to the civil service law, chapter 41.06 RCW. In addition, the director may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. To the extent necessary to protect the state from unintended liability and ensure quality program and contract design, the director shall contract with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability insurance and with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability reinsurance. The director shall enter into such contracts after competitive bid but need not select the lowest bid. Any such contractor or consultant is prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the program director. The director may call upon other agencies of the state to provide technical support and available information as necessary to

assist the director in meeting the director's responsibilities under this chapter. Agencies shall supply this support and information as promptly as circumstances permit.

(3) The director may appoint ad hoc technical advisory committees to obtain expertise necessary to fulfill the purposes of this chapter. [1994 sp.s. c 9 § 805; 1990 c 64 § 4; 1989 c 383 § 4.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

70.148.035 Program design—Cost coverage. (Expires June 1, 2013.) The director may design the program to cover the costs incurred in determining whether a proposed applicant for pollution insurance under the program meets the underwriting standards of the insurer. In covering such costs the director shall consider the financial resources of the applicant, shall take into consideration the economic impact of the discontinued use of the applicant's storage tank upon the affected community, shall provide coverage within the revenue limits provided under this chapter, and shall limit coverage of such costs to the extent that coverage would be detrimental to providing affordable insurance under the program. [1990 c 64 § 11.]

70.148.040 Rules. (Expires June 1, 2013.) The director may adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1990 c 64 § 5; 1989 c 383 § 5.]

70.148.050 Powers and duties of director. (Expires June 1, 2013.) The director has the following powers and duties:

(1) To design and from time to time revise a reinsurance contract providing coverage to an insurer meeting the requirements of this chapter. Before initially entering into a reinsurance contract, the director shall prepare an actuarial report describing the various reinsurance methods considered by the director and describing each method's costs. In designing the reinsurance contract the director shall consider common insurance industry reinsurance contract provisions and shall design the contract in accordance with the following guidelines:

(a) The contract shall provide coverage to the insurer for the liability risks of owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action that are underwritten by the insurer.

(b) In the event of an insolvency of the insurer, the reinsurance contract shall provide reinsurance payable directly to the insurer or to its liquidator, receiver, or successor on the basis of the liability of the insurer in accordance with the reinsurance contract. In no event may the program be liable for or provide coverage for that portion of any covered loss that is the responsibility of the insurer whether or not the insurer is able to fulfill the responsibility.

(c) The total limit of liability for reinsurance coverage shall not exceed one million dollars per occurrence and two million dollars annual aggregate for each policy underwritten by the insurer less the ultimate net loss retained by the insurer as defined and provided for in the reinsurance contract.

(d) Disputes between the insurer and the insurance program shall be settled through arbitration.

(2) To design and implement a structure of periodic premiums due the director from the insurer that takes full advantage of revenue collections and projected revenue collections to ensure affordable premiums to the insured consistent with sound actuarial principles.

(3) To periodically review premium rates for reinsurance to determine whether revenue appropriations supporting the program can be reduced without substantially increasing the insured's premium costs.

(4) To solicit bids from insurers and select an insurer to provide pollution liability insurance to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action.

(5) To monitor the activities of the insurer to ensure compliance with this chapter and protect the program from excessive loss exposure resulting from claims mismanagement by the insurer.

(6) To monitor the success of the program and periodically make such reports and recommendations to the legislature as the director deems appropriate, and to annually publish a financial report on the pollution liability insurance program trust account showing, among other things, administrative and other expenses paid from the fund.

(7) To annually report the financial and loss experience of the insurer as to policies issued under the program and the financial and loss experience of the program to the legislature.

(8) To enter into contracts with public and private agencies to assist the director in his or her duties to design, revise, monitor, and evaluate the program and to provide technical or professional assistance to the director.

(9) To examine the affairs, transactions, accounts, records, documents, and assets of insurers as the director deems advisable. [2006 c 276 § 2; 1998 c 245 § 115; 1995 c 12 § 1; 1990 c 64 § 6; 1989 c 383 § 6.]

Effective date—1995 c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 12, 1995]." [1995 c 12 § 3.]

70.148.060 Disclosure of reports and information—Penalty. (Expires June 1, 2013.) (1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

(a) The Washington state insurance commissioner;

(b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and

(c) The attorney general in his or her role as legal advisor to the director.

(3) Subsection (1) of this section notwithstanding, the director may furnish all or part of the examination or proprietary reports or information obtained by the director to:

- (a) The Washington state insurance commissioner; and
- (b) A person, firm, corporation, association, governmental body, or other entity with whom the director has contracted for services necessary to perform his or her official duties.

(4) Examination reports and proprietary information obtained by the director and the director's staff are not subject to public disclosure under chapter 42.56 RCW.

(5) A person who violates any provision of this section is guilty of a gross misdemeanor. [2005 c 274 § 341; 1990 c 64 § 7; 1989 c 383 § 7.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

70.148.070 Insurer selection process and criteria. (Expires June 1, 2013.) (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of underground storage tanks, the director shall evaluate bids based upon criteria established by the director that shall include:

- (a) The insurer's ability to underwrite pollution liability insurance;
- (b) The insurer's ability to settle pollution liability claims quickly and efficiently;
- (c) The insurer's estimate of underwriting and claims adjustment expenses;
- (d) The insurer's estimate of premium rates for providing coverage;
- (e) The insurer's ability to manage and invest premiums; and
- (f) The insurer's ability to provide risk management guidance to insureds.

The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(2) The successful bidder shall agree to provide liability insurance coverage to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action consistent with the following minimum standards:

- (a) The insurer shall provide coverage for defense costs.
- (b) The insurer shall collect a deductible from the insured for corrective action in an amount approved by the director.
- (c) The insurer shall provide coverage for accidental releases in the amount of five hundred thousand dollars per occurrence and one million dollars annual aggregate but no more than one million dollars per occurrence and two million dollars annual aggregate exclusive of defense costs.
- (d) The insurer shall require insurance applicants to meet at least the following underwriting standards before issuing coverage to the applicant:

(i) The applicant must be in compliance with statutes, ordinances, rules, regulations, and orders governing the own-

ership and operation of underground storage tanks as identified by the director by rule; and

(ii) The applicant must exercise adequate underground storage tank risk management as specified by the director by rule.

(e) The insurer may exclude coverage for losses arising before the effective date of coverage, and the director may adopt rules establishing standards for determining whether a loss was incurred before the effective date of coverage.

(f) The insurer may exclude coverage for bodily injury, property damage, and corrective action as permitted by the director by rule.

(g) The insurer shall use a variable rate schedule approved by the director taking into account tank type, tank age, and other factors specified by the director.

(3) The director shall adopt all rules necessary to implement this section. In developing and adopting rules governing rates, deductibles, underwriting standards, and coverage conditions, limitations, and exclusions, the director shall balance the owner and operator's need for coverage with the need to maintain the actuarial integrity of the program, shall take into consideration the economic impact of the discontinued use of a storage tank upon the affected community, and shall consult with the *standing technical advisory committee established under RCW 70.148.030(3). In developing and adopting rules governing coverage exclusions affecting corrective action, the director shall consult with the Washington state department of ecology.

(4) Notwithstanding the definitions contained in RCW 70.148.010, the director may permit an insurer to use different words or phrases describing the coverage provided under the program. In permitting such deviations from the definitions contained in RCW 70.148.010, the director shall consider the regulations adopted by the United States environmental protection agency requiring financial responsibility by owners and operators of underground petroleum storage tanks.

(5) Owners and operators of underground storage tanks or sites containing underground storage tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

- (a) The owner or operator must have a plan for proceeding with corrective action; and
- (b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed.

(6) When a reinsurance contract has been entered into by the agency and insurance companies, the director shall notify the department of ecology of the letting of the contract. Within thirty days of that notification, the department of ecology shall notify all known owners and operators of petroleum underground storage tanks that appropriate levels of financial responsibility must be established by October 26, 1990, in accordance with federal environmental protection agency requirements, and that insurance under the program is available. All owners and operators of petroleum underground storage tanks must also be notified that declaration of method of financial responsibility or intent to seek to be insured

under the program must be made to the state by November 1, 1990. If the declaration of method of financial responsibility is not made by November 1, 1990, the department of ecology shall, pursuant to chapter 90.76 RCW, prohibit the owner or operator of an underground storage tank from obtaining a tank tag or receiving petroleum products until such time as financial responsibility has been established. [1990 c 64 § 8; 1989 c 383 § 8.]

***Reviser's note:** The "standing technical advisory committee" was abolished by 1994 sp.s. c 9 § 805 and in its place the director was given authority to appoint ad hoc technical advisory committees.

70.148.080 Cancellation or refusal by insurer—Appeal. (Expires June 1, 2013.) If the insurer cancels or refuses to issue or renew a policy, the affected owner or operator may appeal the insurer's decision to the director. The director shall conduct a brief adjudicative proceeding under chapter 34.05 RCW. [1990 c 64 § 9; 1989 c 383 § 9.]

70.148.090 Exemptions from Title 48 RCW—Exceptions. (Expires June 1, 2013.) (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of underground storage tanks are exempt from the requirements of Title 48 RCW except for:

- (a) Chapter 48.03 RCW pertaining to examinations;
- (b) RCW 48.05.250 pertaining to annual reports;
- (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- (d) Chapter 48.13 RCW pertaining to investments;
- (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and
- (f) Chapter 48.92 RCW pertaining to liability risk retention.

(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of underground storage tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of underground storage tanks issued in connection with the program. [1990 c 64 § 10; 1989 c 383 § 10.]

70.148.110 Reservation of legislative power. (Expires June 1, 2013.) The legislature reserves the right to amend or repeal all or any part of this chapter at any time, and there is no vested right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or any acts done under it exist subject to the power of the legislature to amend or repeal this chapter at any time. [1989 c 383 § 12.]

70.148.120 Financial assistance for corrective actions in small communities—Intent. (Expires June 1, 2013.) The legislature recognizes as a fundamental government purpose the need to protect the environment and human health and safety. To that end the state has enacted laws designed to limit and prevent environmental damage and risk to public

health and safety caused by underground petroleum storage tank leaks. Because of the costs associated with compliance with such laws and the high costs associated with correcting past environmental damage, many owners and operators of underground petroleum storage tanks have discontinued the use of or have planned to discontinue the use of such tanks. As a consequence, isolated communities face the loss of their source of motor vehicle fuel and face the risk that the owner or operator will have insufficient funds to take corrective action for pollution caused by past leaks from the tanks. In particular, rural communities face the risk that essential emergency, medical, fire and police services may be disrupted through the diminution or elimination of local sellers of petroleum products and by the closure of underground storage tanks owned by local government entities serving these communities.

The legislature also recognizes as a fundamental government purpose the need to preserve a minimum level of economic viability in rural communities so that public revenues generated from economic activity are sufficient to sustain necessary governmental functions. The closing of local service stations adversely affects local economies by reducing or eliminating reasonable access to fuel for agricultural, commercial, recreational, and transportation needs.

The legislature intends to assist small communities within this state by authorizing:

(1) Cities, towns, and counties to certify that a local private owner or operator of an underground petroleum storage tank meets a vital local government, public health or safety need thereby qualifying the owner or operator for state financial assistance in complying with environmental regulations and assistance in taking needed corrective action for existing tank leaks; and

(2) Local government entities to obtain state financial assistance to bring local government underground petroleum storage tanks into compliance with environmental regulations and to take needed corrective action for existing tank leaks. [2005 c 428 § 1; 1991 c 4 § 1.]

Severability—1991 c 4: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 4 § 10.]

70.148.130 Financial assistance—Criteria. (Expires June 1, 2013.) (1) Subject to the conditions and limitations of RCW 70.148.120 through 70.148.170, the director shall establish and manage a program for providing financial assistance to public and private owners and operators of underground storage tanks who have been certified by the governing body of the county, city, or town in which the tanks are located as meeting a vital local government, public health or safety need. In providing such financial assistance the director shall:

(a) Require owners and operators, including local government owners and operators, to demonstrate serious financial hardship;

(b) Limit assistance to only that amount necessary to supplement applicant financial resources;

(c) Limit assistance to no more than two hundred thousand dollars in value for any one underground storage tank

site of which amount no more than seventy-five thousand dollars in value may be provided for corrective action; and

(d) Whenever practicable, provide assistance through the direct payment of contractors and other professionals for labor, materials, and other services.

(2)(a) Except as otherwise provided in RCW 70.148.120 through 70.148.170, no grant of financial assistance may be used for any purpose other than for corrective action and repair, replacement, reconstruction, and improvement of underground storage tanks and tank sites. If at any time prior to providing financial assistance or in the course of providing such assistance, it appears to the director that corrective action costs may exceed seventy-five thousand dollars, the director may not provide further financial assistance until the owner or operator has developed and implemented a corrective action plan with the department of ecology.

(b) A grant of financial assistance may also be made to an owner or operator that has discontinued using underground petroleum storage tanks due to economic hardship. An owner or operator may receive a grant up to two hundred thousand dollars per retailing location if:

- (i) The property is located in an underserved rural area;
- (ii) The property was previously used by a private owner or operator to provide motor vehicle fuel; and
- (iii) The property is at least ten miles from the nearest motor vehicle fuel service station.

(3) When requests for financial assistance exceed available funds, the director shall give preference to providing assistance first to those underground storage tank sites which constitute the sole source of petroleum products in remote rural communities.

(4) The director shall consult with the department of ecology in approving financial assistance for corrective action to ensure compliance with regulations governing underground petroleum storage tanks and corrective action.

(5) The director shall approve or disapprove applications for financial assistance within sixty days of receipt of a completed application meeting the requirements of RCW 70.148.120 through 70.148.170. The certification by local government of an owner or operator shall not preclude the director from disapproving an application for financial assistance if the director finds that such assistance would not meet the purposes of RCW 70.148.120 through 70.148.170.

(6) The director may adopt all rules necessary to implement the financial assistance program and shall consult with the technical advisory committee established under RCW 70.148.030 in developing such rules and in reviewing applications for financial assistance. [2005 c 428 § 2; 1991 c 4 § 2.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.140 Financial assistance—Private owner or operator. (Expires June 1, 2013.) (1) To qualify for financial assistance, a private owner or operator retailing petroleum products to the public must:

(a) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(b) If the director makes a preliminary determination of possible eligibility for financial assistance, apply to the

appropriate governing body of the city or town in which the tanks are located or in the case where the tanks are located outside of the jurisdiction of a city or town, then to the appropriate governing body of the county in which the tanks are located, for a determination by the governing body of the city, town, or county that the continued operation of the tanks meets a vital local government, or public health or safety need; and

(c) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided.

(2) In consideration for financial assistance and prior to receiving such assistance the owner and operator must enter into an agreement with the state whereby the owner and operator agree:

(a) To sell petroleum products to the public;

(b) To maintain the tank site for use in the retail sale of petroleum products for a period of not less than fifteen years from the date of agreement;

(c) To sell petroleum products to local government entities within the affected community on a cost-plus basis periodically negotiated between the owner and operator and the city, town, or county in which the tanks are located; and

(d) To maintain compliance with state underground storage tank financial responsibility and environmental regulations.

(3) The agreement shall be filed as a real property lien against the tank site with the county auditor [of the county] in which the tanks are located. If the owner or operator transfers his or her interest in such property, the new owner or operator must agree to abide by the agreement or any financial assistance provided under RCW 70.148.120 through 70.148.170 shall be immediately repaid to the state by the owner or operator who received such assistance.

(4) As determined by the director, if an owner or operator materially breaches the agreement, any financial assistance provided shall be immediately repaid by such owner or operator.

(5) The agreement between an owner and operator and the state required under this section shall expire fifteen years from the date of entering into the agreement. [1991 c 4 § 3.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.150 Financial assistance—Public owner or operator. (Expires June 1, 2013.) (1) To qualify for financial assistance, a public owner or operator must:

(a) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(b) Provide to the director a copy of the resolution by the governing body of the city, town, or county having jurisdiction, finding that the continued operation of the tanks is necessary to maintain vital local public health, education, or safety needs;

(c) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided.

(2) The director shall give priority to and shall encourage local government entities to consolidate multiple operational underground storage tank sites into as few sites as possible.

For this purpose, the director may provide financial assistance for the establishment of a new local government underground storage tank site contingent upon the closure of other operational sites in accordance with environmental regulations. Within the per site financial limits imposed under RCW 70.148.120 through 70.148.170, the director may authorize financial assistance for the closure of operational sites when closure is for the purpose of consolidation. [1991 c 4 § 4.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.160 Financial assistance—Rural hospitals. (Expires June 1, 2013.) To qualify for financial assistance, a rural hospital as defined in *RCW 18.89.020, owning or operating an underground storage tank must:

(1) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(2) Apply to the governing body of the city, town, or county in which the hospital is located for certification that the continued operation of the tank or tanks is necessary to maintain vital local public health or safety needs;

(3) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided; and

(4) Agree to provide charity care as defined in **RCW 70.39.020 in an amount of equivalent value to the financial assistance provided under RCW 70.148.120 through 70.148.170. The director shall consult with the department of health to monitor and determine the time period over which such care should be expected to be provided in the local community. [1991 c 4 § 5.]

Reviser's note: *(1) RCW 18.89.020 was amended by 1997 c 334 § 3, deleting the definition of "rural hospital."

***(2) RCW 70.39.020 was repealed by 1982 c 223 § 10, effective June 30, 1990.

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.170 Certification. (Expires June 1, 2013.) (1) The director shall develop and distribute to appropriate cities, towns, and counties a form for use by the local government in making the certification required for all private owner and operator financial assistance along with instructions on the use of such form.

(2) In certifying a private owner or operator retailing petroleum products to the public as meeting vital local government, public health or safety needs, the local government shall:

(a) Consider and find that other retail suppliers of petroleum products are located remote from the local community;

(b) Consider and find that the owner or operator requesting certification is capable of faithfully fulfilling the agreement required for financial assistance;

(c) Designate the local government official who will be responsible for negotiating the price of petroleum products to be sold on a cost-plus basis to the local government entities in the affected communities and the entities eligible to receive petroleum products at such price; and

(d) State the vital need or needs that the owner or operator meets.

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(3) In certifying a hospital as meeting local public health and safety needs the local government shall:

(a) Consider and find that the continued use of the underground storage tank by the hospital is necessary; and

(b) Consider and find that the hospital provides health care services to the poor and otherwise provides charity care.

(4) The director shall notify the governing body of the city, town, or county providing certification when financial assistance for a private owner or operator has been approved. [1991 c 4 § 6.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.900 Expiration of chapter. This chapter shall expire June 1, 2013. [2006 c 276 § 3; 2000 c 16 § 1; 1995 c 12 § 2; 1989 c 383 § 13.]

Effective date—1995 c 12: See note following RCW 70.148.050.

70.148.901 Severability—1989 c 383. (Expires June 1, 2013.) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 383 § 20.]

Chapter 70.149 RCW

HEATING OIL POLLUTION LIABILITY PROTECTION ACT

Sections

70.149.010	Intent—Findings.
70.149.020	Short title.
70.149.030	Definitions.
70.149.040	Duties of director.
70.149.050	Selection of insurer to provide pollution liability insurance—Eligibility for coverage.
70.149.060	Exemptions from Title 48 RCW—Exceptions.
70.149.070	Heating oil pollution liability trust account.
70.149.080	Pollution liability insurance fee.
70.149.090	Confidentiality.
70.149.100	Application of RCW 19.86.020 through 19.86.060.
70.149.120	Heating oil tanks—Design criteria—Reimbursement.
70.149.900	Expiration of chapter.
70.149.901	Severability—1995 c 20.

70.149.010 Intent—Findings. (Expires June 1, 2013.) It is the intent of the legislature to establish a temporary regulatory program to assist owners and operators of heating oil tanks. The legislature finds that it is in the best interests of all citizens for heating oil tanks to be operated safely and for tank leaks or spills to be dealt with expeditiously. The legislature further finds that it is necessary to protect tank owners from the financial hardship related to damaged heating oil tanks. The problem is especially acute because owners and operators of heating oil tanks used for space heating have been unable to obtain pollution liability insurance or insurance has been unaffordable. [1995 c 20 § 1.]

70.149.020 Short title. (Expires June 1, 2013.) This chapter may be known and cited as the Washington state heating oil pollution liability protection act. [1995 c 20 § 2.]

70.149.030 Definitions. (Expires June 1, 2013.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accidental release" means a sudden or nonsudden release of heating oil, occurring after July 23, 1995, from operating a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(2) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(3)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Replacement or repair of heating oil tanks or other receptacles; or

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles.

(4) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(5) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(6) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(7) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(8) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from a heating oil tank.

(9) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

(10) "Pollution liability insurance agency" means the Washington state pollution liability insurance agency.

(11) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(12) "Release" means a spill, leak, emission, escape, or leaching into the environment.

(13) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action.

(14) "Tank" means a stationary device, designed to contain an accumulation of heating oil, that is constructed primarily of nonearthen materials such as concrete, steel, fiberglass, or plastic that provides structural support.

(15) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage or personal injury that results from a leak or spill. [1995 c 20 § 3.]

70.149.040 Duties of director. (Expires June 1, 2013.)

The director shall:

(1) Design a program, consistent with RCW 70.149.120, for providing pollution liability insurance for heating oil tanks that provides up to sixty thousand dollars per occurrence coverage and aggregate limits, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims;

(2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under RCW 70.149.070;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Design and from time to time revise a reinsurance contract providing coverage to an insurer or insurers meeting the requirements of this chapter. The director is authorized to provide reinsurance through the pollution liability insurance program trust account;

(7) Solicit bids from insurers and select an insurer to provide pollution liability insurance for third-party bodily injury and property damage, and corrective action to owners and operators of heating oil tanks;

(8) Register, and design a means of accounting for, operating heating oil tanks;

(9) Implement a program to provide advice and technical assistance to owners and operators of active and abandoned heating oil tanks if contamination from an active or abandoned heating oil tank is suspected. Advice and assistance regarding administrative and technical requirements may include observation of testing or site assessment and review

of the results of reports. If the director finds that contamination is not present or that the contamination is apparently minor and not a threat to human health or the environment, the director may provide written opinions and conclusions on the results of the investigation to owners and operators of active and abandoned heating oil tanks. The agency is authorized to collect, from persons requesting advice and assistance, the costs incurred by the agency in providing such advice and assistance. The costs may include travel costs and expenses associated with review of reports and preparation of written opinions and conclusions. Funds from cost reimbursement must be deposited in the heating oil pollution liability trust account. The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, such advice, opinion, conclusion, or assistance;

(10) Establish a public information program to provide information regarding liability, technical, and environmental requirements associated with active and abandoned heating oil tanks;

(11) Monitor agency expenditures and seek to minimize costs and maximize benefits to ensure responsible financial stewardship;

(12) Create an advisory committee of stakeholders to advise the director on all aspects of program operations and fees authorized by this chapter, including pollution prevention programs. The advisory committee must have one member each from the Pacific Northwest oil heat council, the Washington oil marketers association, the western states petroleum association, and the department of ecology and three members from among the owners of home heating oil tanks registered with the pollution liability insurance agency who are generally representative of the geographical distribution and types of registered owners. The committee should meet at least quarterly, or more frequently at the discretion of the director; and

(13) Study if appropriate user fees to supplement program funding are necessary and develop recommendations for legislation to authorize such fees. [2007 c 240 § 1; 2004 c 203 § 1; 1997 c 8 § 1; 1995 c 20 § 4.]

Application—2007 c 240: See note following RCW 70.149.120.

70.149.050 Selection of insurer to provide pollution liability insurance—Eligibility for coverage. (Expires June 1, 2013.) (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of heating oil tanks used for space heating, the director shall evaluate bids based upon criteria established by the director that shall include:

(a) The insurer's ability to underwrite pollution liability insurance;

(b) The insurer's ability to settle pollution liability claims quickly and efficiently;

(c) The insurer's estimate of underwriting and claims adjustment expenses;

(d) The insurer's estimate of premium rates for providing coverage;

(e) The insurer's ability to manage and invest premiums; and

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(f) The insurer's ability to provide risk management guidance to insureds.

(2) The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(3) Owners and operators of heating oil tanks, or sites containing heating oil tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

(a) The owner or operator must have a plan for proceeding with corrective action; and

(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed. [1995 c 20 § 5.]

70.149.060 Exemptions from Title 48 RCW—Exceptions. (Expires June 1, 2013.) (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks are exempt from the requirements of Title 48 RCW except for:

(a) Chapter 48.03 RCW pertaining to examinations;

(b) RCW 48.05.250 pertaining to annual reports;

(c) Chapter 48.12 RCW pertaining to assets and liabilities;

(d) Chapter 48.13 RCW pertaining to investments;

(e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and

(f) Chapter 48.92 RCW pertaining to liability risk retention.

(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of heating oil tanks issued in connection with the program. [1995 c 20 § 6.]

70.149.070 Heating oil pollution liability trust account. (Expires June 1, 2013.) (1) The heating oil pollution liability trust account is created in the custody of the state treasurer. All receipts from the pollution liability insurance fee collected under RCW 70.149.080 and reinsurance premiums shall be deposited into the account. Expenditures from the account may be used only for the purposes set out under this chapter. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Any residue in the account in excess of funds needed to meet administrative costs for January of the following year shall be transferred after

the end of the calendar year to the pollution liability insurance program trust account.

(2) Money in the account may be used by the director for the following purposes:

- (a) Corrective action costs;
- (b) Third-party liability claims;
- (c) Costs associated with claims administration;
- (d) Purchase of an insurance policy to cover all registered heating oil tanks, and reinsurance of the policy; and
- (e) Administrative expenses of the program, including personnel, equipment, supplies, and providing advice and technical assistance. [2004 c 203 § 2; 1997 c 8 § 2; 1995 c 20 § 7.]

70.149.080 Pollution liability insurance fee. (Expires June 1, 2013.) (1) A pollution liability insurance fee of one and two-tenths cents per gallon of heating oil purchased within the state shall be imposed on every special fuel dealer, as the term is defined in chapter 82.38 RCW, making sales of heating oil to a user or consumer.

(2) The pollution liability insurance fee shall be remitted by the special fuel dealer to the department of licensing.

(3) The fee proceeds shall be used for the specific regulatory purposes of this chapter.

(4) The fee imposed by this section shall not apply to heating oil exported or sold for export from the state. [2004 c 203 § 3; 1995 c 20 § 8.]

Effective date—2004 c 203 § 3: "Section 3 of this act takes effect July 1, 2004." [2004 c 203 § 5.]

70.149.090 Confidentiality. (Expires June 1, 2013.) The following shall be confidential and exempt under chapter 42.56 RCW, subject to the conditions set forth in this section:

(1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) All information obtained by the director or the director's staff related to registration of heating oil tanks to be insured may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(3) The director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

- (a) The Washington state insurance commissioner;
- (b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and
- (c) The attorney general in his or her role as legal advisor to the director. [2005 c 274 § 342; 1995 c 20 § 9.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

70.149.100 Application of RCW 19.86.020 through 19.86.060. (Expires June 1, 2013.) Nothing contained in this chapter shall authorize any commercial conduct which is prohibited by RCW 19.86.020 through 19.86.060, and no section

of this chapter shall be deemed to be an implied repeal of any of those sections of the Revised Code of Washington. [1995 c 20 § 10.]

70.149.120 Heating oil tanks—Design criteria—Reimbursement. (1) The pollution liability insurance agency shall identify design criteria for heating oil tanks that provide superior protection against future leaks as compared to standard steel tank designs. Any tank designs identified under this section must either be constructed with fiberglass or offer at least an equivalent level of protection against leaks as a standard fiberglass design.

(2) The pollution liability insurance agency shall reimburse any owner or operator, who is participating in the program created in this chapter and who has experienced an occurrence or remedial action, for the difference in price between a standard steel heating tank and a new heating oil tank that satisfies the design standards identified under subsection (1) of this section, if the owner or operator chooses or is required to replace his or her tank at the time of the occurrence or remedial action.

(3) Any new heating oil tank reimbursement provided under this section must be funded within the amount of per occurrence coverage provided to the owner or operator under RCW 70.149.040. [2007 c 240 § 2.]

Application—2007 c 240: "This act applies prospectively and only to individuals who file a claim with the pollution liability insurance agency on or after July 22, 2007." [2007 c 240 § 3.]

70.149.900 Expiration of chapter. Sections 1 through 11 of this act shall expire June 1, 2013. [2006 c 276 § 4; 2000 c 16 § 2; 1995 c 20 § 14.]

70.149.901 Severability—1995 c 20. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 20 § 16.]

Chapter 70.150 RCW

WATER QUALITY JOINT DEVELOPMENT ACT

Sections

70.150.010	Purpose—Legislative intent.
70.150.020	Definitions.
70.150.030	Agreements with service providers—Contents—Sources of funds for periodic payments under agreements.
70.150.040	Service agreements and related agreements—Procedural requirements.
70.150.050	Sale, lease, or assignment of public property to service provider—Use for services to public body.
70.150.060	Public body eligible for grants or loans—Use of grants or loans.
70.150.070	RCW 70.150.030 through 70.150.060 to be additional method of providing services.
70.150.080	Application of other chapters to service agreements under this chapter—Prevailing wages.
70.150.900	Short title.
70.150.905	Severability—1986 c 244.

70.150.010 Purpose—Legislative intent. The long-range health and economic and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, and

enjoyment of its people. It is the purpose of this chapter to provide public bodies an additional means by which to provide for financing, development, and operation of water pollution control facilities needed for achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that public bodies be authorized to provide service from water pollution control facilities by means of service agreements with public or private parties as provided in this chapter. [1986 c 244 § 1.]

70.150.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Water pollution control facilities" or "facilities" means any facilities, systems, or subsystems owned or operated by a public body, or owned or operated by any person or entity for the purpose of providing service to a public body, for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential wastes, commercial wastes, industrial wastes, and agricultural wastes, that are causing or threatening the degradation of subterranean or surface bodies of water due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities do not include dams or water supply systems.

(2) "Public body" means the state of Washington or any agency, county, city or town, political subdivision, municipal corporation, or quasi-municipal corporation.

(3) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any surface or subterranean waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(4) "Agreement" means any agreement to which a public body and a service provider are parties by which the service provider agrees to deliver service to such public body in connection with its design, financing, construction, ownership, operation, or maintenance of water pollution control facilities in accordance with this chapter.

(5) "Service provider" means any privately owned or publicly owned profit or nonprofit corporation, partnership, joint venture, association, or other person or entity that is legally capable of contracting for and providing service with respect to the design, financing, ownership, construction, operation, or maintenance of water pollution control facilities in accordance with this chapter. [1986 c 244 § 2.]

70.150.030 Agreements with service providers—Contents—Sources of funds for periodic payments under agreements. (1) Public bodies may enter into agreements with service providers for the furnishing of service in connection with water pollution control facilities pursuant to the process set forth in RCW 70.150.040. The agreements may

provide that a public body pay a minimum periodic fee in consideration of the service actually available without regard to the amount of service actually used during all or any part of the contractual period. Agreements may be for a term not to exceed forty years or the life of the facility, whichever is longer, and may be renewable.

(2) The source of funds to meet periodic payment obligations assumed by a public body pursuant to an agreement permitted under this section may be paid from taxes, or solely from user fees, charges, or other revenues pledged to the payment of the periodic obligations, or any of these sources. [1986 c 244 § 3.]

70.150.040 Service agreements and related agreements—Procedural requirements. The legislative authority of a public body may secure services by means of an agreement with a service provider. Such an agreement may obligate a service provider to perform one or more of the following services: Design, finance, construct, own, operate, or maintain water pollution control facilities by which services are provided to the public body. Service agreements and related agreements under this chapter shall be entered into in accordance with the following procedure:

(1) The legislative authority of the public body shall publish notice that it is seeking to secure certain specified services by means of entering into an agreement with a service provider. The notice shall be published in the official newspaper of the public body, or if there is no official newspaper then in a newspaper in general circulation within the boundaries of the public body, at least once each week for two consecutive weeks. The final notice shall appear not less than thirty days before the date for submission of proposals. The notice shall state (a) the nature of the services needed, (b) the location in the public body's offices where the requirements and standards for construction, operation, or maintenance of projects needed as part of the services are available for inspection, and (c) the final date for the submission of proposals. The legislative authority may undertake a prequalification process by the same procedure set forth in this subsection.

(2) The request for proposals shall (a) indicate the time and place responses are due, (b) include evaluation criteria to be considered in selecting a service provider, (c) specify minimum requirements or other limitations applying to selection, (d) insofar as practicable, set forth terms and provisions to be included in the service agreement, and (e) require the service provider to demonstrate in its proposal to the public body's satisfaction that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous to the public body from the standpoint of annual costs, quality of services, experience of the provider, reduction of risk, and other factors.

(3) The criteria set forth in the request for proposals shall be those determined to be relevant by the legislative authority of the public body, which may include but shall not be limited to: The respondent's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability, and financial resources; cost of the service; nature of facility design proposed by respondents; system reliability; performance standards required for the facilities; compatibility with existing

service facilities operated by the public body or other providers of service to the public body; project performance warranties; penalty and other enforcement provisions; environmental protection measures to be used; and allocation of project risks. The legislative authority may designate persons or entities within or outside the public body (a) to assist it in issuing the request for proposals to ensure that proposals will be responsive to its needs, and (b) to assist it in evaluating the proposals received.

(4) After proposals under subsections (1) through (3) of this section have been received, the legislative authority or its designee shall determine, on the basis of its review of the proposals, whether one or more proposals have been received from respondents which are (a) determined to be qualified to provide the requested services, and (b) responsive to the notice and evaluation criteria, which shall include, but not be limited to, cost of services. These chosen respondents may, at the discretion of the public body, be aggregated into a short list of qualified respondents, who shall be referred to as the selected respondents in this section. The legislative authority or its designee shall conduct a bidder's conference to include all these selected respondents to assure a full understanding of the proposals. The bidder's conference shall make these selected respondents aware of any changes in the request for proposal. Any information related to revisions in the request for proposal shall be made available to all these selected respondents. Any selected respondent shall be accorded a reasonable opportunity for revision of its proposal prior to commencement of the negotiation provided in subsection (5) of this section, for the purpose of obtaining best and final proposals.

(5) After such conference is held, the legislative authority or its designee may negotiate with the selected respondent whose proposal it determines to be the most advantageous to the public body, considering the criteria set forth in the request for proposals. If negotiations are conducted by the designee, the legislative authority shall continue to oversee the negotiations and provide direction to its designee. If the negotiation is unsuccessful, the legislative authority may commence negotiations with any other selected respondent. On completion of this process, and after the department of ecology review and comments as provided for in subsection (9) of this section, and after public hearing as provided for in subsection (10) of this section, the legislative authority may approve a contract with its chosen respondent.

(6) Any person aggrieved by the legislative authority's approval of a contract may appeal the determination to an appeals board selected by the public body, which shall consist of not less than three persons determined by the legislative authority to be qualified for such purposes. Such board shall promptly hear and determine whether the public body entered into the agreement in accordance with this chapter and other applicable law. The board shall have the power only to affirm or void the agreement.

(7) Notwithstanding the foregoing, where contracting for design services by the public body is done separately from contracting for other services permitted under this chapter, the contracting for design services shall be done in accordance with chapter 39.80 RCW.

(8) If a public body elects to enter into an agreement whereby the service provider will own all or a portion of the

water pollution control facilities it constructs, the service agreement shall include provision for an option by which a public body may acquire at fair market value facilities dedicated to such service.

(9) Before any service agreement is entered into by the public body, it shall be reviewed by the department of ecology to ensure consistency with the purposes of chapters 90.46 and 90.48 RCW.

The department of ecology has thirty days from receipt of the proposed service agreement to complete its review and provide the public body with comments. A review under this section is not intended to replace any additional permitting or regulatory reviews and approvals that may be required under other applicable laws.

(10) Prior to entering into any service agreement under this chapter, the public body must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous compared to other methods.

(11) Each service agreement shall include project performance bonds or other security by the service provider which in the judgment of the public body is sufficient to secure adequate performance by the service provider. [2005 c 469 § 1; 1989 c 175 § 136; 1986 c 244 § 4.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Competitive bids—Inapplicability to certain agreements: RCW 35.22.625 and 36.32.265.

70.150.050 Sale, lease, or assignment of public property to service provider—Use for services to public body. A public body may sell, lease, or assign public property for fair market value to any service provider as part of a service agreement entered into under the authority of this chapter. The property sold or leased shall be used by the provider, directly or indirectly, in providing services to the public body. Such use may include demolition, modification, or other use of the property as may be necessary to execute the purposes of the service agreement. [1986 c 244 § 5.]

70.150.060 Public body eligible for grants or loans—Use of grants or loans. A public body that enters into a service agreement pursuant to this chapter, under which a facility is owned wholly or partly by a service provider, shall be eligible for grants or loans to the extent permitted by law or regulation as if the entire portion of the facility dedicated to service to such public body were publicly owned. The grants or loans shall be made to and shall inure to the benefit of the public body and not the service provider. Such grants or loans shall be used by the public body for all or part of its ownership interest in the facility, and/or to defray a part of the payments it makes to the service provider under a service agreement if such uses are permitted under the grant or loan program. [1986 c 244 § 6.]

70.150.070 RCW 70.150.030 through 70.150.060 to be additional method of providing services. RCW 70.150.030 through 70.150.060 shall be deemed to provide an additional method for the provision of services from and in connection with facilities and shall be regarded as supple-

mental and additional to powers conferred by other state laws and by federal laws. [2007 c 494 § 505; 2005 c 469 § 2; 1986 c 244 § 7.]

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

70.150.080 Application of other chapters to service agreements under this chapter—Prevailing wages. (1) The provisions of chapters 39.12, 39.19, and *39.25 RCW shall apply to a service agreement entered into under this chapter to the same extent as if the facilities dedicated to such service were owned by a public body.

(2) Subsection (1) of this section shall not be construed to apply to agreements or actions by persons or entities which are not undertaken pursuant to this chapter.

(3) Except for RCW 39.04.175, this chapter shall not be construed as a limitation or restriction on the application of Title 39 RCW to public bodies.

(4) Prevailing wages shall be established as the prevailing wage in the largest city of the county in which facilities are built. [1986 c 244 § 8.]

***Reviser's note:** Chapter 39.25 RCW was repealed by 1994 c 138 § 2.

70.150.900 Short title. This chapter may be cited as the water quality joint development act. [1986 c 244 § 9.]

70.150.905 Severability—1986 c 244. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 244 § 18.]

Chapter 70.155 RCW

TOBACCO—ACCESS TO MINORS

Sections

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70.155.005 Finding. The legislature finds that while present state law prohibits the sale and distribution of tobacco to minors, youth obtain tobacco products with ease. Availability and lack of enforcement put tobacco products in the hands of youth.

Federal law requires states to enforce laws prohibiting sale and distribution of tobacco products to minors in a manner that can reasonably be expected to reduce the extent to which the products are available to minors. It is imperative to

effectively reduce the sale, distribution, and availability of tobacco products to minors. [1993 c 507 § 1.]

Minors and tobacco: RCW 26.28.080.

Taxation: Chapters 82.24 and 82.26 RCW.

Tobacco on school grounds: RCW 28A.210.310.

70.155.010 Definitions. The definitions set forth in RCW 82.24.010 shall apply to RCW 70.155.020 through 70.155.130. In addition, for the purposes of this chapter, unless otherwise required by the context:

(1) "Board" means the Washington state liquor control board.

(2) "Delivery sale" means any sale of cigarettes to a consumer in the state where either: (a) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery service, or the internet or other online service; or (b) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state. A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed pursuant to chapter 82.24 RCW or a retailer pursuant to chapter 82.24 RCW is not a delivery sale.

(3) "Delivery service" means any private carrier engaged in the commercial delivery of letters, packages, or other containers that requires the recipient of that letter, package, or container to sign to accept delivery.

(4) "Minor" refers to an individual who is less than eighteen years old.

(5) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.

(6) "Sampling" means the distribution of samples to members of the public.

(7) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(8) "Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

(9) "Tobacco product" means a product that contains tobacco and is intended for human use, including any product defined in RCW 82.24.010(2) or 82.26.010(1). [2006 c 14 § 2; 2003 c 113 § 1; 1993 c 507 § 2.]

Reviser's note: In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

Finding—Intent—2006 c 14: See note following RCW 70.155.050.

70.155.020 Cigarette wholesaler or retailer licensee duties—Prohibition sign to be posted. A person who holds a license issued under RCW 82.24.520 or 82.24.530 shall:

(1) Display the license or a copy in a prominent location at the outlet for which the license is issued; and

(2) Display a sign concerning the prohibition of tobacco sales to minors.

Such sign shall:

(a) Be posted so that it is clearly visible to anyone purchasing tobacco products from the licensee;

(b) Be designed and produced by the department of health to read: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID REQUIRED"; and

(c) Be provided free of charge by the liquor control board. [1993 c 507 § 3.]

70.155.030 Cigarette machine location. No person shall sell or permit to be sold any tobacco product through any device that mechanically dispenses tobacco products unless the device is located fully within premises from which minors are prohibited or in industrial worksites where minors are not employed and not less than ten feet from all entrance or exit ways to and from each premise. The board shall adopt rules that allow an exception to the requirement that a device be located not less than ten feet from all entrance or exit ways to and from a premise if it is architecturally impractical for the device to be located not less than ten feet from all entrance and exit ways. [1994 c 202 § 1; 1993 c 507 § 4.]

70.155.040 Cigarettes must be sold in original package—Exception. No person shall sell or permit to be sold cigarettes not in the original unopened package or container to which the stamps required by RCW 82.24.060 have been affixed.

This section does not apply to the sale of loose leaf tobacco by a retail business that generates a minimum of sixty percent of annual gross sales from the sale of tobacco products. [1993 c 507 § 5.]

70.155.050 Sampling prohibited—Penalty. (1) No person may engage in the business of sampling tobacco products.

(2) A violation of this section is a misdemeanor. [2006 c 14 § 3; 1993 c 507 § 6.]

Reviser's note: In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

Finding—Intent—2006 c 14: "The legislature recognizes that tobacco use among children is a serious and preventable health problem. Every day sixty-five more children in Washington state become smokers, and every year more than eight thousand two hundred state residents die from tobacco-related illnesses. The legislature further finds that tobacco samples contribute to children's access to tobacco products by providing a no-cost initiation that encourages minors to experiment with nicotine at early ages. Sampling activity often occurs in venues frequented by minors, and tobacco samples are distributed along with other promotional items that contain tobacco brand logos, thus increasing the appeal of the tobacco products as well as the chances that children will obtain them. Sampling events in this state have increased twenty-fold over the past nine years, and nationwide, tobacco industry spending on samples has increased significantly. It is therefore the intent of the legislature to protect minors from the influence of tobacco sampling by eliminating the distribution of samples in this state." [2006 c 14 § 1.]

70.155.070 Coupons. No person shall give or distribute cigarettes or other tobacco products to a person by a coupon

if such coupon is redeemed in any manner that does not require an in-person transaction in a retail store. [1993 c 507 § 8.]

70.155.080 Purchasing, possessing by persons under eighteen—Civil infraction—Jurisdiction. (1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80 RCW or participation in up to four hours of community restitution, or both. The court may also require participation in a smoking cessation program. This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a liquor control board, law enforcement, or local health department activity.

(2) Municipal and district courts within the state have jurisdiction for enforcement of this section. [2002 c 175 § 47; 1998 c 133 § 2; 1993 c 507 § 9.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Intent—1998 c 133: "The legislature finds that the protection of adolescents' health requires a strong set of comprehensive health and law enforcement interventions. We know that youth are deterred from using alcohol in public because of existing laws making possession illegal. However, while the purchase of tobacco by youth is clearly prohibited, the possession of tobacco is not. It is the legislature's intent that youth hear consistent messages from public entities, including law enforcement, about public opposition to their illegal use of tobacco products." [1998 c 133 § 1.]

70.155.090 Age identification requirement. (1) Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer or agent thereof, shall require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: (a) Liquor control authority card of identification of a state or province of Canada; (b) driver's license, instruction permit, or identification card of a state or province of Canada; (c) "identocard" issued by the Washington state department of licensing under chapter 46.20 RCW; (d) United States military identification; (e) passport; (f) enrollment card, issued by the governing authority of a federally recognized Indian tribe located in Washington, that incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card; or (g) merchant marine identification card issued by the United States coast guard.

(2) It is a defense to a prosecution under RCW 26.28.080 that the person making a sale reasonably relied on any of the officially issued identification as defined in subsection (1) of this section. The liquor control board shall waive the suspension or revocation of a license if the licensee clearly establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence. [2006 c 14 § 4; 2005 c 206 § 2; 1993 c 507 § 10.]

Reviser's note: In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District

Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

Finding—Intent—2006 c 14: See note following RCW 70.155.050.

70.155.100 Penalties, sanctions, and actions against licensees. (1) The liquor control board may suspend or revoke a retailer's license issued under RCW 82.24.510(1)(b) held by a business at any location, or may impose a monetary penalty as set forth in subsection (2) of this section, if the liquor control board finds that the licensee has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

(2) The sanctions that the liquor control board may impose against a person licensed under RCW 82.24.530 based upon one or more findings under subsection (1) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(b) For violations of RCW 70.155.030, a monetary penalty in the amount of one hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040 occurring on the licensed premises:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(d) For violations of RCW 70.155.050, a monetary penalty in the amount of three hundred dollars for each violation;

(e) For violations of RCW 70.155.070, a monetary penalty in the amount of one thousand dollars for each violation.

(3) The liquor control board may impose a monetary penalty upon any person other than a licensed cigarette retailer if the liquor control board finds that the person has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

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(4) The monetary penalty that the liquor control board may impose based upon one or more findings under subsection (3) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020, fifty dollars for the first violation and one hundred dollars for each subsequent violation;

(b) For violations of RCW 70.155.030, one hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040, one hundred dollars for each violation;

(d) For violations of RCW 70.155.050, three hundred dollars for each violation;

(e) For violations of RCW 70.155.070, one thousand dollars for each violation.

(5) The liquor control board may develop and offer a class for retail clerks and use this class in lieu of a monetary penalty for the clerk's first violation.

(6) The liquor control board may issue a cease and desist order to any person who is found by the liquor control board to have violated or intending to violate the provisions of this chapter, RCW 26.28.080 or 82.24.500, requiring such person to cease specified conduct that is in violation. The issuance of a cease and desist order shall not preclude the imposition of other sanctions authorized by this statute or any other provision of law.

(7) The liquor control board may seek injunctive relief to enforce the provisions of RCW 26.28.080 or 82.24.500 or this chapter. The liquor control board may initiate legal action to collect civil penalties imposed under this chapter if the same have not been paid within thirty days after imposition of such penalties. In any action filed by the liquor control board under this chapter, the court may, in addition to any other relief, award the liquor control board reasonable attorneys' fees and costs.

(8) All proceedings under subsections (1) through (6) of this section shall be conducted in accordance with chapter 34.05 RCW.

(9) The liquor control board may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter where the elements of proof are inadequate or where there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a retailer. Further, the board may exceed penalties set forth in this chapter based on aggravating circumstances. [2006 c 14 § 5; 1998 c 133 § 3; 1993 c 507 § 11.]

Reviser's note: In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

Finding—Intent—2006 c 14: See note following RCW 70.155.050.

Finding—Intent—1998 c 133: See note following RCW 70.155.080.

70.155.105 Delivery sale of cigarettes—Requirements, unlawful practices—Penalties—Enforcement. (1) It is unlawful for a person who mails, ships, or otherwise delivers cigarettes to fail to:

(a) Verify the age of the receiver of the cigarettes upon delivery; and

(b) Obtain in writing, before the first delivery sale of cigarettes, verification of the receiver's address and that the receiver of the cigarettes is not a minor. The statement must also confirm that the purchaser understands: (i) That signing another person's name to the certification is a violation of RCW 9A.60.040(1)(a); (ii) that the sale of cigarettes to a minor is a violation of RCW 26.28.080; (iii) that the purchase of cigarettes by minors is a violation of RCW 70.155.080; and (iv) that he or she has the option to receive mailings from a tobacco company about tobacco products.

(2) It is unlawful for a person to mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless before the first delivery sale to the consumer that person:

(a) Either verifies the information contained in the certification provided by the prospective consumer in subsection (1) of this section against a commercially available database, or obtains a photocopy of an officially issued identification containing the bearer's age, signature, and photograph. The only forms of identification that are acceptable as proof of age for the purchase for tobacco products are: (i) A liquor control authority card of identification issued by a state of the United States or a province of Canada, (ii) a driver's license, instruction permit, or identification card issued by a state of the United States or a province of Canada, (iii) a United States military identification card, (iv) a passport, or (v) a merchant marine identification card issued by the United States coast guard;

(b) Provides to the prospective consumer through electronic mail or other means a notice that meets the requirements of subsection (3) of this section; and

(c) In the case of an order for cigarettes pursuant to an advertisement on the internet, receives payment for the delivery sale from the prospective consumer by a credit card or debit card, or by check that has been issued in the prospective consumer's name.

(3) The notice required under subsection (2)(b) of this section must include:

(a) A prominent and clearly legible statement that cigarette sales to minors are illegal;

(b) A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1333(a)(1)) rotated on a quarterly basis;

(c) A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (1) of this section; and

(d) A prominent and clearly legible statement that cigarette sales are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an explanation of how the tax has been or is to be paid with respect to a delivery sale.

(4) It is unlawful for a person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale to fail to:

(a) Include as part of the bill of lading, or other shipping documents, a clear and conspicuous statement that states: "Cigarettes: Washington Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";

(b) Contract only with private carriers who employ delivery agents who will verify the receiver of the cigarettes

is not a minor upon delivery. The only forms of identification that are acceptable as proof of age for the purchase for tobacco products are: (i) A liquor control authority card of identification issued by a state of the United States or a province of Canada, (ii) a driver's license, instruction permit, or identification card issued by a state of the United States or a province of Canada, (iii) a United States military identification card, (iv) a passport, or (v) a merchant marine identification card issued by the United States coast guard;

(c) Provide to the delivery service retained for the delivery sale evidence of full compliance with this section.

(5)(a) Before making delivery sales or mailings, shipping, or otherwise delivering cigarettes to a Washington address in connection with any sales, any person who mails, ships, or otherwise delivers cigarettes shall file with the board a statement setting forth the person's name, trade name, and the address of the person's principal place of business and any other place of business.

(b) Any person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall within fifteen days after the first of each month file with the board a report of all delivery sales made by the person within this state for the preceding month. The report shall show the name and address of the consumer to whom the cigarettes were sold, the kind and quality, and the date of delivery thereof.

(6)(a) Any person other than a delivery service who violates any of the provisions of this section is guilty of a class C felony punishable by up to five years in prison and a fine of ten thousand dollars, and payment of the cost of investigation and prosecution, including attorneys' fees.

(b) Any person other than a delivery service who commits a second or subsequent violation of this section is [guilty of] a class B felony punishable by up to ten years in prison and a fine of twenty thousand dollars, and payment of the cost of investigation and prosecution, including attorneys' fees.

(c) Any delivery service that violates any provision of this section shall be guilty of a gross misdemeanor punishable by up to one year in jail and a fine of five thousand dollars.

(7) Any person that fails to collect or remit to the department of revenue any tax required under chapter 82.24 RCW in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five times the retail value of the cigarettes involved.

(8) For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board or any of its agents may inspect the books, documents, and records of any person who makes delivery sales or mailings, or ships or otherwise delivers cigarettes or retains another person to make delivery sales or mailings, or to ship or otherwise deliver cigarettes insofar as such books, documents, and/or records pertain to the financial transaction involved. If such a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the board or its agent, then the board or the attorney general may seek an order in superior court compelling such production of books, records, or documents. [2003 c 113 § 2.]

70.155.110 Liquor control board authority. (1) The liquor control board shall, in addition to the board's other powers and authorities, have the authority to enforce the provisions of this chapter and *RCW 26.28.080(4) and 82.24.500. The liquor control board shall have full power to revoke or suspend the license of any retailer or wholesaler in accordance with the provisions of RCW 70.155.100.

(2) The liquor control board and the board's authorized agents or employees shall have full power and authority to enter any place of business where tobacco products are sold for the purpose of enforcing the provisions of this chapter.

(3) For the purpose of enforcing the provisions of this chapter and *RCW 26.28.080(4) and 82.24.500, a peace officer or enforcement officer of the liquor control board who has reasonable grounds to believe a person observed by the officer purchasing, attempting to purchase, or in possession of tobacco products is under the age of eighteen years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. Further, tobacco products possessed by persons under the age of eighteen years of age are considered contraband and may be seized by a peace officer or enforcement officer of the liquor control board.

(4) The liquor control board may work with local county health departments or districts and local law enforcement agencies to conduct random, unannounced, inspections to assure compliance. [1993 c 507 § 12.]

*Reviser's note: RCW 26.28.080 was amended by 1994 sp.s. c 7 § 437, and no longer has numbered subsections.

70.155.120 Youth tobacco prevention account—Source and use of funds. (1) The youth tobacco prevention account is created in the state treasury. All fees collected pursuant to RCW 82.24.520 and 82.24.530 and funds collected by the liquor control board from the imposition of monetary penalties and samplers' fees shall be deposited into this account, except that ten percent of all such fees and penalties shall be deposited in the state general fund.

(2) Moneys appropriated from the youth tobacco prevention account to the department of health shall be used by the department of health for implementation of this chapter, including collection and reporting of data regarding enforcement and the extent to which access to tobacco products by youth has been reduced.

(3) The department of health shall enter into interagency agreements with the liquor control board to pay the costs incurred, up to thirty percent of available funds, in carrying out its enforcement responsibilities under this chapter. Such agreements shall set forth standards of enforcement, consistent with the funding available, so as to reduce the extent to which tobacco products are available to individuals under the age of eighteen. The agreements shall also set forth requirements for data reporting by the liquor control board regarding its enforcement activities.

(4) The department of health and the department of revenue shall enter into an interagency agreement for payment of the cost of administering the tobacco retailer licensing system and for the provision of quarterly documentation of tobacco wholesaler, retailer, and vending machine names and locations.

(2008 Ed.)

(5) The department of health shall, within up to seventy percent of available funds, provide grants to local health departments or other local community agencies to develop and implement coordinated tobacco intervention strategies to prevent and reduce tobacco use by youth. [1993 c 507 § 13.]

70.155.130 Preemption of political subdivisions. This chapter preempts political subdivisions from adopting or enforcing requirements for the licensure and regulation of tobacco product promotions and sales within retail stores, except that political subdivisions that have adopted ordinances prohibiting sampling by January 1, 1993, may continue to enforce these ordinances. No political subdivision may: (1) Impose fees or license requirements on retail businesses for possessing or selling cigarettes or tobacco products, other than general business taxes or license fees not primarily levied on tobacco products; or (2) regulate or prohibit activities covered by RCW 70.155.020 through 70.155.080. This chapter does not otherwise preempt political subdivisions from adopting ordinances regulating the sale, purchase, use, or promotion of tobacco products not inconsistent with chapter 507, Laws of 1993. [1993 c 507 § 14.]

70.155.900 Severability—1993 c 507. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 507 § 20.]

Chapter 70.157 RCW

NATIONAL UNIFORM TOBACCO SETTLEMENT— NONPARTICIPATING TOBACCO PRODUCT MANUFACTURERS

Sections

70.157.005	Findings and purpose.
70.157.010	Definitions.
70.157.020	Requirements.
70.157.030	Contingent expiration date—Court action.

70.157.005 Findings and purpose. (a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into

a settlement with the State or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise. [1999 c 393 § 1.]

Captions not law—1999 c 393: "Captions used in this act are not part of the law." [1999 c 393 § 5.]

Effective date—1999 c 393: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 18, 1999]." [1999 c 393 § 6.]

70.157.010 Definitions. (a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use

and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with RCW 70.157.020(b).

(g) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in paragraph (1) or (2).

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1)-(3) above.

(j) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs bearing the excise tax stamp of the State or "roll-your-own" tobacco containers. The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year. [1999 c 393 § 2.]

Captions not law—Effective date—1999 c 393: See notes following RCW 70.157.005.

70.157.020 Requirements. (Contingent expiration date.) Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after May 18, 1999, shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—

1999: \$.0094241 per unit sold after May 18, 1999;

2000: \$.0104712 per unit sold;

for each of 2001 and 2002: \$.0136125 per unit sold;

for each of 2003 through 2006: \$.0167539 per unit sold;

for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold, had it been a Participating Manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and

in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. The violator shall also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3). [2003 c 342 § 1; 1999 c 393 § 3.]

Captions not law—Effective date—1999 c 393: See notes following RCW 70.157.005.

70.157.020 Requirements. (Contingent effective date.) Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after May 18, 1999, shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—

1999: \$.0094241 per unit sold after May 18, 1999;

2000: \$.0104712 per unit sold;

for each of 2001 and 2002: \$.0136125 per unit sold;

for each of 2003 through 2006: \$.0167539 per unit sold;

for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of

that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. The violator shall also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3). [1999 c 393 § 3.]

Captions not law—Effective date—1999 c 393: See notes following RCW 70.157.005.

70.157.030 Contingent expiration date—Court action. If chapter 342, Laws of 2003 is held by a court of competent jurisdiction to be unconstitutional, then RCW 70.157.020(b)(2)(B) shall be repealed in its entirety. If RCW 70.157.020(b)(2) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then chapter 342, Laws of 2003 shall be repealed, and RCW 70.157.020(b)(2)(B) be restored as if no amendments had been made. Neither any holding of unconstitutionality nor the repeal of RCW 70.157.020(b)(2)(B) shall affect, impair, or invalidate any other portion of RCW 70.157.020 or the application of that section to any other person or circumstance, and the remaining portions of RCW 70.157.020 shall at all times continue in full force and effect. [2003 c 342 § 2.]

Chapter 70.158 RCW

TOBACCO PRODUCT MANUFACTURERS

Sections

70.158.010	Findings.
70.158.020	Definitions.
70.158.030	Tobacco product manufacturers—Certification—Attorney general to publish directory—Violations.
70.158.040	Nonresident, nonparticipating manufacturers—Agent for service of process.
70.158.050	Reports, records—Confidentiality, disclosures, voluntary waivers—Escrow payments.
70.158.060	Penalties—Application of consumer protection act.
70.158.070	Attorney general's directory decision to be final agency action—Due dates for reports, certifications, directory—Rules—Costs—Penalties.
70.158.900	Conflict of law—Severability—2003 c 25.
70.158.901	Effective date—2003 c 25.

70.158.010 Findings. The legislature finds that violations of RCW 70.157.020 threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health. The legislature finds the enacting procedural enhancements will help prevent violations and aid the enforcement of RCW 70.157.020 and thereby safeguard the master settlement agreement, the fiscal soundness of the state, and the public health. The provisions of chapter 25, Laws of 2003 are not intended to and shall not be interpreted to amend chapter 70.157 RCW. [2003 c 25 § 1.]

70.158.020 Definitions. The following definitions apply to this chapter unless the context clearly requires otherwise.

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Board" means the liquor control board.

(3) "Cigarette" has the same meaning as in RCW 70.157.010(d).

(4) "Director" means the director of the department of revenue except as otherwise noted.

(5) "Directory" means the directory to be created and published on a web site by the attorney general pursuant to RCW 70.158.030(2).

(6) "Distributor" has the same meaning as in RCW 82.26.010(3), except that for purposes of this chapter, no person is a distributor if that person does not deal with cigarettes as defined in this section.

(7) "Master settlement agreement" has the same meaning as in RCW 70.157.010(e).

(8) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(9) "Participating manufacturer" has the meaning given that term in section II(jj) of the master settlement agreement.

(10) "Qualified escrow fund" has the same meaning as in RCW 70.157.010(f).

(11) "Stamp" means "stamp" as defined in RCW 82.24.010(7) or as referred to in RCW 43.06.455(4).

(12) "Tobacco product manufacturer" has the same meaning as in RCW 70.157.010(i).

(13) "Units sold" has the same meaning as in RCW 70.157.010(j).

(14) "Wholesaler" has the same meaning as in RCW 82.24.010. [2003 c 25 § 2.]

70.158.030 Tobacco product manufacturers—Certification—Attorney general to publish directory—Violations. (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the attorney general a certification to the attorney general, no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, the tobacco product manufacturer is either a participating manufacturer; or is in full compliance with RCW 70.157.020(b)(1), including all payments required by that section or chapter 25, Laws of 2003.

(a) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(b) A nonparticipating manufacturer shall include in its certification: (i) A list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year; (ii) a list of all of its brand families that have been sold in the state at anytime during the current calendar year; (iii) indicating, by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and (iv) identifying by name and address any other manufacturer of brand families in the preceding or current calendar year. The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(c) In the case of a nonparticipating manufacturer, the certification shall further certify:

(i) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice as required by RCW 70.158.040;

(ii) That the nonparticipating manufacturer: (A) Has established and continues to maintain a qualified escrow fund; and (B) has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(iii) That the nonparticipating manufacturer is in full compliance with RCW 70.157.020(b)(1) and this chapter, and any rules adopted pursuant thereto; and

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established a qualified escrow fund required pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder; (B) the account number of the qualified escrow fund and any sub-account number for the state of Washington; (C) the amount

the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and (D) the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder.

(d) A tobacco product manufacturer may not include a brand family in its certification unless: (i) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of RCW 70.157.020(b)(1). Nothing in this section limits or otherwise affects the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of RCW 70.157.020.

(e) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(2) Not later than November 1, 2003, the attorney general shall develop and publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of this section and all brand families that are listed in these certifications, except as noted below:

(a) The attorney general shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with subsection (1)(b) and (c) of this section, unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that: (i) Any escrow payment required pursuant to RCW 70.157.020(b)(1) for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or (ii) any outstanding final judgment, including interest, for a violation of RCW 70.157.020(b)(1) that has not been fully satisfied for the brand family or manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.

The attorney general shall transmit, by e-mail or other practicable means to each wholesaler or distributor, notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the wholesaler or distributor and a tobacco product manufacturer, the wholesaler or distributor shall be entitled to a refund from a tobacco product manufacturer for any money paid by the wholesaler or distributor to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the wholesaler or distributor on the date of notice by the attorney general of the removal from the directory of that tobacco product manufacturer or the brand family of the cigarettes. The attorney general shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the wholesaler or distributor any refund due.

(d) Every wholesaler and distributor shall provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by this chapter.

(e) A tobacco product manufacturer included in the directory may request that a new brand family be certified and added to the directory. Within forty-five business days of receiving the request, the attorney general will respond by either: (i) Certifying the new brand family; or (ii) denying the request. However, in cases where the attorney general determines that it needs clarification as to whether the requestor is actually the tobacco product manufacturer, the attorney general may take more time as needed to clarify the request, to locate and assemble information or documents needed to process the request, and to notify persons or agencies affected by the request.

(f) The web site will state that chapter 25, Laws of 2003 applies only to cigarettes including, pursuant to the definition of "cigarettes" in chapter 25, Laws of 2003, roll-your-own tobacco.

(3) It is unlawful for any person (a) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory, or to pay or cause to be paid the tobacco products tax on any package or container; or (b) to sell, offer, or possess for sale in this state or import for sale in this state, any cigarettes of a tobacco product manufacturer or brand family not included in the directory. [2003 c 25 § 3.]

70.158.040 Nonresident, nonparticipating manufacturers—Agent for service of process. (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter and RCW 70.157.020(b)(1), may be served in any manner authorized by law. The service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment

and availability of the agent to the satisfaction of the attorney general.

(2) The nonparticipating manufacturer shall provide notice to the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within five calendar days and include proof to the satisfaction of the attorney general of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose cigarettes are sold in this state, who has not appointed and engaged an agent as required in this section, shall be deemed to have appointed the secretary of state as the agent and may be proceeded against in courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory. [2003 c 25 § 4.]

70.158.050 Reports, records—Confidentiality, disclosures, voluntary waivers—Escrow payments. (1) In addition to the reporting requirements under *RCW 70.157.010(j) and the rules adopted thereunder, not later than twenty-five calendar days after the end of each calendar month, and more frequently if directed by the director, each wholesaler and distributor shall submit information the director requires to facilitate compliance with this chapter, including, but not limited to, a list by brand family of the total number of cigarettes, or, in the case of roll-your-own, the equivalent stick count for which the wholesaler or distributor affixed stamps during the previous calendar month or otherwise paid the tax due for the cigarettes. Each wholesaler and distributor shall maintain and make available to the director, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general or the director for a period of five years.

(2) Information or records required to be furnished to the department, the board, or the attorney general are confidential and shall not be disclosed. However, the director and the board are authorized to disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this chapter. The director, the board, and the attorney general may share with each other the information received under this chapter, and may share information with other federal, state, or local agencies, including without limitation the board, only for purposes of enforcement of this chapter, RCW 70.157.020, or corresponding laws of other states. If a tobacco product manufacturer that is required to establish a qualified escrow fund under RCW 70.157.020 disputes the attorney general's determination of what that manufacturer needs to place into escrow, and the attorney general determines that the dispute can likely be resolved by disclosing reports from the relevant distributors and wholesalers indicating the sales or purchases

of the tobacco manufacturer's products, then the attorney general shall request voluntary waivers of confidentiality so that the reports may be disclosed to the tobacco product manufacturer to help resolve the dispute. If the waivers are provided, then the director and the attorney general are authorized to disclose the waived confidential information collected on the sales or purchases of cigarettes to the tobacco product manufacturer. However, before the attorney general or the director discloses the waived confidential information, the tobacco product manufacturer must provide to the attorney general all records relating to its sales or purchases of cigarettes in dispute. The information provided to a tobacco product manufacturer pursuant to this subsection (2) shall be limited to brands or products of that manufacturer only, may be used only for the limited purpose of determining the appropriate escrow deposit, and may not be disclosed by the tobacco product manufacturer.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with RCW 70.157.020(b)(1), of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to RCW 70.158.030, this section, and chapters 82.24 and 82.26 RCW, the director, the board, or the attorney general may require a wholesaler, distributor, or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this chapter. If the director, the board, or the attorney general makes a request for information pursuant to this subsection (4), the tobacco product manufacturer, distributor, or wholesaler shall comply promptly.

(5) A nonparticipating manufacturer that either: (a) Has not previously made escrow payments to the state of Washington pursuant to RCW 70.157.020; or (b) has not actually made any escrow payments for more than one year, shall make the required escrow deposits in quarterly installments during the first year in which the sales covered by the deposits are made or in the first year in which the payments are made. The director or the attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit. [2003 c 25 § 5.]

***Reviser's note:** For rules and reporting requirements adopted pursuant to RCW 70.157.010, see WAC 458-20-264.

70.158.060 Penalties—Application of consumer protection act. (1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated RCW 70.158.030(3) or any rule adopted pursuant to this chapter, the director or the board may revoke or suspend the license of the wholesaler in the manner provided by chapter 82.24 or 82.32 RCW. Each stamp affixed and each sale or offer to sell cigarettes in violation of RCW 70.158.030(3) shall constitute a separate viola-

tion. For each violation of this chapter, the director or the board may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of RCW 70.158.030(3) or any rules adopted pursuant thereto. The penalty shall be imposed in the manner provided by chapter 82.24 RCW.

(2) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of RCW 70.158.030(3) or 70.158.050 (1) or (4) by a person and to compel the person to comply with these sections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees.

(3) It is unlawful for a person to: (a) Sell or distribute cigarettes or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes, that the person knows or should know are intended for distribution or sale in the state in violation of RCW 70.158.030(3). A violation of this subsection (3) is a gross misdemeanor.

(4) Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of this chapter shall lie solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [2003 c 25 § 6.]

70.158.070 Attorney general's directory decision to be final agency action—Due dates for reports, certifications, directory—Rules—Costs—Penalties. (1) A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer shall be final agency action for purposes of review under RCW 34.05.570(4).

(2) No person shall be issued a license or granted a renewal of a license to act as a wholesaler unless the person has certified in writing under penalty of perjury, that the person will comply fully with this section.

(3) The first reports of wholesalers and distributors are due August 25, 2003. The certifications by a tobacco product manufacturer described in RCW 70.158.030(1) are due September 15, 2003. The directory described in RCW 70.158.030(2) shall be published or made available by November 1, 2003.

(4) The attorney general, the board, and the director may adopt rules as necessary to effect the administration of this chapter.

(5) In any action brought by the state to enforce this chapter, the state is entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(6) If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the general fund. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state. [2003 c 25 § 7.]

70.158.900 Conflict of law—Severability—2003 c 25.

If a court of competent jurisdiction finds that the provisions of chapter 25, Laws of 2003 and chapter 70.157 RCW conflict and cannot be harmonized, then the provisions of chapter 70.157 RCW shall control. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of chapter 25, Laws of 2003 causes chapter 70.157 RCW no longer to constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of chapter 25, Laws of 2003 shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of chapter 25, Laws of 2003 is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of chapter 25, Laws of 2003 or any part thereof. [2003 c 25 § 8.]

70.158.901 Effective date—2003 c 25. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003. [2003 c 25 § 13.]

Chapter 70.160 RCW**SMOKING IN PUBLIC PLACES**

(Formerly: Washington clean indoor air act)

Sections

70.160.011	Findings—Intent—2006 c 2 (Initiative Measure No. 901).
70.160.020	Definitions.
70.160.030	Smoking prohibited in public places or places of employment.
70.160.050	Owners, lessees to post signs prohibiting smoking.
70.160.060	Intent of chapter as applied to certain private workplaces.
70.160.070	Intentional violation of chapter—Removing, defacing, or destroying required sign—Fine—Notice of infraction—Exceptions—Violations of RCW 70.160.050—Fine—Enforcement.
70.160.075	Smoking prohibited within twenty-five feet of public places or places of employment—Application to modify presumptively reasonable minimum distance.
70.160.080	Local regulations authorized.
70.160.100	Penalty assessed under this chapter paid to jurisdiction bringing action.

Smoking in municipal transit vehicle, unlawful bus conduct: RCW 9.91.025.

70.160.011 Findings—Intent—2006 c 2 (Initiative Measure No. 901). The people of the state of Washington recognize that exposure to secondhand smoke is known to cause cancer in humans. Secondhand smoke is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to secondhand smoke in the workplace, and are likely to develop chronic, potentially fatal diseases as a result of such exposure. In order to protect the health and welfare of all citizens, including workers in their places of employment, it is necessary to prohibit smoking in public places and workplaces. [2006 c 2 § 1 (Initiative Measure No. 901, approved November 8, 2005).]

Captions not law—2006 c 2 (Initiative Measure No. 901): "Captions used in this act are not any part of the law." [2006 c 2 § 8 (Initiative Measure No. 901, approved November 8, 2005).]

70.160.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly indicates otherwise.

[Title 70 RCW—page 492]

(1) "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.

(2) "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance, as set forth in RCW 70.160.075, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises.

Public places include, but are not limited to: Schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. A public place does not include a private residence. This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.

(3) "Place of employment" means any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to: Entrances and exits to the places of employment, and including a presumptively reasonable minimum distance, as set forth in RCW 70.160.075, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment. [2006 c 2 § 2 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 2.]

Captions not law—2006 c 2 (Initiative Measure No. 901): See note following RCW 70.160.011.

70.160.030 Smoking prohibited in public places or places of employment. No person may smoke in a public place or in any place of employment. [2006 c 2 § 3 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 3.]

Captions not law—2006 c 2 (Initiative Measure No. 901): See note following RCW 70.160.011.

70.160.050 Owners, lessees to post signs prohibiting smoking. Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated

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under this chapter shall prohibit smoking in public places and places of employment and shall post signs prohibiting smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place. [2006 c 2 § 4 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 5.]

Captions not law—2006 c 2 (Initiative Measure No. 901): See note following RCW 70.160.011.

70.160.060 Intent of chapter as applied to certain private workplaces. This chapter is not intended to regulate smoking in a private enclosed workplace, within a public place, even though such workplace may be visited by non-smokers, excepting places in which smoking is prohibited by the chief of the Washington state patrol, through the director of fire protection, or by other law, ordinance, or regulation. [1995 c 369 § 60; 1986 c 266 § 121; 1985 c 236 § 6.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.160.070 Intentional violation of chapter—Removing, defacing, or destroying required sign—Fine—Notice of infraction—Exceptions—Violations of RCW 70.160.050—Fine—Enforcement. (1) Any person intentionally violating this chapter by smoking in a public place or place of employment, or any person removing, defacing, or destroying a sign required by this chapter, is subject to a civil fine of up to one hundred dollars. Any person passing by or through a public place while on a public sidewalk or public right-of-way has not intentionally violated this chapter. Local law enforcement agencies shall enforce this section by issuing a notice of infraction to be assessed in the same manner as traffic infractions. The provisions contained in chapter 46.63 RCW for the disposition of traffic infractions apply to the disposition of infractions for violation of this subsection except as follows:

(a) The provisions in chapter 46.63 RCW relating to the provision of records to the department of licensing in accordance with RCW 46.20.270 are not applicable to this chapter; and

(b) The provisions in chapter 46.63 RCW relating to the imposition of sanctions against a person's driver's license or vehicle license are not applicable to this chapter.

The form for the notice of infraction for a violation of this subsection shall be prescribed by rule of the supreme court.

(2) When violations of RCW 70.160.050 occur, a warning shall first be given to the owner or other person in charge. Any subsequent violation is subject to a civil fine of up to one hundred dollars. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

(3) Local health departments shall enforce RCW 70.160.050 regarding the duties of owners or persons in control of public places and places of employment by either of the following actions:

(a) Serving notice requiring the correction of any violation; or

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(b) Calling upon the city or town attorney or county prosecutor or local health department attorney to maintain an action for an injunction to enforce RCW 70.160.050, to correct a violation, and to assess and recover a civil penalty for the violation. [2006 c 2 § 5 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 7.]

Captions not law—2006 c 2 (Initiative Measure No. 901): See note following RCW 70.160.011.

70.160.075 Smoking prohibited within twenty-five feet of public places or places of employment—Application to modify presumptively reasonable minimum distance. Smoking is prohibited within a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty-five feet is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance. [2006 c 2 § 6 (Initiative Measure No. 901, approved November 8, 2005).]

Captions not law—2006 c 2 (Initiative Measure No. 901): See note following RCW 70.160.011.

70.160.080 Local regulations authorized. Local fire departments or fire districts and local health departments may adopt regulations as required to implement this chapter. [1985 c 236 § 9.]

70.160.100 Penalty assessed under this chapter paid to jurisdiction bringing action. Any penalty assessed and recovered in an action brought under this chapter shall be paid to the city or county bringing the action. [1985 c 236 § 8.]

Chapter 70.162 RCW

INDOOR AIR QUALITY IN PUBLIC BUILDINGS

Sections

70.162.005	Finding—Intent.
70.162.010	Definitions.
70.162.020	Department duties.
70.162.030	State building code council duties.
70.162.040	Public agencies—Directive.
70.162.050	Superintendent of public instruction—Model program.
70.162.900	Severability—1989 c 315.

70.162.005 Finding—Intent. The legislature finds that many Washington residents spend a significant amount of their time working indoors and that exposure to indoor air

pollutants may occur in public buildings, schools, work places, and other indoor environments. Scientific studies indicate that pollutants common in the indoor air may include radon, asbestos, volatile organic chemicals including formaldehyde and benzene, combustion byproducts including carbon monoxide, nitrogen oxides, and carbon dioxide, metals and gases including lead, chlorine, and ozone, respirable particles, tobacco smoke, biological contaminants, microorganisms, and other contaminants. In some circumstances, exposure to these substances may cause adverse health effects, including respiratory illnesses, multiple chemical sensitivities, skin and eye irritations, headaches, and other related symptoms. There is inadequate information about indoor air quality within the state of Washington, including the sources and nature of indoor air pollution.

The intent of the legislature is to develop a control strategy that will improve indoor air quality, provide for the evaluation of indoor air quality in public buildings, and encourage voluntary measures to improve indoor air quality. [1989 c 315 § 1.]

70.162.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of labor and industries.

(2) "Public agency" means a state office, commission, committee, bureau, or department.

(3) "Industry standard" means the 62-1981R standard established by the American society of heating, refrigerating, and air conditioning engineers as codified in M-1602 of the building officials and code administrators international manual as of January 1, 1990. [1989 c 315 § 2.]

70.162.020 Department duties. The department shall, in coordination with other appropriate state agencies:

(1) Recommend a policy for evaluation and prioritization of state-owned or leased buildings with respect to indoor air quality;

(2) Recommend stronger workplace regulation of indoor air quality under the Washington industrial safety and health act;

(3) Review indoor air quality programs in public schools administered by the superintendent of public instruction and the department of social and health services;

(4) Provide educational and informational pamphlets or brochures to state agencies on indoor air quality standards; and

(5) Recommend to the legislature measures to implement the recommendations, if any, for the improvement of indoor air quality in public buildings within a reasonable period of time. [1989 c 315 § 3.]

70.162.030 State building code council duties. The state building code council is directed to:

(1) Review the state building code to determine the adequacy of current mechanical ventilation and filtration standards prescribed by the state compared to the industry standard; and

(2) Make appropriate changes in the building code to bring the state prescribed standards into conformity with the industry standard. [1989 c 315 § 4.]

70.162.040 Public agencies—Directive. Public agencies are encouraged to:

(1) Evaluate the adequacy of mechanical ventilation and filtration systems in light of the recommendations of the American society of heating, refrigerating, and air conditioning engineers and the building officials and code administrators international; and

(2) Maintain and operate any mechanical ventilation and filtration systems in a manner that allows for maximum operating efficiency consistent with the recommendations of the American society of heating, refrigerating, and air conditioning engineers and the building officials and code administrators international. [1989 c 315 § 5.]

70.162.050 Superintendent of public instruction—Model program. (1) The superintendent of public instruction may implement a model indoor air quality program in a school district selected by the superintendent.

(2) The superintendent shall ensure that the model program includes:

(a) An initial evaluation by an indoor air quality expert of the current indoor air quality in the school district. The evaluation shall be completed within ninety days after the beginning of the school year;

(b) Establishment of procedures to ensure the maintenance and operation of any ventilation and filtration system used. These procedures shall be implemented within thirty days of the initial evaluation;

(c) A reevaluation by an indoor air quality expert, to be conducted approximately two hundred seventy days after the initial evaluation; and

(d) The implementation of other procedures or plans that the superintendent deems necessary to implement the model program. [1998 c 245 § 116; 1989 c 315 § 6.]

70.162.900 Severability—1989 c 315. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 315 § 7.]

Chapter 70.164 RCW

LOW-INCOME RESIDENTIAL WEATHERIZATION PROGRAM

Sections

70.164.010	Legislative findings.
70.164.020	Definitions.
70.164.030	Low-income weatherization assistance account.
70.164.040	Proposals for low-income weatherization programs—Matching funds.
70.164.050	Program compliance with laws and rules—Energy assessment required.
70.164.060	Weatherization of leased or rented residences—Limitations.
70.164.070	Payments to low-income weatherization assistance account.
70.164.900	Severability—1987 c 36.

70.164.010 Legislative findings. The legislature finds and declares that weatherization of the residences of low-income households will help conserve energy resources in this state and can reduce the need to obtain energy from more costly conventional energy resources. The legislature also finds that rising energy costs have made it difficult for low-income citizens of the state to afford adequate fuel for residential space heat. Weatherization of residences will lower energy consumption, making space heat more affordable for persons in low-income households. It will also reduce the uncollectible accounts of fuel suppliers resulting from low-income customers not being able to pay fuel bills.

The program implementing the policy of this chapter is necessary to support the poor and infirm and also to benefit the health, safety, and general welfare of all citizens of the state. [1987 c 36 § 1.]

70.164.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of community, trade, and economic development.

(2) "Energy assessment" means an analysis of a dwelling unit to determine the need for cost-effective energy conservation measures as determined by the department.

(3) "Household" means an individual or group of individuals living in a dwelling unit as defined by the department.

(4) "Low income" means household income that is at or below one hundred twenty-five percent of the federally established poverty level.

(5) "Nonutility sponsor" means any sponsor other than a public service company, municipality, public utility district, mutual or cooperative, furnishing gas or electricity used to heat low-income residences.

(6) "Residence" means a dwelling unit as defined by the department.

(7) "Sponsor" means any entity that submits a proposal under RCW 70.164.040, including but not limited to any local community action agency, community service agency, or any other participating agency or any public service company, municipality, public utility district, mutual or cooperative, or any combination of such entities that jointly submits a proposal.

(8) "Sponsor match" means the share, if any, of the cost of weatherization to be paid by the sponsor.

(9) "Weatherization" means materials or measures, and their installation, that are used to improve the thermal efficiency of a residence.

(10) "Weatherizing agency" means any approved department grantee or any public service company, municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for ensuring the performance of weatherization of residences under this chapter and has been approved by the department. [1995 c 399 § 199; 1987 c 36 § 2.]

70.164.030 Low-income weatherization assistance account. The low-income weatherization assistance account is created in the state treasury. All moneys from the money distributed to the state pursuant to *Exxon v. United States*, 561 F.Supp. 816 (1983), affirmed 773 F.2d 1240 (1985), or (2008 Ed.)

any other oil overcharge settlements or judgments distributed by the federal government, that are allocated to the low-income weatherization assistance account shall be deposited in the account. The department may accept such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, and shall deposit such funds in the account. Any moneys received from sponsor match payments shall be deposited in the account. The legislature may also appropriate moneys to the account. Moneys in the account shall be spent pursuant to appropriation and only for the purposes and in the manner provided in RCW 70.164.040. Any moneys appropriated that are not spent by the department shall return to the account. [1991 sp.s. c 13 § 62; 1987 c 36 § 3.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

70.164.040 Proposals for low-income weatherization programs—Matching funds. (1) The department shall solicit proposals for low-income weatherization programs from potential sponsors. A proposal shall state the amount of the sponsor match, the amount requested from the low-income weatherization assistance account, the name of the weatherizing agency, and any other information required by the department.

(2)(a) A sponsor may use its own moneys, including corporate or ratepayer moneys, or moneys provided by landlords, charitable groups, government programs, the Bonneville Power Administration, or other sources to pay the sponsor match.

(b) Moneys provided by a sponsor pursuant to requirements in this section shall be in addition to and shall not supplant any funding for low-income weatherization that would otherwise have been provided by the sponsor or any other entity enumerated in (a) of this subsection.

(c) No proposal may require any contribution as a condition of weatherization from any household whose residence is weatherized under the proposal.

(d) Proposals shall provide that full levels of all cost-effective structurally feasible measures, as determined by the department, shall be installed when a low-income residence is weatherized.

(3) The department may in its discretion accept, accept in part, or reject proposals submitted. The department shall allocate funds appropriated from the low-income weatherization assistance account among proposals accepted or accepted in part so as to achieve the greatest possible expected monetary and energy savings by low-income households and other energy consumers and shall, to the extent feasible, ensure a balance of participation in proportion to population among low-income households for: (a) Geographic regions in the state; (b) types of fuel used for heating; (c) owner-occupied and rental residences; and (d) single-family and multifamily dwellings. The department may allocate funds to a nonutility sponsor without requiring a sponsor match if the department determines that such an allocation is necessary to provide the greatest benefits to low-income residents of the state.

(4)(a) A sponsor may elect to: (i) Pay a sponsor match as a lump sum at the time of weatherization, or (ii) make yearly payments to the low-income weatherization assistance account over a period not to exceed ten years. If a sponsor

elects to make yearly payments, the value of the payments shall not be less than the value of the lump sum payment that would have been made under (i) of this subsection.

(b) The department may permit a sponsor to meet its match requirement in whole or in part through providing labor, materials, or other in-kind expenditures.

(5) The department shall adopt rules to carry out this section. [1987 c 36 § 4.]

70.164.050 Program compliance with laws and rules—Energy assessment required. (1) The department is responsible for ensuring that sponsors and weatherizing agencies comply with the state laws, the department's rules, and the sponsor's proposal in carrying out proposals.

(2) Before a residence is weatherized, the department shall require that an energy assessment be conducted. [1987 c 36 § 5.]

70.164.060 Weatherization of leased or rented residences—Limitations. Before a leased or rented residence is weatherized, written permission shall be obtained from the owner of the residence for the weatherization. The department shall adopt rules to ensure that: (1) The benefits of weatherization assistance in connection with a leased or rented residence accrue primarily to low-income tenants; (2) as a result of weatherization provided under this chapter, the rent on the residence is not increased and the tenant is not evicted; and (3) as a result of weatherization provided under this chapter, no undue or excessive enhancement occurs in the value of the residence. This section is in the public interest and any violation by a landlord of the rules adopted under this section shall be an act in trade or commerce violating chapter 19.86 RCW, the consumer protection act. [1987 c 36 § 6.]

70.164.070 Payments to low-income weatherization assistance account. Payments to the low-income weatherization assistance account shall be treated, for purposes of state law, as payments for energy conservation and shall be eligible for any tax credits or deductions, equity returns, or other benefits for which conservation investments are eligible. [1987 c 36 § 7.]

70.164.900 Severability—1987 c 36. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 36 § 9.]

Chapter 70.168 RCW

STATEWIDE TRAUMA CARE SYSTEM

Sections

70.168.010	Legislative finding.
70.168.015	Definitions.
70.168.020	Steering committee—Composition—Appointment.
70.168.030	Analysis of state's trauma system—Plan.
70.168.040	Emergency medical services and trauma care system trust account.
70.168.050	Emergency medical services and trauma care system—Department to establish—Rule making—Gifts.
70.168.060	Department duties—Timelines.

70.168.070	Provision of trauma care service—Designation.
70.168.080	Prehospital trauma care service—Verification—Compliance—Variance.
70.168.090	Statewide data registry—Quality assurance program—Confidentiality.
70.168.100	Regional emergency medical services and trauma care councils.
70.168.110	Planning and service regions.
70.168.120	Local and regional emergency medical services and trauma care councils—Power and duties.
70.168.130	Disbursement of funds to regional emergency medical services and trauma care councils—Grants to nonprofit agencies—Purposes.
70.168.135	Grant program for designated trauma care services—Rules.
70.168.140	Prehospital provider liability.
70.168.900	Short title.
70.168.901	Severability—1990 c 269.

70.168.010 Legislative finding. The legislature finds and declares that:

(1) Trauma is a severe health problem in the state of Washington and a major cause of death;

(2) Presently, trauma care is very limited in many parts of the state, and health care in rural areas is in transition with the danger that some communities will be without emergency medical care;

(3) It is in the best interest of the citizens of Washington state to establish an efficient and well-coordinated statewide emergency medical services and trauma care system to reduce costs and incidence of inappropriate and inadequate trauma care and emergency medical service and minimize the human suffering and costs associated with preventable mortality and morbidity;

(4) The goals and objectives of an emergency medical services and trauma care system are to: (a) Pursue trauma prevention activities to decrease the incidence of trauma; (b) provide optimal care for the trauma victim; (c) prevent unnecessary death and disability from trauma and emergency illness; and (d) contain costs of trauma care and trauma system implementation; and

(5) In other parts of the United States where trauma care systems have failed and trauma care centers have closed, there is a direct relationship between such failures and closures and a lack of commitment to fair and equitable reimbursement for trauma care participating providers and system overhead costs. [1990 c 269 § 1; 1988 c 183 § 1.]

70.168.015 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Communications system" means a radio and land-line network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

(2) "Emergency medical service" means medical treatment and care that may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

(3) "Emergency medical services medical program director" means a person who is an approved program director as defined by RCW 18.71.205(4).

(4) "Department" means the department of health.

(5) "Designation" means a formal determination by the department that hospitals or health care facilities are capable of providing designated trauma care services as authorized in RCW 70.168.070.

(6) "Designated trauma care service" means a level I, II, III, IV, or V trauma care service or level I, II, or III pediatric trauma care service or level I, I-pediatric, II, or III trauma-related rehabilitative service.

(7) "Emergency medical services and trauma care system plan" means a statewide plan that identifies statewide emergency medical services and trauma care objectives and priorities and identifies equipment, facility, personnel, training, and other needs required to create and maintain a statewide emergency medical services and trauma care system. The plan also includes a plan of implementation that identifies the state, regional, and local activities that will create, operate, maintain, and enhance the system. The plan is formulated by incorporating the regional emergency medical services and trauma care plans required under this chapter. The plan shall be updated every two years and shall be made available to the state board of health in sufficient time to be considered in preparation of the biennial state health report required in RCW 43.20.050.

(8) "Emergency medical services and trauma care planning and service regions" means geographic areas established by the department under this chapter.

(9) "Facility patient care protocols" means the written procedures adopted by the medical staff that direct the care of the patient. These procedures shall be based upon the assessment of the patients' medical needs. The procedures shall follow minimum statewide standards for trauma care services.

(10) "Hospital" means a facility licensed under chapter 70.41 RCW, or comparable health care facility operated by the federal government or located and licensed in another state.

(11) "Level I pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall provide definitive, comprehensive, specialized care for pediatric trauma patients and shall also provide ongoing research and health care professional education in pediatric trauma care.

(12) "Level II pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall provide initial stabilization and evaluation of pediatric trauma patients and provide comprehensive general medicine and surgical care to pediatric patients who can be maintained in a stable or improving condition without the specialized care available in the level I hospital. Complex surgeries and research and health care professional education in pediatric trauma care activities are not required.

(13) "Level III pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level III services shall provide initial evaluation and stabilization of patients. The range of pediatric trauma care services provided in level III hospitals are not as comprehensive as level I and II hospitals.

(14) "Level I rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I rehabilitative services provide rehabilitative treatment to patients with traumatic brain injuries, spinal cord

injuries, complicated amputations, and other diagnoses resulting in functional impairment, with moderate to severe impairment or complexity. These facilities serve as referral facilities for facilities authorized to provide level II and III rehabilitative services.

(15) "Level I-pediatric rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I-pediatric rehabilitative services provide the same services as facilities authorized to provide level I rehabilitative services except these services are exclusively for children under the age of fifteen years.

(16) "Level II rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level II rehabilitative services treat individuals with musculoskeletal trauma, peripheral nerve lesions, lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area, with moderate to severe impairment or complexity.

(17) "Level III rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level III rehabilitative services provide treatment to individuals with musculoskeletal injuries, peripheral nerve injuries, uncomplicated lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area but with minimal to moderate impairment or complexity.

(18) "Level I trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall have specialized trauma care teams and provide ongoing research and health care professional education in trauma care.

(19) "Level II trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall be similar to those provided by level I hospitals, although complex surgeries and research and health care professional education activities are not required to be provided.

(20) "Level III trauma care services" means trauma care services as established in RCW 70.168.060. The range of trauma care services provided by level III hospitals are not as comprehensive as level I and II hospitals.

(21) "Level IV trauma care services" means trauma care services as established in RCW 70.168.060.

(22) "Level V trauma care services" means trauma care services as established in RCW 70.168.060. Facilities providing level V services shall provide stabilization and transfer of all patients with potentially life-threatening injuries.

(23) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with minimum statewide standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be

consistent with the transfer procedures required in chapter 70.170 RCW.

(24) "Pediatric trauma patient" means trauma patients known or estimated to be less than fifteen years of age.

(25) "Prehospital" means emergency medical care or transportation rendered to patients prior to hospital admission or during interfacility transfer by licensed ambulance or aid service under chapter 18.73 RCW, by personnel certified to provide emergency medical care under chapters 18.71 and 18.73 RCW, or by facilities providing level V trauma care services as provided for in this chapter.

(26) "Prehospital patient care protocols" means the written procedures adopted by the emergency medical services medical program director that direct the out-of-hospital emergency care of the emergency patient which includes the trauma patient. These procedures shall be based upon the assessment of the patients' medical needs and the treatment to be provided for serious conditions. The procedures shall meet or exceed statewide minimum standards for trauma and other prehospital care services.

(27) "Rehabilitative services" means a formal program of multidisciplinary, coordinated, and integrated services for evaluation, treatment, education, and training to help individuals with disabling impairments achieve and maintain optimal functional independence in physical, psychosocial, social, vocational, and avocational realms. Rehabilitation is indicated for the trauma patient who has sustained neurologic or musculoskeletal injury and who needs physical or cognitive intervention to return to home, work, or society.

(28) "Secretary" means the secretary of the department of health.

(29) "Trauma" means a major single or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(30) "Trauma care system" means an organized approach to providing care to trauma patients that provides personnel, facilities, and equipment for effective and coordinated trauma care. The trauma care system shall: Identify facilities with specific capabilities to provide care, triage trauma victims at the scene, and require that all trauma victims be sent to an appropriate trauma facility. The trauma care system includes prevention, prehospital care, hospital care, and rehabilitation.

(31) "Triage" means the sorting of patients in terms of disposition, destination, or priority. Triage of prehospital trauma victims requires identifying injury severity so that the appropriate care level can be readily assessed according to patient care guidelines.

(32) "Verification" means the identification of prehospital providers who are capable of providing verified trauma care services and shall be a part of the licensure process required in chapter 18.73 RCW.

(33) "Verified trauma care service" means prehospital service as provided for in RCW 70.168.080, and identified in the regional emergency medical services and trauma care plan as required by RCW 70.168.100. [1990 c 269 § 4.]

70.168.020 Steering committee—Composition—Appointment. (1) There is hereby created an emergency medical services and trauma care steering committee composed of representatives of individuals knowledgeable in

emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, emergency medical technicians, paramedics, ambulance services, a member of the emergency medical services licensing and certification advisory committee, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The governor shall appoint members of the steering committee. Members shall be appointed for a period of three years. The department shall provide administrative support to the committee. All appointive members of the committee, in the performance of their duties, may be entitled to receive travel expenses as provided in RCW 43.03.050 and 43.03.060. The governor may remove members from the committee who have three unexcused absences from committee meetings. The governor shall fill any vacancies of the committee in a timely manner. The terms of those members representing the same field shall not expire at the same time.

The committee shall elect a chair and a vice-chair whose terms of office shall be for one year each. The chair shall be ineligible for reelection after serving four consecutive terms.

The committee shall meet on call by the governor, the secretary, or the chair.

(2) The emergency medical services and trauma care steering committee shall:

(a) Advise the department regarding emergency medical services and trauma care needs throughout the state.

(b) Review the regional emergency medical services and trauma care plans and recommend changes to the department before the department adopts the plans.

(c) Review proposed departmental rules for emergency medical services and trauma care.

(d) Recommend modifications in rules regarding emergency medical services and trauma care. [2000 c 93 § 20; 1990 c 269 § 5; 1988 c 183 § 2.]

70.168.030 Analysis of state's trauma system—Plan.

(1) Upon the recommendation of the steering committee, the director of the office of financial management shall contract with an independent party for an analysis of the state's trauma system.

(2) The analysis shall contain at a minimum, the following:

(a) The identification of components of a functional statewide trauma care system, including standards; and

(b) An assessment of the current trauma care program compared with the functional statewide model identified in subsection (a) of this section, including an analysis of deficiencies and reasons for the deficiencies.

(3) The analysis shall provide a design for a statewide trauma care system based on the findings of the committee under subsection (2) of this section, with a plan for phased-in implementation. The plan shall include, at a minimum, the following:

(a) Responsibility for implementation;

(b) Administrative authority at the state, regional, and local levels;

(c) Facility, equipment, and personnel standards;

(d) Triage and care criteria;

(e) Data collection and use;

(f) Cost containment strategies;

- (g) System evaluation; and
- (h) Projected costs. [1998 c 245 § 117; 1988 c 183 § 3.]

70.168.040 Emergency medical services and trauma care system trust account. The emergency medical services and trauma care system trust account is hereby created in the state treasury. Moneys shall be transferred to the emergency medical services and trauma care system trust account from the public safety education account or other sources as appropriated, and as collected under RCW *46.63.110(6) and 46.12.042. Disbursements shall be made by the department subject to legislative appropriation. Expenditures may be made only for the purposes of the state trauma care system under this chapter, including emergency medical services, trauma care services, rehabilitative services, and the planning and development of related services under this chapter and for reimbursement by the department of social and health services for trauma care services provided by designated trauma centers. During the 2001-2003 fiscal biennium, the legislature may transfer from the emergency medical services and trauma care system trust account to the state general fund such amounts as reflect the excess fund balance of the account. [2002 c 371 § 922; 1997 c 331 § 2; 1990 c 269 § 17; 1988 c 183 § 4.]

*Reviser's note: RCW 46.63.110 was amended by 2002 c 279 § 15, changing subsection (6) to subsection (7).

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Effective date—1997 c 331: See note following RCW 70.168.135.

70.168.050 Emergency medical services and trauma care system—Department to establish—Rule making—Gifts. (1) The department, in consultation with, and having solicited the advice of, the emergency medical services and trauma care steering committee, shall establish the Washington state emergency medical services and trauma care system.

(2) The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for facilities and other participants. The department shall assure an opportunity for consultation, review, and comment by the public and providers of emergency medical services and trauma care before adoption of rules. When developing rules to implement this chapter the department shall consider the report of the Washington state trauma project established under chapter 183, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation in that report except as it may also be included in this chapter.

(3) The department may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the emergency medical services and trauma care system in the state. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments. [1990 c 269 § 3.]

70.168.060 Department duties—Timelines. The department, in consultation with and having solicited the advice of the emergency medical services and trauma care steering committee, shall:

(1) Establish the following on a statewide basis:

(a) By September 1990, minimum standards for facility, equipment, and personnel for level I, II, III, IV, and V trauma care services;

(b) By September 1990, minimum standards for facility, equipment, and personnel for level I, I-pediatric, II, and III trauma-related rehabilitative services;

(c) By September 1990, minimum standards for facility, equipment, and personnel for level I, II, and III pediatric trauma care services;

(d) By September 1990, minimum standards required for verified prehospital trauma care services, including equipment and personnel;

(e) Personnel training requirements and programs for providers of trauma care. The department shall design programs which are accessible to rural providers including on-site training;

(f) Statewide emergency medical services and trauma care system objectives and priorities;

(g) Minimum standards for the development of facility patient care protocols and prehospital patient care protocols and patient care procedures;

(h) By July 1991, minimum standards for an effective emergency medical communication system;

(i) Minimum standards for an effective emergency medical services transportation system; and

(j) By July 1991, establish a program for emergency medical services and trauma care research and development;

(2) Establish statewide standards, personnel training requirements and programs, system objectives and priorities, protocols and guidelines as required in subsection (1) of this section, by utilizing those standards adopted in the report of the Washington trauma advisory committee as authorized by chapter 183, Laws of 1988. In establishing standards for level IV or V trauma care services the department may adopt similar standards adopted for services provided in rural health care facilities authorized in chapter 70.175 RCW. The department may modify standards, personnel training requirements and programs, system objectives and priorities, and guidelines in rule if the department determines that such modifications are necessary to meet federal and other state requirements or are essential to allow the department and others to establish the system or should it determine that public health considerations or efficiencies in the delivery of emergency medical services and trauma care warrant such modifications;

(3) Designate emergency medical services and trauma care planning and service regions as provided for in this chapter;

(4) By July 1, 1992, establish the minimum and maximum number of hospitals and health care facilities in the state and within each emergency medical services and trauma care planning and service region that may provide designated trauma care services based upon approved regional emergency medical services and trauma care plans;

(5) By July 1, 1991, establish the minimum and maximum number of prehospital providers in the state and within each emergency medical services and trauma care planning

and service region that may provide verified trauma care services based upon approved regional emergency medical services and trauma care plans;

(6) By July 1993, begin the designation of hospitals and health care facilities to provide designated trauma care services in accordance with needs identified in the statewide emergency medical services and trauma care plan;

(7) By July 1990, adopt a format for submission of the regional plans to the department;

(8) By July 1991, begin the review and approval of regional emergency medical services and trauma care plans;

(9) By July 1992, prepare regional plans for those regions that do not submit a regional plan to the department that meets the requirements of this chapter;

(10) By October 1992, prepare and implement the statewide emergency medical services and trauma care system plan incorporating the regional plans;

(11) Coordinate the statewide emergency medical services and trauma care system to assure integration and smooth operation between the regions;

(12) Facilitate coordination between the emergency medical services and trauma care steering committee and the emergency medical services licensing and certification advisory committee;

(13) Monitor the statewide emergency medical services and trauma care system;

(14) Conduct a study of all costs, charges, expenses, and levels of reimbursement associated with providers of trauma care services, and provide its findings and any recommendations regarding adequate and equitable reimbursement to trauma care providers to the legislature by July 1, 1991;

(15) Monitor the level of public and private payments made on behalf of trauma care patients to determine whether health care providers have been adequately reimbursed for the costs of care rendered such persons;

(16) By July 1991, design and establish the statewide trauma care registry as authorized in RCW 70.168.090 to (a) assess the effectiveness of emergency medical services and trauma care delivery, and (b) modify standards and other system requirements to improve the provision of emergency medical services and trauma care;

(17) By July 1991, develop patient outcome measures to assess the effectiveness of emergency medical services and trauma care in the system;

(18) By July 1993, develop standards for regional emergency medical services and trauma care quality assurance programs required in RCW 70.168.090;

(19) Administer funding allocated to the department for the purpose of creating, maintaining, or enhancing the statewide emergency medical services and trauma care system; and

(20) By October 1990, begin coordination and development of trauma prevention and education programs. [1990 c 269 § 8.]

70.168.070 Provision of trauma care service—Designation. Any hospital or health care facility that desires to be authorized to provide a designated trauma care service shall request designation from the department. Designation involves a contractual relationship between the state and a hospital or health care facility whereby each agrees to main-

tain a level of commitment and resources sufficient to meet responsibilities and standards required by the statewide emergency medical services and trauma care system plan. By January 1992, the department shall determine by rule the manner and form of such requests. Upon receiving a request, the department shall review the request to determine whether the hospital or health care facility is in compliance with standards for the trauma care service or services for which designation is desired. If requests are received from more than one hospital or health care facility within the same emergency medical planning and trauma care planning and service region, the department shall select the most qualified applicant or applicants to be selected through a competitive process. Any applicant not designated may request a hearing to review the decision.

Designations are valid for a period of three years and are renewable upon receipt of a request for renewal prior to expiration from the hospital or health care facility. When an authorization for designation is due for renewal other hospitals and health care facilities in the area may also apply and compete for designation. Regional emergency medical and trauma care councils shall be notified promptly of designated hospitals and health care facilities in their region so they may incorporate them into the regional plan as required by this chapter. The department may revoke or suspend the designation should it determine that the hospital or health care facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional emergency medical and trauma care planning and service region of suspensions or revocations. Any facility whose designation has been revoked or suspended may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

As a part of the process to designate and renew the designation of hospitals authorized to provide level I, II, or III trauma care services or level I, II, and III pediatric trauma care services, the department shall contract for on-site reviews of such hospitals to determine compliance with required standards. The department may contract for on-site reviews of hospitals and health care facilities authorized to provide level IV or V trauma care services or level I, I-pediatric, II, or III trauma-related rehabilitative services to determine compliance with required standards. Members of on-site review teams and staff included in site visits are exempt from chapter 42.56 RCW. They may not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (1) In actions arising out of the department's designation of a hospital or health care facility pursuant to this section; (2) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under this section; or (3) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. When a facility

requests designation for more than one service, the department may coordinate the joint consideration of such requests.

The department may establish fees to help defray the costs of this section, though such fees shall not be assessed to health care facilities authorized to provide level IV and V trauma care services.

This section shall not restrict the authority of a hospital or a health care provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law. [2005 c 274 § 343; 1990 c 269 § 9.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

70.168.080 Prehospital trauma care service—Verification—Compliance—Variance. (1) Any provider desiring to provide a verified prehospital trauma care service shall indicate on the licensing application how they meet the standards required for verification as a provider of this service. The department shall notify the regional emergency medical services and trauma care councils of the providers of verified trauma care services in their regions. The department may conduct on-site reviews of prehospital providers to assess compliance with the applicable standards.

(2) Should the department determine that a prehospital provider is substantially out of compliance with the standards, the department shall notify the regional emergency medical services and trauma care council. If the failure of a prehospital provider to comply with the applicable standards results in the region being out of compliance with its regional plan, the council shall take such steps necessary to assure the region is brought into compliance within a reasonable period of time. The council may seek assistance and funding from the department and others to provide training or grants necessary to bring a prehospital provider into compliance. The council may appeal to the department for modification of the regional plan if it is unable to assure continued compliance with the regional plan. The department may authorize modification of the plan if such modifications meet the requirements of this chapter. The department may suspend or revoke the authorization of a prehospital provider to provide a verified prehospital service if the provider has refused or been unable to comply after a reasonable period of time has elapsed. The council shall be notified promptly of any revocations or suspensions. Any prehospital provider whose verification has been suspended or revoked may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

(3) The department may grant a variance from provisions of this section if the department determines: (a) That no detriment to public health and safety will result from the variance, and (b) compliance with provisions of this section will cause a reduction or loss of existing prehospital services. Variances may be granted for a period not to exceed one year. A variance may be renewed by the department. If a renewal is granted, a plan of compliance shall be prepared specifying steps necessary to bring a provider or region into compliance and expected date of compliance.

(4) This section shall not restrict the authority of a provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law. [1990 c 269 § 10.]

70.168.090 Statewide data registry—Quality assurance program—Confidentiality. (1) By July 1991, the department shall establish a statewide data registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The department shall collect additional data on traumatic brain injury should additional data requirements be enacted by the legislature. The registry shall be used to improve the availability and delivery of prehospital and hospital trauma care services. Specific data elements of the registry shall be defined by rule by the department. To the extent possible, the department shall coordinate data collection from hospitals for the trauma registry with the health care data system authorized in chapter 70.170 RCW. Every hospital, facility, or health care provider authorized to provide level I, II, III, IV, or V trauma care services, level I, II, or III pediatric trauma care services, level I, level I-pediatric, II, or III trauma-related rehabilitative services, and prehospital trauma-related services in the state shall furnish data to the registry. All other hospitals and prehospital providers shall furnish trauma data as required by the department by rule.

The department may respond to requests for data and other information from the registry for special studies and analysis consistent with requirements for confidentiality of patient and quality assurance records. The department may require requestors to pay any or all of the reasonable costs associated with such requests that might be approved.

(2) By January 1994, in each emergency medical services and trauma care planning and service region, a regional emergency medical services and trauma care systems quality assurance program shall be established by those facilities authorized to provide levels I, II, and III trauma care services. The systems quality assurance program shall evaluate trauma care delivery, patient care outcomes, and compliance with the requirements of this chapter. The emergency medical services medical program director and all other health care providers and facilities who provide trauma care services within the region shall be invited to participate in the regional emergency medical services and trauma care quality assurance program.

(3) Data elements related to the identification of individual patient's, provider's and facility's care outcomes shall be confidential, shall be exempt from RCW 42.56.030 through 42.56.570 and 42.17.350 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence.

(4) Patient care quality assurance proceedings, records, and reports developed pursuant to this section are confidential, exempt from chapter 42.56 RCW, and are not subject to discovery by subpoena or admissible as evidence. In any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (a) In actions arising out of the department's designation of a hospital or health care facility pursuant to RCW 70.168.070; (b) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under RCW 70.168.070; or (c) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies

individual patients shall not be publicly disclosed without the patient's consent. [2005 c 274 § 344; 1990 c 269 § 11.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

70.168.100 Regional emergency medical services and trauma care councils. Regional emergency medical services and trauma care councils are established. The councils shall:

(1) By June 1990, begin the development of regional emergency medical services and trauma care plans to:

(a) Assess and analyze regional emergency medical services and trauma care needs;

(b) Identify personnel, agencies, facilities, equipment, training, and education to meet regional and local needs;

(c) Identify specific activities necessary to meet state-wide standards and patient care outcomes and develop a plan of implementation for regional compliance;

(d) Establish and review agreements with regional providers necessary to meet state standards;

(e) Establish agreements with providers outside the region to facilitate patient transfer;

(f) Include a regional budget;

(g) Establish the number and level of facilities to be designated which are consistent with state standards and based upon availability of resources and the distribution of trauma within the region;

(h) Identify the need for and recommend distribution and level of care of prehospital services to assure adequate availability and avoid inefficient duplication and lack of coordination of prehospital services within the region; and

(i) Include other specific elements defined by the department;

(2) By June 1991, begin the submission of the regional emergency services and trauma care plan to the department;

(3) Advise the department on matters relating to the delivery of emergency medical services and trauma care within the region;

(4) Provide data required by the department to assess the effectiveness of the emergency medical services and trauma care system;

(5) May apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the emergency medical services and trauma care system in the region. The councils shall report in the regional budget the amount, source, and purpose of all gifts and payments. [1990 c 269 § 13.]

70.168.110 Planning and service regions. The department shall designate at least eight emergency medical services and trauma care planning and service regions so that all parts of the state are within such an area. These regional designations are to be made on the basis of efficiency of delivery of needed emergency medical services and trauma care. [1990 c 269 § 14; 1987 c 214 § 4; 1973 1st ex.s. c 208 § 6. Formerly RCW 18.73.060.]

70.168.120 Local and regional emergency medical services and trauma care councils—Power and duties. (1) A county or group of counties may create a local emergency medical services and trauma care council composed of representatives of hospital and prehospital trauma care and emergency medical services providers, local elected officials, consumers, local law enforcement officials, and local government agencies involved in the delivery of emergency medical services and trauma care.

(2) The department shall establish regional emergency medical services and trauma care councils and shall appoint members to be comprised of a balance of hospital and prehospital trauma care and emergency medical services providers, local elected officials, consumers, local law enforcement representatives, and local government agencies involved in the delivery of trauma care and emergency medical services recommended by the local emergency medical services and trauma care councils within the region.

(3) Local emergency medical services and trauma care councils shall review, evaluate, and provide recommendations to the regional emergency medical services and trauma care council regarding the provision of emergency medical services and trauma care in the region, and provide recommendations to the regional emergency medical services and trauma care councils on the plan for emergency medical services and trauma care. [1990 c 269 § 15; 1987 c 214 § 6; 1983 c 112 § 8. Formerly RCW 18.73.073.]

70.168.130 Disbursement of funds to regional emergency medical services and trauma care councils—Grants to nonprofit agencies—Purposes. (1) The department, with the assistance of the emergency medical services and trauma care steering committee, shall adopt a program for the disbursement of funds for the development, implementation, and enhancement of the emergency medical services and trauma care system. Under the program, the department shall disburse funds to each emergency medical services and trauma care regional council, or their chosen fiscal agent or agents, which shall be city or county governments, stipulating the purpose for which the funds shall be expended. The regional emergency medical services and trauma care council shall use such funds to make available matching grants in an amount not to exceed fifty percent of the cost of the proposal for which the grant is made; provided, the department may waive or modify the matching requirement if it determines insufficient local funding exists and the public health and safety would be jeopardized if the proposal were not funded. Grants shall be made to any public or private nonprofit agency which, in the judgment of the regional emergency medical services and trauma care council, will best fulfill the purpose of the grant.

(2) Grants may be awarded for any of the following purposes:

(a) Establishment and initial development of an emergency medical services and trauma care system;

(b) Expansion and improvement of an emergency medical services and trauma care system;

(c) Purchase of equipment for the operation of an emergency medical services and trauma care system;

(d) Training and continuing education of emergency medical and trauma care personnel; and

(e) Department approved research and development activities pertaining to emergency medical services and trauma care.

(3) Any emergency medical services agency or trauma care provider which receives a grant shall stipulate that it will:

(a) Operate in accordance with applicable provisions and standards required under this chapter;

(b) Provide, without prior inquiry as to ability to pay, emergency medical and trauma care to all patients requiring such care; and

(c) Be consistent with applicable provisions of the regional emergency medical services and trauma care plan and the statewide emergency medical services and trauma care system plan. [1990 c 269 § 16; 1987 c 214 § 8; 1979 ex.s. c 261 § 8. Formerly RCW 18.73.085.]

70.168.135 Grant program for designated trauma care services—Rules. The department shall establish by rule a grant program for designated trauma care services. The grants shall be made from the emergency medical services and trauma care system trust account and shall require regional matching funds. The trust account funds and regional match shall be in a seventy-five to twenty-five percent ratio. [1997 c 331 § 1.]

Effective date—1997 c 331: "Sections 1 through 8 of this act take effect January 1, 1998." [1997 c 331 § 11.]

70.168.140 Prehospital provider liability. (1) No act or omission of any prehospital provider done or omitted in good faith while rendering emergency medical services in accordance with the approved regional plan shall impose any liability upon that provider.

(2) This section does not apply to the commission or omission of an act which is not within the field of the medical expertise of the provider.

(3) This section does not relieve a provider of any duty otherwise imposed by law.

(4) This section does not apply to any act or omission which constitutes gross negligence or willful or wanton misconduct.

(5) This section applies in addition to provisions already established in RCW 18.71.210. [1990 c 269 § 26.]

70.168.900 Short title. This chapter shall be known and cited as the "statewide emergency medical services and trauma care system act." [1990 c 269 § 2.]

70.168.901 Severability—1990 c 269. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 269 § 30.]

Chapter 70.170 RCW

HEALTH DATA AND CHARITY CARE

Sections

70.170.010 Intent.
70.170.020 Definitions.
70.170.050 Requested studies—Costs.

(2008 Ed.)

70.170.060 Charity care—Prohibited and required hospital practices and policies—Rules—Department to monitor and report.
70.170.070 Penalties.
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70.170.090 Confidentiality.
70.170.900 Effective date—1989 1st ex.s. c 9.
70.170.905 Severability—1989 1st ex.s. c 9.

Hospital discharge data—Financial reports—Data retrieval—American Indian health data: RCW 43.70.052.

70.170.010 Intent. (1) The legislature finds and declares that there is a need for health care information that helps the general public understand health care issues and how they can be better consumers and that is useful to purchasers, payers, and providers in making health care choices and negotiating payments. It is the purpose and intent of this chapter to establish a hospital data collection, storage, and retrieval system which supports these data needs and which also provides public officials and others engaged in the development of state health policy the information necessary for the analysis of health care issues.

(2) The legislature finds that rising health care costs and access to health care services are of vital concern to the people of this state. It is, therefore, essential that strategies be explored that moderate health care costs and promote access to health care services.

(3) The legislature further finds that access to health care is among the state's goals and the provision of such care should be among the purposes of health care providers and facilities. Therefore, the legislature intends that charity care requirements and related enforcement provisions for hospitals be explicitly established.

(4) The lack of reliable statistical information about the delivery of charity care is a particular concern that should be addressed. It is the purpose and intent of this chapter to require hospitals to provide, and report to the state, charity care to persons with acute care needs, and to have a state agency both monitor and report on the relative commitment of hospitals to the delivery of charity care services, as well as the relative commitment of public and private purchasers or payers to charity care funding. [1989 1st ex.s. c 9 § 501.]

70.170.020 Definitions. As used in this chapter:

(1) "Department" means department of health.

(2) "Hospital" means any health care institution which is required to qualify for a license under *RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW.

(3) "Secretary" means secretary of health.

(4) "Charity care" means necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third-party payer, as determined by the department.

(5) "Sliding fee schedule" means a hospital-determined, publicly available schedule of discounts to charges for persons deemed eligible for charity care; such schedules shall be established after consideration of guidelines developed by the department.

(6) "Special studies" means studies which have not been funded through the department's biennial or other legislative appropriations. [1995 c 269 § 2203; 1989 1st ex.s. c 9 § 502.]

***Reviser's note:** RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.170.050 Requested studies—Costs. The department shall have the authority to respond to requests of others for special studies or analysis. The department may require such sponsors to pay any or all of the reasonable costs associated with such requests that might be approved, but in no event may costs directly associated with any such special study be charged against the funds generated by the assessment authorized under RCW 70.170.080. [1989 1st ex.s. c 9 § 505.]

70.170.060 Charity care—Prohibited and required hospital practices and policies—Rules—Department to monitor and report. (1) No hospital or its medical staff shall adopt or maintain admission practices or policies which result in:

(a) A significant reduction in the proportion of patients who have no third-party coverage and who are unable to pay for hospital services;

(b) A significant reduction in the proportion of individuals admitted for inpatient hospital services for which payment is, or is likely to be, less than the anticipated charges for or costs of such services; or

(c) The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

(2) No hospital shall adopt or maintain practices or policies which would deny access to emergency care based on ability to pay. No hospital which maintains an emergency department shall transfer a patient with an emergency medical condition or who is in active labor unless the transfer is performed at the request of the patient or is due to the limited medical resources of the transferring hospital. Hospitals must follow reasonable procedures in making transfers to other hospitals including confirmation of acceptance of the transfer by the receiving hospital.

(3) The department shall develop definitions by rule, as appropriate, for subsection (1) of this section and, with reference to federal requirements, subsection (2) of this section. The department shall monitor hospital compliance with subsections (1) and (2) of this section. The department shall report individual instances of possible noncompliance to the state attorney general or the appropriate federal agency.

(4) The department shall establish and maintain by rule, consistent with the definition of charity care in RCW 70.170.020, the following:

(a) Uniform procedures, data requirements, and criteria for identifying patients receiving charity care;

(b) A definition of residual bad debt including reasonable and uniform standards for collection procedures to be used in efforts to collect the unpaid portions of hospital charges that are the patient's responsibility.

(5) For the purpose of providing charity care, each hospital shall develop, implement, and maintain a charity care policy which, consistent with subsection (1) of this section, shall enable people below the federal poverty level access to appropriate hospital-based medical services, and a sliding fee

schedule for determination of discounts from charges for persons who qualify for such discounts by January 1, 1990. The department shall develop specific guidelines to assist hospitals in setting sliding fee schedules required by this section. All persons with family income below one hundred percent of the federal poverty standard shall be deemed charity care patients for the full amount of hospital charges, provided that such persons are not eligible for other private or public health coverage sponsorship. Persons who may be eligible for charity care shall be notified by the hospital.

(6) Each hospital shall make every reasonable effort to determine the existence or nonexistence of private or public sponsorship which might cover in full or part the charges for care rendered by the hospital to a patient; the family income of the patient as classified under federal poverty income guidelines; and the eligibility of the patient for charity care as defined in this chapter and in accordance with hospital policy. An initial determination of sponsorship status shall preclude collection efforts directed at the patient.

(7) The department shall monitor the distribution of charity care among hospitals, with reference to factors such as relative need for charity care in hospital service areas and trends in private and public health coverage. The department shall prepare reports that identify any problems in distribution which are in contradiction of the intent of this chapter. The report shall include an assessment of the effects of the provisions of this chapter on access to hospital and health care services, as well as an evaluation of the contribution of all purchasers of care to hospital charity care.

(8) The department shall issue a report on the subjects addressed in this section at least annually, with the first report due on July 1, 1990. [1998 c 245 § 118; 1989 1st ex.s. c 9 § 506.]

70.170.070 Penalties. (1) Every person who shall violate or knowingly aid and abet the violation of RCW 70.170.060 (5) or (6), 70.170.080, or *70.170.100, or any valid orders or rules adopted pursuant to these sections, or who fails to perform any act which it is herein made his or her duty to perform, shall be guilty of a misdemeanor. Following official notice to the accused by the department of the existence of an alleged violation, each day of noncompliance upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of this chapter may be enjoined from continuing such violation. The department has authority to levy civil penalties not exceeding one thousand dollars for violations of this chapter and determined pursuant to this section.

(2) Every person who shall violate or knowingly aid and abet the violation of RCW 70.170.060 (1) or (2), or any valid orders or rules adopted pursuant to such section, or who fails to perform any act which it is herein made his or her duty to perform, shall be subject to the following criminal and civil penalties:

(a) For any initial violations: The violating person shall be guilty of a misdemeanor, and the department may impose a civil penalty not to exceed one thousand dollars as determined pursuant to this section.

(b) For a subsequent violation of RCW 70.170.060 (1) or (2) within five years following a conviction: The violating person shall be guilty of a misdemeanor, and the department

may impose a penalty not to exceed three thousand dollars as determined pursuant to this section.

(c) For a subsequent violation with intent to violate RCW 70.170.060 (1) or (2) within five years following a conviction: The criminal and civil penalties enumerated in (a) of this subsection; plus up to a three-year prohibition against the issuance of tax exempt bonds under the authority of the Washington health care facilities authority; and up to a three-year prohibition from applying for and receiving a certificate of need.

(d) For a violation of RCW 70.170.060 (1) or (2) within five years of a conviction under (c) of this subsection: The criminal and civil penalties and prohibition enumerated in (a) and (b) of this subsection; plus up to a one-year prohibition from participation in the state medical assistance or medical care services authorized under chapter 74.09 RCW.

(3) The provisions of chapter 34.05 RCW shall apply to all noncriminal actions undertaken by the department of health, the department of social and health services, and the Washington health care facilities authority pursuant to chapter 9, Laws of 1989 1st ex. sess. [1989 1st ex.s. c 9 § 507.]

***Reviser's note:** RCW 70.170.100 was repealed by 1995 c 265 § 27 and by 1995 c 267 § 12, effective July 1, 1995.

70.170.080 Assessments—Costs. The basic expenses for the hospital data collection and reporting activities of this chapter shall be financed by an assessment against hospitals of no more than four one-hundredths of one percent of each hospital's gross operating costs, to be levied and collected from and after that date, upon which the similar assessment levied under *chapter 70.39 RCW is terminated, for the provision of hospital services for its last fiscal year ending on or before June 30th of the preceding calendar year. Budgetary requirements in excess of that limit must be financed by a general fund appropriation by the legislature. All moneys collected under this section shall be deposited by the state treasurer in the hospital data collection account which is hereby created in the state treasury. The department may also charge, receive, and dispense funds or authorize any contractor or outside sponsor to charge for and reimburse the costs associated with special studies as specified in RCW 70.170.050.

During the 1993-1995 fiscal biennium, moneys in the hospital data collection account may be expended, pursuant to appropriation, for hospital data analysis and the administration of the health information program.

Any amounts raised by the collection of assessments from hospitals provided for in this section which are not required to meet appropriations in the budget act for the current fiscal year shall be available to the department in succeeding years. [1993 sp.s. c 24 § 925; 1991 sp.s. c 13 § 71; 1989 1st ex.s. c 9 § 508.]

***Reviser's note:** Chapter 70.39 RCW was repealed by 1982 c 223 § 10, effective June 30, 1990.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

70.170.090 Confidentiality. The department and any of its contractors or agents shall maintain the confidentiality (2008 Ed.)

of any information which may, in any manner, identify individual patients. [1989 1st ex.s. c 9 § 509.]

70.170.900 Effective date—1989 1st ex.s. c 9. See RCW 43.70.910.

70.170.905 Severability—1989 1st ex.s. c 9. See RCW 43.70.920.

Chapter 70.175 RCW

RURAL HEALTH SYSTEM PROJECT

Sections

70.175.010	Legislative findings.
70.175.020	Definitions.
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70.175.060	Duties and responsibilities of participating communities.
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70.175.100	Licensure—Rules.
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70.175.900	Effective date—1989 1st ex.s. c 9.
70.175.910	Severability—1989 1st ex.s. c 9.

Rural health access account: RCW 43.70.325.

Rural hospitals: RCW 70.38.105, 70.38.111, 70.41.090.

Rural public hospital districts: RCW 70.44.450.

70.175.010 Legislative findings. (1) The legislature declares that availability of health services to rural citizens is an issue on which a state policy is needed.

The legislature finds that changes in the demand for health care, in reimbursement policies of public and private purchasers, [and] in the economic and demographic conditions in rural areas threaten the availability of care services.

In addition, many factors inhibit needed changes in the delivery of health care services to rural areas which include inappropriate and outdated regulatory laws, aging and inefficient health care facilities, the absence of local planning and coordination of rural health care services, the lack of community understanding of the real costs and benefits of supporting rural hospitals, the lack of regional systems to assure access to care that cannot be provided in every community, and the absence of state health care policy objectives.

The legislature further finds that the creation of effective health care delivery systems that assure access to health care services provided in an affordable manner will depend on active local community involvement. It further finds that it is the duty of the state to create a regulatory environment and health care payment policy that promotes innovation at the local level to provide such care.

It further declares that it is the responsibility of the state to develop policy that provides direction to local communities with regard to such factors as a definition of health care services, identification of statewide health status outcomes, clarification of state, regional, [and] community responsibilities and interrelationships for assuring access to affordable

health care and continued assurances that quality health care services are provided.

(2) The legislature further finds that many rural communities do not operate hospitals in a cost-efficient manner. The cost of operating the rural hospital often exceeds the revenues generated. Some of these hospitals face closure, which may result in the loss of health care services for the community. Many communities are struggling to retain health care services by operating a cost-efficient facility located in the community. Current regulatory laws do not provide for the facilities licensure option that is appropriate for rural areas. A major barrier to the development of an appropriate rural licensure model is federal medicare approval to guarantee reimbursement for the costs of providing care and operating the facility. Medicare certification typically elaborates upon state licensure requirements. Medicare approval of reimbursement is more likely if the state has developed legal criteria for a rural-appropriate health facility. Medicare has begun negotiations with other states facing similar problems to develop exceptions with the goal of allowing reimbursement of rural alternative health care facilities. It is in the best interests of rural citizens for Washington state to begin negotiations with the federal government with the objective of designing a medicare eligible rural health care facility structured to meet the health care needs of rural Washington and be eligible for federal and state financial support for its development and operation. [1989 1st ex.s. c 9 § 701.]

70.175.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrative structure" means a system of contracts or formal agreements between organizations and persons providing health services in an area that establishes the roles and responsibilities each will assume in providing the services of the rural health care facility.

(2) "Department" means the department of health.

(3) "Health care delivery system" means services and personnel involved in providing health care to a population in a geographic area.

(4) "Health care facility" means any land, structure, system, machinery, equipment, or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with a hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services.

(5) "Health care system strategic plan" means a plan developed by the participant and includes identification of health care service needs of the participant, services and personnel necessary to meet health care service needs, identification of health status outcomes and outcome measures, identification of funding sources, and strategies to meet health care needs including measures of effectiveness.

(6) "Institutions of higher education" means educational institutions as defined in RCW 28B.10.016.

(7) "Local administrator" means an individual or organization representing the participant who may enter into legal agreements on behalf of the participant.

(8) "Participant" means communities, counties, and regions that serve as a health care catchment area where the project site is located.

(9) "Project" means the Washington rural health system project.

(10) "Project site" means a site selected to participate in the project.

(11) "Rural health care facility" means a facility, group, or other formal organization or arrangement of facilities, equipment, and personnel capable of providing or assuring availability of health services in a rural area. The services to be provided by the rural health care facility may be delivered in a single location or may be geographically dispersed in the community health service catchment area so long as they are organized under a common administrative structure or through a mechanism that provides appropriate referral, treatment, and follow-up.

(12) "Secretary" means the secretary of health. [1989 1st ex.s. c 9 § 702.]

70.175.030 Project established—Implementation.

(1) The department shall establish the Washington rural health system project to provide financial and technical assistance to participants. The goal of the project is to help assure access to affordable health care services to citizens in the rural areas of Washington state.

(2) Administrative costs necessary to implement this project shall be kept at a minimum to insure the maximum availability of funds for participants.

(3) The secretary may contract with third parties for services necessary to carry out activities to implement this chapter where this will promote economy, avoid duplication of effort, and make the best use of available expertise.

(4) The secretary may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects related to the delivery of health care in rural areas.

(5) In designing and implementing the project the secretary shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the secretary to follow any specific recommendation contained in that report except as it may also be included in this chapter. [1994 sp.s. c 9 § 806; 1989 1st ex.s. c 9 § 703.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

70.175.040 Rules. The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for participants and should not be complex in nature so as to serve as a barrier or disincentive for prospective participants applying for the project. [1989 1st ex.s. c 9 § 704.]

70.175.050 Secretary's powers and duties. The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Project sites that receive seed grant funding may hire consultants and shall perform other activities necessary to meet participant requirements defined in this chapter. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) where a financially vulnerable health care facility is present, (c) where a financially vulnerable health care facility is present and an adjoining community in the same catchment area has a competing facility, or (d) where improvements in the delivery of primary care services, including preventive care services, is needed.

The department may obtain technical assistance support for project sites that are not selected to be funded sites. The secretary shall select these assisted project sites based upon merit and to the extent possible, based upon the desire to address specific health status outcomes;

(2) To design acceptable outcome measures which are based upon health status outcomes and are to be part of the community plan, to work with communities to set acceptable local outcome targets in the health care delivery system strategic plan, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve community strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To define health care catchment areas, identify financially vulnerable health care facilities, and to identify rural populations which are not receiving adequate health care services;

(5) To identify existing private and public resources which may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource services available and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(6) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(7) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(8) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(9) To act as facilitator for multiple applicants and entrants to the project;

(10) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project. [1991 c 224 § 1; 1989 1st ex.s. c 9 § 705.]

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70.175.060 Duties and responsibilities of participating communities. The duties and responsibilities of participating communities shall include:

(1) To involve major health care providers, businesses, public officials, and other community leaders in project design, administration, and oversight;

(2) To identify an individual or organization to serve as the local administrator of the project. The secretary may require the local administrator to maintain acceptable accountability of seed grant funding;

(3) To coordinate and avoid duplication of public health and other health care services;

(4) To assess and analyze community health care needs;

(5) To identify services and providers necessary to meet needs;

(6) To develop outcome measures to assess the long-term effectiveness of modifications initiated through the project;

(7) To write a health care delivery system strategic plan including to the extent possible, identification of outcome measures needed to achieve health status outcomes identified in the plan. New organizational structures created should integrate existing programs and activities of local health providers so as to maximize the efficient planning and delivery of health care by local providers and promote more accessible and affordable health care services to rural citizens. Participants should create health care delivery system strategic plans which promote health care services which the participant can financially sustain;

(8) To screen and contract with consultants for technical assistance if the project site was selected to receive funding and assistance is needed;

(9) To monitor and evaluate the project in an ongoing manner;

(10) To implement necessary changes as defined in the plans such as converting existing facilities, developing or modifying services, recruiting providers, or obtaining agreements with other communities to provide some or all health care services; and

(11) To provide data and comply with other requirements of the administrator that are intended to evaluate the effectiveness of the projects. [1989 1st ex.s. c 9 § 706.]

70.175.070 Cooperation of state agencies. (1) The secretary may call upon other agencies of the state to provide available information to assist the secretary in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(2) The secretary may call upon other state agencies including institutions of higher education as authorized under Title 28B RCW to identify and coordinate the delivery of technical assistance services to participants in meeting the responsibilities of this chapter. The state agencies and institutions of higher education shall cooperate and provide technical assistance to the secretary to the extent that current funding for these agencies and institutions of higher education permits. [1989 1st ex.s. c 9 § 707.]

70.175.080 Powers and duties of secretary—Contracting. In addition to the powers and duties specified in

RCW 70.175.050 the secretary has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the secretary in the secretary's duties to design or revise the health status outcomes, or to monitor or evaluate the performance of participants.

(2) With public or private agencies, to provide technical or professional assistance to project participants. [1989 1st ex.s. c 9 § 708.]

70.175.090 Participants authorized to contract—Penalty—Secretary and state exempt from liability. (1) Participants are authorized to use funding granted to them by the secretary for the purpose of contracting for technical assistance services. Participants shall use only consultants identified by the secretary for consulting services unless the participant can show that an alternative consultant is qualified to provide technical assistance and is approved by the secretary. Adequate records shall be kept by the participant showing project site expenditures from grant moneys. Inappropriate use of grant funding shall be a gross misdemeanor.

(2) In providing a list of qualified consultants the secretary and the state shall not be held responsible for assuring qualifications of consultants and shall be held harmless for the actions of consultants. Furthermore, the secretary and the state shall not be held liable for the failure of participants to meet contractual obligations established in connection with project participation. [1989 1st ex.s. c 9 § 709.]

70.175.100 Licensure—Rules. (1) The department shall establish and adopt such standards and rules pertaining to the construction, maintenance, and operation of a rural health care facility and the scope of health care services, and rescind, amend, or modify the rules from time to time as necessary in the public interest. In developing the rules, the department shall consult with representatives of rural hospitals, community mental health centers, public health departments, community and migrant health clinics, and other providers of health care in rural communities. The department shall also consult with third-party payers, consumers, local officials, and others to ensure broad participation in defining regulatory standards and requirements that are appropriate for a rural health care facility.

(2) When developing the rural health care facility licensure rules, the department shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation contained in that report except as it may also be included in this chapter.

(3) Upon developing rules, the department shall enter into negotiations with appropriate federal officials to seek medicare approval of the facility and financial participation of medicare and other federal programs in developing and operating the rural health care facility. [1998 c 245 § 119; 1989 1st ex.s. c 9 § 710.]

70.175.110 Licensure—Rules—Duties of department. In developing the rural health care facility licensure regulations, the department shall:

(1) Minimize regulatory requirements to permit local flexibility and innovation in providing services;

(2) Promote the cost-efficient delivery of health care and other social services as is appropriate for the particular local community;

(3) Promote the delivery of services in a coordinated and nonduplicative manner;

(4) Maximize the use of existing health care facilities in the community;

(5) Permit regionalization of health care services when appropriate;

(6) Provide for linkages with hospitals, tertiary care centers, and other health care facilities to provide services not available in the facility; and

(7) Achieve health care outcomes defined by the community through a community planning process. [1989 1st ex.s. c 9 § 711.]

70.175.120 Rural health care facility not a hospital. The rural health care facility is not considered a hospital for building occupancy purposes. [1989 1st ex.s. c 9 § 712.]

70.175.130 Rural health care plan. The department may develop and implement a rural health care plan and may approve hospital and rural health care facility requests to be designated as essential access community hospitals or rural primary care hospitals so that such facilities may form rural health networks to preserve health care services in rural areas and thereby be eligible for federal program funding and enhanced medicare reimbursement. The department may monitor any rural health care plan and designated facilities to assure continued compliance with the rural health care plan. [1992 c 27 § 4; 1990 c 271 § 18.]

70.175.140 Consultative advice for licensees or applicants. Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities may contact the department for consultative advice before commencing such alteration, addition, or new construction. [1992 c 27 § 5.]

70.175.900 Effective date—1989 1st ex.s. c 9. See RCW 43.70.910.

70.175.910 Severability—1989 1st ex.s. c 9. See RCW 43.70.920.

Chapter 70.180 RCW RURAL HEALTH CARE

Sections

70.180.005	Finding—Health care professionals.
70.180.009	Finding—Rural training opportunities.
70.180.011	Definitions.
70.180.020	Health professional temporary substitute resource pool.
70.180.030	Registry of health care professionals available to rural communities—Conditions of participation.
70.180.040	Request procedure—Acceptance of gifts.
70.180.110	Rural training opportunities—Plan development.
70.180.120	Midwifery—Statewide plan.
70.180.130	Expenditures, funding.

Rural health access account: RCW 43.70.325.

Rural public hospital districts: RCW 70.44.450.

70.180.005 Finding—Health care professionals. The legislature finds that a health care access problem exists in rural areas of the state because rural health care providers are unable to leave the community for short-term periods of time to attend required continuing education training or for personal matters because their absence would leave the community without adequate medical care coverage. The lack of adequate medical coverage in geographically remote rural communities constitutes a threat to the health and safety of the people in those communities.

The legislature declares that it is in the public interest to recruit and maintain a pool of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners willing and able on short notice to practice in rural communities on a short-term basis to meet the medical needs of the community. [1991 c 332 § 27; 1990 c 271 § 1.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

70.180.009 Finding—Rural training opportunities. The legislature finds that a shortage of physicians, nurses, pharmacists, and physician assistants exists in rural areas of the state. In addition, many education programs to train these health care providers do not include options for practical training experience in rural settings. As a result, many health care providers find their current training does not prepare them for the unique demands of rural practice.

The legislature declares that the availability of rural training opportunities as a part of professional medical, nursing, pharmacist, and physician assistant education would provide needed practical experience, serve to attract providers to rural areas, and help address the current shortage of these providers in rural Washington. [1990 c 271 § 14.]

70.180.011 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Rural areas" means a rural area in the state of Washington as identified by the department. [1991 c 332 § 29.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

70.180.020 Health professional temporary substitute resource pool. The department shall establish or contract for a health professional temporary substitute resource pool. The purpose of the pool is to provide short-term physician, physician assistant, pharmacist, and advanced registered nurse practitioner personnel to rural communities where these health care providers:

(1) Are unavailable due to provider shortages;

(2) Need time off from practice to attend continuing education and other training programs; and

(3) Need time off from practice to attend to personal matters or recover from illness.

The health professional temporary substitute resource pool is intended to provide short-term assistance and should complement active health provider recruitment efforts by

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rural communities where shortages exist. [1994 c 103 § 1; 1990 c 271 § 2.]

70.180.030 Registry of health care professionals available to rural communities—Conditions of participation. (1) The department, in cooperation with the University of Washington school of medicine, the state's registered nursing programs, the state's pharmacy programs, and other appropriate public and private agencies and associations, shall develop and keep current a register of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners who are available to practice on a short-term basis in rural communities of the state. The department shall list only individuals who have a valid license to practice. The register shall be compiled and made available to all rural hospitals, public health departments and districts, rural pharmacies, and other appropriate public and private agencies and associations.

(2) Eligible health care professionals are those licensed under chapters 18.57, 18.57A, 18.64, 18.71, and 18.71A RCW and advanced registered nurse practitioners licensed under chapter 18.79 RCW.

(3) Participating sites may:

(a) Receive reimbursement for substitute provider travel to and from the rural community and for lodging at a rate determined under RCW 43.03.050 and 43.03.060; and

(b) Receive reimbursement for the cost of malpractice insurance if the services provided are not covered by the substitute provider's or local provider's existing medical malpractice insurance. Reimbursement for malpractice insurance shall only be made available to sites that incur additional costs for substitute provider coverage.

(4) The department may require rural communities to participate in health professional recruitment programs as a condition for providing a temporary substitute health care professional if the community does not have adequate permanent health care personnel. To the extent deemed appropriate and subject to funding, the department may also require communities to participate in other programs or projects, such as the rural health system project authorized in chapter 70.175 RCW, that are designed to assist communities to reorganize the delivery of rural health care services.

(5) A participating site may receive reimbursement for substitute provider assistance as provided for in subsection (3) of this section for up to ninety days during any twelve-month period. The department may modify or waive this limitation should it determine that the health and safety of the community warrants a waiver or modification.

(6) Participating sites shall:

(a) Be responsible for all salary expenses for the temporary substitute provider.

(b) Provide the temporary substitute provider with referral and back-up coverage information. [1994 sp.s. c 9 § 746; 1994 c 103 § 2; 1990 c 271 § 3.]

Reviser's note: This section was amended by 1994 c 103 § 2 and by 1994 sp.s. c 9 § 746, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

70.180.040 Request procedure—Acceptance of gifts.

(1) Requests for a temporary substitute health care professional may be made to the department by the certified health plan, local rural hospital, public health department or district, community health clinic, local practicing physician, physician assistant, pharmacist, or advanced registered nurse practitioner, or local city or county government.

(2) The department may provide directly or contract for services to:

(a) Establish a manner and form for receiving requests;

(b) Minimize paperwork and compliance requirements for participant health care professionals and entities requesting assistance; and

(c) Respond promptly to all requests for assistance.

(3) The department may apply for, receive, and accept gifts and other payments, including property and services, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts to operate the pool. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments. [1994 c 103 § 3; 1990 c 271 § 4.]

70.180.110 Rural training opportunities—Plan development. (1) The department, in consultation with at least the higher education coordinating board, the state board for community and technical colleges, the superintendent of public instruction, and state-supported education programs in medicine, pharmacy, and nursing, shall develop a plan for increasing rural training opportunities for students in medicine, pharmacy, and nursing. The plan shall provide for direct exposure to rural health professional practice conditions for students planning careers in medicine, pharmacy, and nursing.

(2) The department and the medical, pharmacy, and nurse education programs shall:

(a) Inventory existing rural-based clinical experience programs, including internships, clerkships, residencies, and other training opportunities available to students pursuing degrees in nursing, pharmacy, and medicine;

(b) Identify where training opportunities do not currently exist and are needed;

(c) Develop recommendations for improving the availability of rural training opportunities;

(d) Develop recommendations on establishing agreements between education programs to assure that all students in medical, pharmacist, and nurse education programs in the state have access to rural training opportunities; and

(e) Review private and public funding sources to finance rural-based training opportunities. [1998 c 245 § 120; 1990 c 271 § 15.]

70.180.120 Midwifery—Statewide plan. The department, in consultation with training programs that lead to licensure in midwifery and certification as a certified nurse midwife, and other appropriate private and public groups, shall develop a statewide plan to address access to midwifery services.

The plan shall include at least the following: (1) Identification of maternity service shortage areas in the state where midwives could reduce the shortage of services; (2) an inven-

tory of current training programs and preceptorship activities available to train licensed and certified nurse midwives; (3) identification of gaps in the availability of training due to such factors as geographic or economic conditions that prevent individuals from seeking training; (4) identification of other barriers to utilizing midwives; (5) identification of strategies to train future midwives such as developing training programs at community colleges and universities, using innovative telecommunications for training in rural areas, and establishing preceptorship programs accessible to prospective midwives in shortage areas; (6) development of recruitment strategies; and (7) estimates of expected costs associated in recruitment and training.

The plan shall identify the most expeditious and cost-efficient manner to recruit and train midwives to meet the current shortages. Plan development and implementation shall be coordinated with other state policy efforts directed toward, but not limited to, maternity care access, rural health care system organization, and provider recruitment for shortage and medically underserved areas of the state. [1998 c 245 § 121; 1990 c 271 § 16.]

70.180.130 Expenditures, funding. Any additional expenditures incurred by the University of Washington from provisions of chapter 271, Laws of 1990 shall be funded from existing financial resources. [1990 c 271 § 28.]

Chapter 70.185 RCW**RURAL AND UNDERSERVED AREAS—
HEALTH CARE PROFESSIONAL
RECRUITMENT AND RETENTION**

Sections

70.185.010	Definitions.
70.185.020	Statewide recruitment and retention clearinghouse.
70.185.030	Community-based recruitment and retention projects—Duties of department.
70.185.040	Rules.
70.185.050	Secretary's powers and duties.
70.185.060	Duties and responsibilities of participating communities.
70.185.070	Cooperation of state agencies.
70.185.080	Participants authorized to contract—Penalty—Secretary and state exempt from liability.
70.185.090	Community contracted student educational positions.
70.185.100	Contracts with area health education centers.
70.185.900	Application to scope of practice—Captions not law—1991 c 332.

Rural public hospital districts: RCW 70.44.450.

70.185.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Health care professional recruitment and retention strategic plan" means a plan developed by the participant and includes identification of health care personnel needs of the community, how these professionals will be recruited and retained in the community following recruitment.

(3) "Institutions of higher education" means educational institutions as defined in RCW 28B.10.016.

(4) "Local administrator" means an individual or organization representing the participant who may enter into legal agreements on behalf of the participant.

(5) "Participant" means communities, counties, and regions that serve as a health care catchment area where the project site is located.

(6) "Project" means the community-based retention and recruitment project.

(7) "Project site" means a site selected to participate in the project.

(8) "Secretary" means the secretary of health. [1991 c 332 § 7.]

70.185.020 Statewide recruitment and retention clearinghouse. The department, in consultation with appropriate private and public entities, shall establish a health professional recruitment and retention clearinghouse. The clearinghouse shall:

(1) Inventory and classify the current public and private health professional recruitment and retention efforts;

(2) Identify recruitment and retention program models having the greatest success rates;

(3) Identify recruitment and retention program gaps;

(4) Work with existing recruitment and retention programs to better coordinate statewide activities and to make such services more widely known and broadly available;

(5) Provide general information to communities, health care facilities, and others about existing available programs;

(6) Work in cooperation with private and public entities to develop new recruitment and retention programs;

(7) Identify needed recruitment and retention programming for state institutions, county public health departments and districts, county human service agencies, and other entities serving substantial numbers of public pay and charity care patients, and may provide to these entities when they have been selected as participants necessary recruitment and retention assistance including:

(a) Assistance in establishing or enhancing recruitment of health care professionals;

(b) Recruitment on behalf of sites unable to establish their own recruitment program; and

(c) Assistance with retention activities when practitioners of the health professional loan repayment and scholarship program authorized by *chapter 18.150 RCW are present in the practice setting. [1991 c 332 § 8.]

*Reviser's note: Chapter 18.150 RCW was recodified as chapter 28B.115 RCW by 1991 c 332 § 36.

70.185.030 Community-based recruitment and retention projects—Duties of department. (1) The department may, subject to funding, establish community-based recruitment and retention project sites to provide financial and technical assistance to participating communities. The goal of the project is to help assure the availability of health care providers in rural and underserved urban areas of Washington state.

(2) Administrative costs necessary to implement this project shall be kept at a minimum to insure the maximum availability of funds for participants.

(3) The secretary may contract with third parties for services necessary to carry out activities to implement this chapter where this will promote economy, avoid duplication of effort, and make the best use of available expertise.

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(4) The secretary may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects related to the delivery of health care in rural areas.

(5) In designing and implementing the project the secretary shall coordinate and avoid duplication with similar federal programs and with the Washington rural health system project as authorized under chapter 70.175 RCW to consolidate administrative duties and reduce costs. [1993 c 492 § 273; 1991 c 332 § 9.]

University of Washington primary care physician shortage plan development—1993 c 492: "(1) The University of Washington shall prepare a primary care shortage plan that accomplishes the following:

(a) Identifies specific activities that the school of medicine shall pursue to increase the number of Washington residents serving as primary care physicians in rural and medically underserved areas of the state, including establishing a goal that assures that no less than fifty percent of medical school graduates who are Washington state residents at the time of matriculation will enter into primary care residencies, to the extent possible, in Washington state by the year 2000;

(b) Assures that the school of medicine shall establish among its highest training priorities the distribution of its primary care physician graduates from the school and associated postgraduate residency programs into rural and medically underserved areas;

(c) Establishes the goal of assuring that the annual number of graduates from the family practice residency network entering rural or medically underserved practice shall be increased by forty percent over a baseline period from 1988 through 1990 by 1995;

(d) Establishes a further goal to make operational at least two additional family practice residency programs within Washington state in geographic areas identified by the plan as underserved in family practice by 1997. The geographic areas identified by the plan as being underserved by family practice physicians shall be consistent with any such similar designations as may be made in the health personnel research plan as authorized under chapter 28B.125 RCW;

(e) Establishes, with the cooperation of existing community and migrant health clinics in rural or medically underserved areas of the state, three family practice residency training tracks. Furthermore, the primary care shortage plan shall provide that one of these training tracks shall be a joint American osteopathic association and American medical association approved training site coordinated with an accredited college of osteopathic medicine with extensive experience in training primary care physicians for the western United States. Such a proposed joint accredited training track will have at least fifty percent of its residency positions in osteopathic medicine; and

(f) Implements the plan, with the exception of the expansion of the family practice residency network, within current biennial appropriations for the University of Washington school of medicine.

(2) The plan shall be submitted to the appropriate committees of the legislature no later than December 1, 1993." [1993 c 492 § 279.]

Finding—1993 c 492: See note following RCW 28B.115.080.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.185.040 Rules. The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for participants and should not be complex in nature so as to serve as a barrier or disincentive for prospective participants applying for the project. [1991 c 332 § 10.]

[Title 70 RCW—page 511]

70.185.050 Secretary's powers and duties. The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Subject to funding, project sites shall be selected that are eligible to receive funding. Funding shall be used to hire consultants and perform other activities necessary to meet participant requirements under this chapter. The secretary shall require at least fifty percent matching funds or in-kind contributions from participants. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) recruitment and retention problems have been chronic, (c) the community is in need of primary care practitioners, or (d) the community has unmet health care needs for specific target populations;

(2) To design acceptable health care professional recruitment and retention strategic plans, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To identify existing private and public resources that may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource services available, and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(5) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(6) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(7) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(8) To act as facilitator for multiple applicants and entrants to the project;

(9) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project. [1991 c 332 § 11.]

70.185.060 Duties and responsibilities of participating communities. The duties and responsibilities of participating communities shall include:

(1) To involve major health care providers, businesses, public officials, and other community leaders in project design, administration, and oversight;

(2) To identify an individual or organization to serve as the local administrator of the project. The secretary may

require the local administrator to maintain acceptable accountability of seed grant funding;

(3) To coordinate and avoid duplication of public health and other health care services;

(4) To assess and analyze community health care professional needs;

(5) To write a health care professional recruitment and retention strategic plan;

(6) To screen and contract with consultants for technical assistance if the project site was selected to receive funding and assistance is needed;

(7) To monitor and evaluate the project in an ongoing manner;

(8) To provide data and comply with other requirements of the administrator that are intended to evaluate the effectiveness of the projects;

(9) To assure that specific populations with unmet health care needs have access to services. [1991 c 332 § 12.]

70.185.070 Cooperation of state agencies. (1) The secretary may call upon other agencies of the state to provide available information to assist the secretary in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(2) The secretary may call upon other state agencies including institutions of higher education as authorized under Titles 28A and 28B RCW to identify and coordinate the delivery of technical assistance services to participants in meeting the responsibilities of this chapter. The state agencies, vocational-technical institutions, and institutions of higher education shall cooperate and provide technical assistance to the secretary to the extent that current funding for these entities permits. [1991 c 332 § 13.]

70.185.080 Participants authorized to contract—Penalty—Secretary and state exempt from liability. (1) Participants are authorized to use funding granted to them by the secretary for the purpose of contracting for technical assistance services. Participants shall use only consultants identified by the secretary for consulting services unless the participant can show that an alternative consultant is qualified to provide technical assistance and is approved by the secretary. Adequate records shall be kept by the participant showing project site expenditures from grant moneys. Inappropriate use of grant funding is a gross misdemeanor and shall incur the penalties under chapter 9A.20 RCW.

(2) In providing a list of qualified consultants the secretary and the state shall not be held responsible for assuring qualifications of consultants and shall be held harmless for the actions of consultants. Furthermore, the secretary and the state shall not be held liable for the failure of participants to meet contractual obligations established in connection with project participation. [1991 c 332 § 14.]

70.185.090 Community contracted student educational positions. (1) The department may develop a mechanism for underserved rural or urban communities to contract with education and training programs for student positions above the full time equivalent lids. The goal of this program

is to provide additional capacity, educating students who will practice in underserved communities.

(2) Eligible education and training programs are those programs approved by the department that lead to eligibility for a credential as a credentialed health care professional. Eligible professions are those licensed under chapters 18.36A, 18.57, 18.57A, 18.71, and 18.71A RCW and advanced registered nurse practitioners and certified nurse midwives licensed under *chapter 18.88 RCW, and may include other providers identified as needed in the health personnel resource plan.

(3) Students participating in the community contracted educational positions shall meet all applicable educational program requirements and provide assurances, acceptable to the community, that they will practice in the sponsoring community following completion of education and necessary licensure.

(4) Participants in the program incur an obligation to repay any contracted funds with interest set by state law, unless they serve at least three years in the sponsoring community.

(5) The department may provide funds to communities for use in contracting. [1993 c 492 § 274.]

***Reviser's note:** Chapter 18.88 RCW was repealed by 1994 sp.s. c 9 § 433, effective July 1, 1994.

Finding—1993 c 492: See note following RCW 28B.115.080.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.185.100 Contracts with area health education centers. The secretary may establish and contract with area health education centers in the eastern and western parts of the state. Consistent with the recruitment and retention objectives of this chapter, the centers shall provide or facilitate the provision of health professional educational and continuing education programs that strengthen the delivery of primary health care services in rural and medically underserved urban areas of the state. The center shall assist in the development and operation of health personnel recruitment and retention programs that are consistent with activities authorized under this chapter. The centers shall further provide technical expertise in the development of well managed health care delivery systems in rural Washington consistent with the goals and objectives of chapter 492, Laws of 1993. [1993 c 492 § 275.]

Finding—1993 c 492: See note following RCW 28B.115.080.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.185.900 Application to scope of practice—Captions not law—1991 c 332. See notes following RCW 18.130.010.

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Chapter 70.190 RCW FAMILY POLICY COUNCIL

Sections

70.190.005	Purpose.
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70.190.040	Finding—Grants to improve readiness to learn.
70.190.050	Community networks—Outcome evaluation.
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70.190.065	Member's authorization of expenditures—Limitation.
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70.190.120	Interagency agreement.
70.190.130	Comprehensive plan—Approval process—Network expenditures—Penalty for noncompliance with chapter.
70.190.150	Federal restrictions on funds transfers, waivers.
70.190.160	Community networks—Implementation in federal and state plans.
70.190.170	Transfer of funds and programs to state agency.
70.190.180	Community network—Grants for use of school facilities.
70.190.190	Network members immune from civil liability—Network assets not subject to attachment or execution.
70.190.910	Severability—1992 c 198.
70.190.920	Effective date—1992 c 198.

70.190.005 Purpose. The legislature finds that a primary goal of public involvement in the lives of children has been to strengthen the family unit.

However, the legislature recognizes that traditional two-parent families with one parent routinely at home are now in the minority. In addition, extended family and natural community supports have eroded drastically. The legislature recognizes that public policy assumptions must be altered to account for this new social reality. Public effort must be redirected to expand, support, strengthen, and help reconstruct family and community networks to assist in meeting the needs of children.

The legislature finds that a broad variety of services for children and families has been independently designed over the years and that the coordination and cost-effectiveness of these services will be enhanced through the adoption of an approach that allows communities to prioritize and coordinate services to meet their local needs. The legislature further finds that the most successful programs for reaching and working with at-risk families and children treat individuals' problems in the context of the family, offer a broad spectrum of services, are flexible in the use of program resources, and use staff who are trained in crossing traditional program categories in order to broker services necessary to fully meet a family's needs.

The legislature further finds that eligibility criteria, expenditure restrictions, and reporting requirements of state and federal categorical programs often create barriers toward the effective use of resources for addressing the multiple problems of at-risk families and children.

The purposes of this chapter are (1) to modify public policy and programs to empower communities to support and respond to the needs of individual families and children and (2) to improve the responsiveness of services for children and

families at risk by facilitating greater coordination and flexibility in the use of funds by state and local service agencies. [1994 sp.s. c 7 § 301; 1992 c 198 § 1.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrative costs" means the costs associated with procurement; payroll processing; personnel functions; management; maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing; indirect costs; and organizational planning, consultation, coordination, and training.

(2) "Assessment" has the same meaning as provided in RCW 43.70.010.

(3) "At-risk" children are children who engage in or are victims of at-risk behaviors.

(4) "At-risk behaviors" means violent delinquent acts, teen substance abuse, teen pregnancy and male parentage, teen suicide attempts, dropping out of school, child abuse or neglect, and domestic violence.

(5) "Community public health and safety networks" or "networks" means the organizations authorized under RCW 70.190.060.

(6) "Comprehensive plan" means a two-year plan that examines available resources and unmet needs for a county or multicounty area, barriers that limit the effective use of resources, and a plan to address these issues that is broadly supported by local residents.

(7) "Participating state agencies" means the office of the superintendent of public instruction, the department of social and health services, the department of health, the employment security department, the department of community, trade, and economic development, and such other departments as may be specifically designated by the governor.

(8) "Family policy council" or "council" means the superintendent of public instruction, the secretary of social and health services, the secretary of health, the commissioner of the employment security department, and the director of the department of community, trade, and economic development or their designees, one legislator from each caucus of the senate and house of representatives, and one representative of the governor.

(9) "Fiduciary interest" means (a) the right to compensation from a health, educational, social service, or justice system organization that receives public funds, or (b) budgetary or policy-making authority for an organization listed in (a) of this subsection. A person who acts solely in an advisory capacity and receives no compensation from a health, educational, social service, or justice system organization, and who has no budgetary or policy-making authority is deemed to have no fiduciary interest in the organization.

(10) "Outcome" or "outcome based" means defined and measurable outcomes used to evaluate progress in reducing the rate of at-risk children and youth through reducing risk factors and increasing protective factors.

(11) "Matching funds" means an amount no less than twenty-five percent of the amount budgeted for a network. The network's matching funds may be in-kind goods and ser-

vices. Funding sources allowable for match include appropriate federal or local levy funds, private charitable funding, and other charitable giving. Basic education funds shall not be used as a match. State general funds shall not be used as a match for violence reduction and drug enforcement account funds created under RCW 69.50.520.

(12) "Policy development" has the same meaning as provided in RCW 43.70.010.

(13) "Protective factors" means those factors determined by the department of health to be empirically associated with behaviors that contribute to socially acceptable and healthy nonviolent behaviors. Protective factors include promulgation, identification, and acceptance of community norms regarding appropriate behaviors in the area of delinquency, early sexual activity, alcohol and substance abuse, educational opportunities, employment opportunities, and absence of crime.

(14) "Risk factors" means those factors determined by the department of health to be empirically associated with at-risk behaviors that contribute to violence. [1996 c 132 § 2; 1995 c 399 § 200; 1992 c 198 § 3.]

Intent—Construction—1996 c 132: "It is the intent of this act only to make minimal clarifying, technical, and administrative revisions to the laws concerning community public health and safety networks and to the related agencies responsible for implementation of the networks. This act is not intended to change the scope of the duties or responsibilities, nor to undermine the underlying policies, set forth in chapter 7, Laws of 1994 sp. sess." [1996 c 132 § 1.]

Severability—1996 c 132: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 132 § 10.]

70.190.020 Consolidate efforts of existing entities. To the extent that any power or duty of the council may duplicate efforts of existing councils, commissions, advisory committees, or other entities, the governor is authorized to take necessary actions to eliminate such duplication. This shall include authority to consolidate similar councils or activities in a manner consistent with the goals of this chapter. [1994 sp.s. c 7 § 315; 1992 c 198 § 4.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.030 Proposals to facilitate services at the community level. The council shall annually solicit from community networks proposals to facilitate greater flexibility, coordination, and responsiveness of services at the community level. The council shall consider such proposals only if:

(1) A comprehensive plan has been prepared by the community networks;

(2) The community network has identified and agreed to contribute matching funds as specified in RCW 70.190.010;

(3) An interagency agreement has been prepared by the council and the participating local service and support agencies that governs the use of funds, specifies the relationship of the project to the principles listed in RCW 74.14A.025, and identifies specific outcomes and indicators; and

(4) The community network has designed into its comprehensive plan standards for accountability. Accountability standards include, but are not limited to, the public hearing process eliciting public comment about the appropriateness

of the proposed comprehensive plan. The community network must submit reports to the council outlining the public response regarding the appropriateness and effectiveness of the comprehensive plan. [1994 sp.s. c 7 § 316; 1992 c 198 § 5.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.040 Finding—Grants to improve readiness to learn. (1) The legislature finds that helping children to arrive at school ready to learn is an important part of improving student learning.

(2) To the extent funds are appropriated, the family policy council shall award grants to community-based consortiums that submit comprehensive plans that include strategies to improve readiness to learn. [1993 c 336 § 901.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.150.210.

70.190.050 Community networks—Outcome evaluation. (1) The Washington state institute for public policy shall conduct or contract for monitoring and tracking of the implementation of chapter 7, Laws of 1994 sp. sess. to determine whether these efforts result in a measurable reduction of violence. The institute shall also conduct or contract for an evaluation of the effectiveness of the community public health and safety networks in reducing the rate of at-risk youth through reducing risk factors and increasing protective factors. The evaluation plan shall result in statistically valid evaluation at both statewide and community levels.

(2) Starting five years after the initial grant to a community network, if the community network fails to meet the outcome standards and goals in any two consecutive years, the institute shall make recommendations to the legislature concerning whether the funds received by that community network should revert back to the originating agency. In making this determination, the institute shall consider the adequacy of the level of intervention relative to the risk factors in the community and any external events having a significant impact on risk factors or outcomes.

(3) The outcomes required under this chapter and social development standards and measures established by the department of health under RCW 43.70.555 shall be used in conducting the outcome evaluation of the community networks. [1998 c 245 § 122; 1994 sp.s. c 7 § 207.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.060 Community networks—Legislative intent—Membership—Open meetings. (1) The legislature authorizes community public health and safety networks to reconnect parents and other citizens with children, youth, families, and community institutions which support health and safety. The networks have only those powers and duties expressly authorized under this chapter. The networks should empower parents and other citizens by being a means of expressing their attitudes, spirit, and perspectives regarding safe and healthy family and community life. The legislature intends that parent and other citizen perspectives exercise a controlling influence over policy and program opera-

tions of professional organizations concerned with children and family issues within networks in a manner consistent with the Constitution and state law. It is not the intent of the legislature that health, social service, or educational professionals dominate community public health and safety network processes or programs, but rather that these professionals use their skills to lend support to parents and other citizens in expressing their values as parents and other citizens identify community needs and establish community priorities. To this end, the legislature intends full participation of parents and other citizens in community public health and safety networks. The intent is that local community values are reflected in the operations of the network.

(2) A group of persons described in subsection (3) of this section may apply to be a community public health and safety network.

(3) Each community public health and safety network shall be composed of twenty-three people, thirteen of whom shall be citizens who live within the network boundary with no fiduciary interest. In selecting these members, first priority shall be given to members of community mobilization advisory boards, city or county children's services commissions, human services advisory boards, or other such organizations. The thirteen persons shall be selected as follows: Three by chambers of commerce, three by school board members, three by county legislative authorities, three by city legislative authorities, and one high school student, selected by student organizations. The remaining ten members shall live or work within the network boundary and shall include local representation selected by the following groups and entities: Cities; counties; federally recognized Indian tribes; parks and recreation programs; law enforcement agencies; state children's service workers; employment assistance workers; private social service providers, broad-based non-secular organizations, or health service providers; and public education.

(4) Each of the twenty-three people who are members of each community public health and safety network must sign an annual declaration under penalty of perjury or a notarized statement that clearly, in plain and understandable language, states whether or not he or she has a fiduciary interest. If a member has a fiduciary interest, the nature of that interest must be made clear, in plain understandable language, on the signed statement.

(5) Members of the network shall serve terms of three years.

The terms of the initial members of each network shall be as follows: (a) One-third shall serve for one year; (b) one-third shall serve for two years; and (c) one-third shall serve for three years. Initial members may agree which shall serve fewer than three years or the decision may be made by lot. Any vacancy occurring during the term may be filled by the chair for the balance of the unexpired term.

(6) Not less than sixty days before the expiration of a network member's term, the chair shall submit the name of a nominee to the network for its approval. The network shall comply with subsection (3) of this section.

(7) Networks are subject to the open public meetings act under chapter 42.30 RCW and the public records provisions of chapter 42.56 RCW. [2005 c 274 § 345; 1998 c 314 § 12; 1996 c 132 § 3; 1994 sp.s. c 7 § 303.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Application—1996 c 132 § 3: "The amendments to RCW 70.190.060 in 1996 c 132 § 3 shall apply prospectively only and are not intended to affect the composition of any community public health and safety network's membership that has been approved by the family policy council prior to June 6, 1996." [1996 c 132 § 11.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.065 Member's authorization of expenditures—Limitation. No network member may vote to authorize, or attempt to influence the authorization of, any expenditure in which the member's immediate family has a fiduciary interest. For the purpose of this section "immediate family" means a spouse, parent, grandparent, adult child, brother, or sister. [1996 c 132 § 5.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

70.190.070 Community networks—Duties. The community public health and safety networks shall:

(1) Review state and local public health data and analysis relating to risk factors, protective factors, and at-risk children and youth;

(2) Prioritize the risk factors and protective factors to reduce the likelihood of their children and youth being at risk. The priorities shall be based upon public health data and assessment and policy development standards provided by the department of health under RCW 43.70.555;

(3) Develop long-term comprehensive plans to reduce the rate of at-risk children and youth; set definitive, measurable goals, based upon the department of health standards; and project their desired outcomes;

(4) Distribute funds to local programs that reflect the locally established priorities and as provided in *RCW 70.190.140;

(5) Comply with outcome-based standards;

(6) Cooperate with the department of health and local boards of health to provide data and determine outcomes; and

(7) Coordinate its efforts with anti-drug use efforts and organizations and maintain a high priority for combatting drug use by at-risk youth. [1994 sp.s. c 7 § 304.]

*Reviser's note: RCW 70.190.140 expired June 30, 1995.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.075 Lead fiscal agent. (1) Each network shall contract with a public entity as its lead fiscal agent. The contract shall grant the agent authority to perform fiscal, accounting, contract administration, legal, and other administrative duties, including the provision of liability insurance. Any contract under this subsection shall be submitted to the council by the network for approval prior to its execution. The council shall review the contract to determine whether the administrative costs will be held to no more than ten percent.

(2) The lead agent shall maintain a system of accounting for network funds consistent with the budgeting, accounting,

and reporting systems and standards adopted or approved by the state auditor.

(3) The lead agent may contract with another public or private entity to perform duties other than fiscal or accounting duties. [1996 c 132 § 4.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

70.190.080 Community networks—Programs and plans.

(1) The community network's plan may include a program to provide postsecondary scholarships to at-risk students who: (a) Are community role models under criteria established by the community network; (b) successfully complete high school; and (c) maintain at least a 2.5 grade point average throughout high school. Funding for the scholarships may include public and private sources.

(2) The community network's plan may also include funding of community-based home visitor programs which are designed to reduce the incidence of child abuse and neglect within the network. Parents shall sign a voluntary authorization for services, which may be withdrawn at any time. The program may provide parents with education and support either in parents' homes or in other locations comfortable for parents, beginning with the birth of their first baby. The program may make the following services available to the families:

(a) Visits for all expectant or new parents, either at the parent's home or another location with which the parent is comfortable;

(b) Screening before or soon after the birth of a child to assess the family's strengths and goals and define areas of concern in consultation with the family;

(c) Parenting education and skills development;

(d) Parenting and family support information and referral;

(e) Parent support groups; and

(f) Service coordination for individual families, and assistance with accessing services, provided in a manner that ensures that individual families have only one individual or agency to which they look for service coordination. Where appropriate for a family, service coordination may be conducted through interdisciplinary or interagency teams.

These programs are intended to be voluntary for the parents involved.

(3) In developing long-term comprehensive plans to reduce the rate of at-risk children and youth, the community networks shall consider increasing employment and job training opportunities in recognition that they constitute an effective network strategy and strong protective factor. The networks shall consider and may include funding of:

(a) At-risk youth job placement and training programs. The programs shall:

(i) Identify and recruit at-risk youth for local job opportunities;

(ii) Provide skills and needs assessments for each youth recruited;

(iii) Provide career and occupational counseling to each youth recruited;

(iv) Identify businesses willing to provide employment and training opportunities for at-risk youth;

(v) Match each youth recruited with a business that meets his or her skills and training needs;

(vi) Provide employment and training opportunities that prepare the individual for demand occupations; and

(vii) Include, to the extent possible, collaboration of business, labor, education and training, community organizations, and local government;

(b) Employment assistance, including job development, school-to-work placement, employment readiness training, basic skills, apprenticeships, job mentoring, and private sector and community service employment;

(c) Education assistance, including tutoring, mentoring, interactions with role models, entrepreneurial education and projects, violence prevention training, safe school strategies, and employment reentry assistance services.

(4) The community network may include funding of:

(a) Peer-to-peer, group, and individual counseling, including crisis intervention, for at-risk youth and their parents;

(b) Youth coalitions that provide opportunities to develop leadership skills and gain appropriate respect, recognition, and rewards for their positive contribution to their community;

(c) Technical assistance to applicants to increase their organizational capacity and to improve the likelihood of a successful application; and

(d) Technical assistance and training resources to successful applicants. [1996 c 132 § 6; 1994 sp.s. c 7 § 305.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.085 Community networks—Sexual abstinence and activity campaign. The community network's plan may include funding for a student designed media and community campaign promoting sexual abstinence and addressing the importance of delaying sexual activity and pregnancy or male parenting until individuals are ready to nurture and support their children. Under the campaign, which shall be substantially designed and produced by students, the same messages shall be distributed in schools, through the media, and in the community where the campaign is targeted. The campaign shall require local private sector matching funds equal to state funds. Local private sector funds may include in-kind contributions of technical or other assistance from consultants or firms involved in public relations, advertising, broadcasting, and graphics or video production or other related fields. The campaign shall be evaluated using the outcomes required of community networks under this chapter, in particular reductions in the number or rate of teen pregnancies and teen male parentage over a three to five year period. [1994 c 299 § 5.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

70.190.090 Community networks—Planning grants and contracts—Distribution of funds—Reports. (1) A network shall, upon application to the council, be eligible to receive planning grants and technical assistance from the council. However, during the 1999-01 fiscal biennium, a net-

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work that has not finalized its membership shall be eligible to receive such grants and assistance. Planning grants may be funded through available federal funds for family preservation services. After receiving the planning grant the network has up to one year to submit the long-term comprehensive plan.

(2) The council shall enter into biennial contracts with networks as part of the grant process. The contracts shall be consistent with available resources, and shall be distributed in accordance with the distribution formula developed pursuant to RCW 43.41.195, subject to the applicable matching fund requirement.

(3) No later than February 1 of each odd-numbered year following the initial contract between the council and a network, the council shall request from the network its plan for the upcoming biennial contract period.

(4) The council shall notify the networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(5) The networks shall, by contract, distribute funds (a) appropriated for plan implementation by the legislature, and (b) obtained from nonstate or federal sources. In distributing funds, the networks shall ensure that administrative costs are held to a maximum of ten percent. However, during the 1999-01 fiscal biennium, administrative costs shall be held to a maximum of ten percent or twenty thousand dollars, whichever is greater, exclusive of costs associated with procurement, payroll processing, personnel functions, management, maintenance and operation of space and property, data processing and computer services, indirect costs, and organizational planning, consultation, coordination, and training.

(6) A network shall not provide services or operate programs.

(7) A network shall file a report with the council by May 1 of each year that includes but is not limited to the following information: Detailed expenditures, programs under way, progress on contracted services and programs, and successes and problems in achieving the outcomes required by RCW 70.190.130(1)(h) related to reducing the rate of state-funded out-of-home placements and the other three at-risk behaviors covered by the comprehensive plan and approved by the council. [1999 c 309 § 918; 1996 c 132 § 7; 1994 sp.s. c 7 § 306.]

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Effective dates—1996 c 132 §§ 7, 8: "(1) Section 7 of this act shall take effect July 1, 1996.

(2) Section 8 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 22, 1996]." [1996 c 132 § 12.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.100 Duties of council. The family policy council shall:

(1) Establish network boundaries no later than July 1, 1994. There is a presumption that no county may be divided between two or more community networks and no network shall have fewer than forty thousand population. When

approving multicounty networks, considering dividing a county between networks, or creating a network with a population of less than forty thousand, the council must consider: (a) Common economic, geographic, and social interests; (b) historical and existing shared governance; and (c) the size and location of population centers. Individuals and groups within any area shall be given ample opportunity to propose network boundaries in a manner designed to assure full consideration of their expressed wishes;

(2) Develop a technical assistance and training program to assist communities in creating and developing community networks and comprehensive plans;

(3) Approve the structure, purpose, goals, plan, and performance measurements of each community network;

(4) Identify all prevention and early intervention programs and funds, including all programs funded under RCW 69.50.520, in addition to the programs set forth in RCW 70.190.110, which could be transferred, in all or part, to the community networks, and report their findings and recommendations to the governor and the legislature regarding any appropriate program transfers by January 1 of each year;

(5) Reward community networks that show exceptional success as provided in RCW 43.41.195;

(6) Seek every opportunity to maximize federal and other funding that is consistent with the plans approved by the council for the purpose and goals of this chapter;

(7) Review the state-funded out-of-home placement rate before the end of each contract to determine whether the region has sufficiently reduced the rate. If the council determines that there has not been a sufficient reduction in the rate, it may reduce the immediately succeeding grant to the network;

(8)(a) The council shall monitor the implementation of programs contracted by participating state agencies by reviewing periodic reports on the extent to which services were delivered to intended populations, the quality of services, and the extent to which service outcomes were achieved at the conclusion of service interventions. This monitoring shall include provision for periodic feedback to community networks;

(b) The legislature intends that this monitoring be used by the Washington state institute for public policy, together with public health data on at-risk behaviors and risk and protective factors, to produce an external evaluation of the effectiveness of the networks and their programs. For this reason, and to conserve public funds, the council shall not conduct or contract for the conduct of control group studies, quasi-experimental design studies, or other analysis efforts to attempt to determine the impact of network programs on at-risk behaviors or risk and protective factors; and

(9) Review the implementation of chapter 7, Laws of 1994 sp. sess. The report shall use measurable performance standards to evaluate the implementation. [1998 c 245 § 123; 1994 sp.s. c 7 § 307.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.110 Program review. (1) The council, and each network, shall biennially review all state and federal funded programs serving individuals, families, or communities to

determine whether a network may be better able to integrate and coordinate these services within the community.

(2) The council, and each network, shall specifically review the feasibility and desirability of decategorizing and granting, all or part of, the following program funds to the networks:

(a) Consolidated juvenile services;

(b) Family preservation and support services;

(c) Readiness to learn;

(d) Community mobilization;

(e) Violence prevention;

(f) Community-police partnership;

(g) Child care;

(h) Early intervention and educational services, including but not limited to, birth to three, birth to six, early childhood education and assistance, and headstart;

(i) Crisis residential care;

(j) Victims' assistance;

(k) Foster care;

(l) Adoption support;

(m) Continuum of care; and

(n) Drug and alcohol abuse prevention and early intervention in schools.

(3) In determining the desirability of decategorizing these programs the report shall analyze whether:

(a) The program is an integral part of the comprehensive plan without decategorization;

(b) The program is already adequately integrated and coordinated with other programs that are, or will be, funded by the network;

(c) The network could develop the capacity to provide the program's services;

(d) The program goals might receive greater community support and reinforcement through the network;

(e) The program presently ensures that adequate follow-up efforts are utilized, and whether the network could improve on those efforts through decategorization of the funds;

(f) The decategorization would benefit the community; and

(g) The decategorization would assist the network in achieving its goals.

(4) If the council or a network determines that a program should not be decategorized, the council or network shall make recommendations regarding programmatic changes that are necessary to improve the coordination and integration of services and programs, regardless of the funding source for those programs. [1998 c 245 § 124; 1994 sp.s. c 7 § 308.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Office of financial management, recommended legislation: RCW 43.41.190.

70.190.120 Interagency agreement. (1) The participating state agencies shall execute an interagency agreement to ensure the coordination of their local program efforts regarding children. This agreement shall recognize and give specific planning, coordination, and program administration responsibilities to community networks, after the approval under RCW 70.190.130 of their comprehensive plans. The community networks shall encourage the development of

integrated, regionally based children, youth, and family activities and services with adequate local flexibility to accomplish the purposes stated in section 101, chapter 7, Laws of 1994 sp. sess. and RCW 74.14A.020.

(2) The community networks shall exercise the planning, coordinating, and program administration functions specified by the state interagency agreement in addition to other activities required by law, and shall participate in the planning process required by chapter 71.36 RCW.

(3) Any state or federal funds identified for contracts with community networks shall be transferred with no reductions. [1994 sp.s. c 7 § 309.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.130 Comprehensive plan—Approval process—Network expenditures—Penalty for noncompliance with chapter. (1) The council shall only disburse funds to a network after a comprehensive plan has been prepared by the network and approved by the council. In approving the plan the council shall consider whether the network:

(a) Promoted input from the widest practical range of agencies and affected parties, including public hearings;

(b) Reviewed the indicators of violence data compiled by the local public health departments and incorporated a response to those indicators in the plan;

(c) Obtained a declaration by the largest health department within the network boundary, indicating whether the plan meets minimum standards for assessment and policy development relating to social development according to RCW 43.70.555;

(d) Included a specific mechanism of data collection and transmission based on the rules established under RCW 43.70.555;

(e) Considered all relevant causes of violence in its community and did not isolate only one or a few of the elements to the exclusion of others and demonstrated evidence of building community capacity through effective neighborhood and community development;

(f) Considered youth employment and job training programs outlined in this chapter as a strategy to reduce the rate of at-risk children and youth;

(g) Integrated local programs that met the network's priorities and were deemed successful by the network;

(h) Committed to make measurable reductions in the rate of at-risk children and youth by reducing the rate of state-funded out-of-home placements and make reductions in at least three of the following rates of youth: Violent criminal acts, substance abuse, pregnancy and male parentage, suicide attempts, dropping out of school, child abuse or neglect, and domestic violence; and

(i) Held a public hearing on its proposed comprehensive plan and submitted to the council all of the written comments received at the hearing and a copy of the minutes taken at the hearing.

(2) The council may establish a maximum amount to be expended by a network for purposes of planning and administrative duties, that shall not, in total, exceed ten percent of funds available to a network. The council shall make recommendations to the legislature regarding the specific maximum amounts that can be spent by a network or group of net-

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works on planning and administrative duties. The recommendation may provide differing percentages, considering the size of the budgets of each network and giving consideration to whether there should be a higher percentage for administrative and planning purposes in budgets for smaller networks and a smaller percentage of the budgets for administration and planning purposes in larger networks.

(3) The council may determine that a network is not in compliance with this chapter if it fails to comply with statutory requirements. Upon a determination of noncompliance, the council may suspend or revoke a network's status or contract and specify a process and deadline for the network's compliance. [1998 c 314 § 13; 1996 c 132 § 8; 1994 sp.s. c 7 § 310.]

Effective dates—1996 c 132 §§ 7, 8: See note following RCW 70.190.090.

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Office of financial management, fund distribution formula: RCW 43.41.195.

70.190.150 Federal restrictions on funds transfers, waivers. If there exist any federal restrictions against the transfer of funds, for the programs enumerated in RCW 70.190.110, to the community networks, the council shall assist the governor in immediately applying to the federal government for waivers of the federal restrictions. The council shall also assist the governor in coordinating efforts to make any changes in federal law necessary to meet the purpose and intent of chapter 7, Laws of 1994 sp. sess. [1994 sp.s. c 7 § 312.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.160 Community networks—Implementation in federal and state plans. The implementation of community networks shall be included in all federal and state plans affecting the state's children, youth, and families. The plans shall be consistent with the intent and requirements of this chapter. [1994 sp.s. c 7 § 314.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.170 Transfer of funds and programs to state agency. If a community network is unable or unwilling to assume powers and duties authorized under this chapter by June 30, 1998, or the Washington state institute for public policy makes a recommendation under RCW 70.190.050, the governor may transfer all funds and programs available to a community network to a single state agency whose statutory purpose, mission, goals, and operating philosophy most closely supports the principles and purposes of section 101, chapter 7, Laws of 1994 sp. sess. and RCW 74.14A.020, for the purpose of integrating the programs and services. [1994 sp.s. c 7 § 320.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.180 Community network—Grants for use of school facilities. A community public health and safety net-

work, based on rules adopted by the department of health, may include in its comprehensive community plans procedures for providing matching grants to school districts to support expanded use of school facilities for after-hours recreational opportunities and day care as authorized under chapter 28A.215 RCW and RCW 28A.620.010. [1994 sp.s. c 7 § 604.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.190 Network members immune from civil liability—Network assets not subject to attachment or execution. (1) The network members are immune from all civil liability arising from their actions done in their decision-making capacity as a network member, except for their intentional tortious acts or acts of official misconduct.

(2) The assets of a network are not subject to attachment or execution in satisfaction of a judgment for the tortious acts or official misconduct of any network member or for the acts of any agency or program to which it provides funds. [1996 c 132 § 9.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

70.190.910 Severability—1992 c 198. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 198 § 20.]

70.190.920 Effective date—1992 c 198. Sections 1 through 13 of this act shall take effect July 1, 1992. [1992 c 198 § 21.]

Chapter 70.195 RCW

EARLY INTERVENTION SERVICES— BIRTH TO SIX

Sections

70.195.005	Findings.
70.195.010	Birth-to-six interagency coordinating council—Early intervention services—Conditions and limitations.
70.195.020	Birth-to-six interagency coordinating council—Coordination with counties and communities.
70.195.030	Early intervention services—Interagency agreements.
70.195.900	Severability—1992 c 198.

70.195.005 Findings. The legislature finds that there is an urgent and substantial need to:

(1) Enhance the development of infants and toddlers with disabilities in the state of Washington in order to minimize developmental delay and maximize individual potential and enhance the capability of families to meet the needs of their infants and toddlers with disabilities and maintain family integrity;

(2) Coordinate and enhance the state's existing early intervention services to ensure a statewide, community-based, coordinated, interagency program of early intervention services for infants and toddlers with disabilities and their families; and

(3) Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources

including public and private insurance coverage. [1992 c 198 § 14.]

70.195.010 Birth-to-six interagency coordinating council—Early intervention services—Conditions and limitations. For the purposes of implementing this chapter, the governor shall appoint a state birth-to-six interagency coordinating council and ensure that state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families shall coordinate and collaborate in the planning and delivery of such services.

No state or local agency currently providing early intervention services to infants and toddlers with disabilities may use funds appropriated for early intervention services for infants and toddlers with disabilities to supplant funds from other sources.

All state and local agencies shall ensure that the implementation of this chapter will not cause any interruption in existing early intervention services for infants and toddlers with disabilities.

Nothing in this chapter shall be construed to permit the restriction or reduction of eligibility under Title V of the Social Security Act, P.L. 90-248, relating to maternal and child health or Title XIX of the Social Security Act, P.L. 89-97, relating to medicaid for infants and toddlers with disabilities. [1998 c 245 § 125; 1992 c 198 § 15.]

70.195.020 Birth-to-six interagency coordinating council—Coordination with counties and communities. The state birth-to-six interagency coordinating council shall identify and work with county early childhood interagency coordinating councils to coordinate and enhance existing early intervention services and assist each community to meet the needs of infants and toddlers with disabilities and their families. [1992 c 198 § 17.]

70.195.030 Early intervention services—Interagency agreements. State agencies providing or paying for early intervention services shall enter into formal interagency agreements with each other and where appropriate, with school districts, counties, and other providers, to define their relationships and financial and service responsibilities. Local agencies or entities, including local school districts, counties, and service providers receiving public money for providing or paying for early intervention services shall enter into formal interagency agreements with each other that define their relationships and financial responsibilities to provide services within each county. In establishing priorities, school districts, counties, and other service providers shall give due regard to the needs of children birth to three years of age and shall ensure that they continue to participate in providing services and collaborate with each other. The interagency agreements shall include procedures for resolving disputes, provisions for establishing maintenance requirements, and all additional components necessary to ensure collaboration and coordination. [1992 c 198 § 16.]

70.195.900 Severability—1992 c 198. See RCW 70.190.910.

Chapter 70.198 RCW
EARLY INTERVENTION SERVICES—
HEARING LOSS

Sections

70.198.010	Findings.
70.198.020	Advisory council—Membership.
70.198.030	Development of early intervention service standards.
70.198.040	Hearing loss pamphlet.

70.198.010 Findings. (1) The legislature finds that children who are deaf or hard of hearing and their families have unique needs specific to the hearing loss. These unique needs reflect the challenges children with hearing loss and their families encounter related to their lack of full access to auditory communication.

(2) The legislature further finds that early detection of hearing loss in a child and early intervention and treatment have been demonstrated to be highly effective in facilitating a child's healthy development in a manner consistent with the child's age and cognitive ability.

(3) These combined factors support the need for early intervention services providers with specialized training and expertise, spanning the spectrum of available approaches and educational options, who can address the unique characteristics and needs of each child who is deaf or hard of hearing and that child's family. [2004 c 47 § 1.]

70.198.020 Advisory council—Membership. (1) There is established an advisory council in the department of social and health services for the purpose of advancing the development of a comprehensive and effective statewide system to provide prompt and effective early interventions for children in the state who are deaf or hard of hearing and their families.

(2) Members of the advisory council shall have training, experience, or interest in hearing loss in children. Membership shall include, but not be limited to, the following: Pediatricians; audiologists; teachers of the deaf and hard of hearing; parents of children who are deaf or hard of hearing; a representative from the Washington state school for the deaf; and representatives of the infant toddler early intervention program in the department of social and health services, the department of health, and the office of the superintendent of public instruction. [2004 c 47 § 2.]

70.198.030 Development of early intervention service standards. (1) The advisory council shall develop statewide standards for early intervention services and early intervention services providers specifically related to children who are deaf or hard of hearing.

(2) The advisory council shall develop these standards by January 1, 2005. [2004 c 47 § 3.]

70.198.040 Hearing loss pamphlet. (1) The advisory council shall create a pamphlet to be provided to the parents of a child in the state who is diagnosed with hearing loss by their child's pediatrician or audiologist, as appropriate, upon diagnosis of hearing loss. The pamphlet shall contain, at minimum, information on the following: The variety of interventions and treatments available for children who are deaf or hard of hearing; and resources for parent support,

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counseling, financing, and education related to hearing loss in children.

(2) The pamphlet shall be available for distribution by July 1, 2005. [2004 c 47 § 4.]

Chapter 70.200 RCW
DONATIONS FOR CHILDREN

Sections

70.200.010	Definitions.
70.200.020	Immunity from liability.
70.200.030	Construction—Liability, penalty.
70.200.900	Severability—1994 c 25.

70.200.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Distributing organization" means a charitable non-profit organization under 26 U.S.C. Sec. 501(c) of the federal internal revenue code, or a public health agency acting on behalf of or in conjunction with a charitable nonprofit organization, which distributes children's items to needy persons free of charge and includes any nonprofit organization that distributes children's items free of charge to other nonprofit organizations or the public. A public health agency shall not otherwise be considered a distributing organization for purposes of this chapter when it is carrying out other functions and responsibilities under Title 70 RCW.

(2) "Donor" means a person, corporation, association, or other organization that donates children's items to a distributing organization or a person, corporation, association, or other organization that repairs or updates such donated items to current standards. Donor also includes any person, corporation, association, or other organization which donates any space in which storage or distribution of children's items takes place.

(3) "Children's items" include, but are not limited to, clothes, diapers, food, baby formula, cribs, playpens, car seat restraints, toys, high chairs, and books. [1997 c 40 § 1; 1994 c 25 § 1.]

70.200.020 Immunity from liability. Donors and distributing organizations are not liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated children's items unless a donor or distributing organization acts with gross negligence or intentional misconduct. [1994 c 25 § 2.]

70.200.030 Construction—Liability, penalty. Nothing in this chapter may be construed to create any liability of, or penalty against a donor or distributing organization except as provided in RCW 70.200.020. [1994 c 25 § 3.]

70.200.900 Severability—1994 c 25. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 25 § 4.]

Chapter 70.210 RCW

INVESTING IN INNOVATION GRANTS PROGRAM

Sections

70.210.010	Intent.
70.210.020	Definitions.
70.210.030	Assessments.
70.210.040	Grant award criteria.
70.210.050	Peer review committee—Support of research commercialization opportunities—Grant awards, priority, eligibility.
70.210.060	Performance benchmarks, review, report.
70.210.070	Administration.

70.210.010 Intent. It is the intent of the legislature to promote growth in the technology sectors of our state's economy and to particularly focus support on the creation and commercialization of intellectual property in the technology, energy, and telecommunications industries. [2003 c 403 § 1.]

70.210.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Center" means the Washington technology center established under RCW 28B.20.283 through 28B.20.295.

(2) "Board" means the board of directors for the center. [2003 c 403 § 2.]

70.210.030 Assessments. (1) The investing in innovation grants program is established.

(2) The center shall periodically make strategic assessments of the types of state investments in research and technology in this state that would likely create jobs and business opportunities and produce the most beneficial long-term improvements to the lives and health of the citizens of the state. The assessments shall be available to the public and shall be used to guide decisions on awarding grants under this chapter. [2003 c 403 § 4.]

70.210.040 Grant award criteria. The board shall:

(1) Develop criteria for the awarding of grants to qualifying universities, institutions, businesses, or individuals;

(2) Make decisions regarding distribution of grant funds and make grant awards; and

(3) In making grant awards, seek to provide a balance between research grant awards and commercialization grant awards. [2003 c 403 § 5.]

70.210.050 Peer review committee—Support of research commercialization opportunities—Grant awards, priority, eligibility. (1) The board may accept grant proposals and establish a competitive process for the awarding of grants.

(2) The board shall establish a peer review committee to include board members, scientists, engineers, and individuals with specific recognized expertise. The peer review committee shall provide to the board an independent peer review of all proposals determined to be competitive for a grant award that are submitted to the board.

(3) In the awarding of grants, priority shall be given to proposals that leverage additional private and public funding resources.

(4) Up to fifty percent of available funds from the *investing in innovation account may be used to support

commercialization opportunities for research in Washington state through an organization with commercialization expertise such as the Spokane intercollegiate research and technology institute.

(5) The center may not be a direct recipient of grant awards under chapter 403, Laws of 2003. [2003 c 403 § 6.]

*Reviser's note: The section creating the investing in innovation account, 2003 c 403 § 3, was vetoed by the governor.

70.210.060 Performance benchmarks, review, report. The board shall establish performance benchmarks against which the program will be evaluated. The grants program shall be reviewed periodically by the board. The board shall report annually to the appropriate standing committees of the legislature on grants awarded and as appropriate on program reviews conducted by the board. [2003 c 403 § 7.]

70.210.070 Administration. (1) The center shall administer the investing in innovation grants program.

(2) Not more than one percent of the available funds from the *investing in innovation account may be used for administrative costs of the program. [2003 c 403 § 8.]

*Reviser's note: The section creating the investing in innovation account, 2003 c 403 § 3, was vetoed by the governor.

Chapter 70.220 RCW

WASHINGTON ACADEMY OF SCIENCES

Sections

70.220.010	Finding—Purpose.
70.220.020	Washington academy of sciences to assist governor, legislature—Duty of state scientists not diminished.
70.220.030	Organizing committee, staff support—Organizational structure.
70.220.040	Duties—Review panels—Funding.
70.220.050	Additional services permitted.
70.220.060	Funding report required by April 30, 2007.

70.220.010 Finding—Purpose. The legislature finds that public policies and programs will be improved when informed by independent scientific analysis and communication with state and local policymakers. Throughout the state there are highly qualified persons in a wide range of scientific disciplines who are willing to contribute their time and expertise in such reviews, but that presently there is lacking an organizational structure in which the entire scientific community may most effectively respond to requests for assessments of complex public policy questions. Therefore it is the purpose of chapter 305, Laws of 2005 to authorize the creation of the Washington academy of sciences as a nonprofit entity independent of government, whose principal mission will be the provision of scientific analysis and recommendations on questions referred to the academy by the governor, the governor's designee, or the legislature. [2005 c 305 § 1.]

70.220.020 Washington academy of sciences to assist governor, legislature—Duty of state scientists not diminished. The Washington academy of sciences authorized to be formed under RCW 70.220.030 shall serve as a principal source of scientific investigation, examination, and reporting on scientific questions referred to the academy by the governor or the legislature under the provisions of RCW

70.220.040. Nothing in this section or this chapter supersedes or diminishes the responsibilities performed by scientists employed by the state or its political subdivisions. [2005 c 305 § 2.]

70.220.030 Organizing committee, staff support—Organizational structure. (1) The presidents of the University of Washington and Washington State University shall jointly form and serve as the cochairs of an organizing committee for the purpose of creating the Washington academy of sciences as an independent entity to carry out the purposes of this chapter. The committee should be representative of appropriate disciplines from the academic, private, governmental, and research sectors.

(2) Staff from the University of Washington and Washington State University, and from other available entities, shall provide support to the organizing committee under the direction of the cochairs.

(3)(a) The committee shall investigate organizational structures that will ensure the participation or membership in the academy of scientists and experts with distinction in their fields, and that will ensure broad participation among the several disciplines that may be called upon in the investigation, examination, and reporting upon questions referred to the academy by the governor or the legislature.

(b) The organizational structure shall include a process by which the academy responds to inquiries from the governor or the legislature, including but not limited to the identification of research projects, past or present, at Washington or other research institutions and the findings of such research projects.

(4) The committee cochairs shall use their best efforts to form the committee by January 1, 2006, and to complete the committee's review by April 30, 2007. By April 30, 2007, the committee, or such individuals as the committee selects, shall file articles of incorporation to create the academy as a Washington independent organizational entity. The articles shall expressly recognize the power and responsibility of the academy to provide services as described in RCW 70.220.040 upon request of the governor, the governor's designee, or the legislature. The articles shall also provide for a board of directors of the academy that includes distinguished scientists from the range of disciplines that may be called upon to provide such services to the state and its political subdivisions, and provide a balance of representation from the academic, private, governmental, and research sectors.

(5) The articles shall provide for all such powers as may be appropriate or necessary to carry out the academy's purposes under this chapter, to the full extent allowable under the proposed organizational structure. [2005 c 305 § 3.]

70.220.040 Duties—Review panels—Funding. (1) The academy shall investigate, examine, and report on any subject of science requested by the governor, the governor's designee, or the legislature. The procedures for selecting panels of experts to respond to such requests shall be set forth in the bylaws or other appropriate operating guidelines. In forming review panels, the academy shall endeavor to assure that the panel members have no conflicts of interest and that proposed panelists first disclose any advocacy positions or

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financial interest related to the questions to be addressed by the panel that the candidate has held within the past ten years.

(2) The governor shall provide funding to the academy for the actual expense of such investigation, examination, and reports. Such funding shall be in addition to state funding assistance to the academy in its initial years of operation as described in RCW 70.220.060. [2005 c 305 § 4.]

70.220.050 Additional services permitted. The academy may carry out functions or provide services to its members and the public in addition to the services provided under RCW 70.220.040, such as public education programs, newsletters, web sites, science fairs, and research assistance. [2005 c 305 § 5.]

70.220.060 Funding report required by April 30, 2007. The organizational committee shall recommend procedures and funding requirements for receiving and disbursing funding in support of the academy's programs and services in a report to the governor and the appropriate committees of the senate and house of representatives no later than April 30, 2007. [2005 c 305 § 6.]

Chapter 70.225 RCW

PRESCRIPTION MONITORING PROGRAM

Sections

- 70.225.010 Definitions.
- 70.225.020 Prescription monitoring program—Subject to funding—Duties of dispensers.
- 70.225.025 Rules.
- 70.225.030 Enhancement of program—Feasibility study.
- 70.225.040 Confidentiality of prescription information—Procedures—Immunity when acting in good faith.
- 70.225.050 Department may contract for operation of program.
- 70.225.060 Violations—Penalties—Disclosure exemption for health care providers.
- 70.225.900 Severability—Subheadings not law—2007 c 259.

70.225.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Controlled substance" has the meaning provided in RCW 69.50.101.

(2) "Department" means the department of health.

(3) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.

(4) "Dispenser" means a practitioner or pharmacy that delivers a Schedule II, III, IV, or V controlled substance to the ultimate user, but does not include:

(a) A practitioner or other authorized person who administers, as defined in RCW 69.41.010, a controlled substance; or

(b) A licensed wholesale distributor or manufacturer, as defined in chapter 18.64 RCW, of a controlled substance. [2007 c 259 § 42.]

70.225.020 Prescription monitoring program—Subject to funding—Duties of dispensers. (1) When sufficient funding is provided for such purpose through federal or private grants, or is appropriated by the legislature, the department shall establish and maintain a prescription monitoring

program to monitor the prescribing and dispensing of all Schedules II, III, IV, and V controlled substances and any additional drugs identified by the board of pharmacy as demonstrating a potential for abuse by all professionals licensed to prescribe or dispense such substances in this state. The program shall be designed to improve health care quality and effectiveness by reducing abuse of controlled substances, reducing duplicative prescribing and overprescribing of controlled substances, and improving controlled substance prescribing practices with the intent of eventually establishing an electronic database available in real time to dispensers and prescribers of controlled substances. As much as possible, the department should establish a common database with other states.

(2) Except as provided in subsection (4) of this section, each dispenser shall submit to the department by electronic means information regarding each prescription dispensed for a drug included under subsection (1) of this section. Drug prescriptions for more than immediate one day use should be reported. The information submitted for each prescription shall include, but not be limited to:

- (a) Patient identifier;
- (b) Drug dispensed;
- (c) Date of dispensing;
- (d) Quantity dispensed;
- (e) Prescriber; and
- (f) Dispenser.

(3) Each dispenser shall submit the information in accordance with transmission methods established by the department.

(4) The data submission requirements of this section do not apply to:

(a) Medications provided to patients receiving inpatient services provided at hospitals licensed under chapter 70.41 RCW; or patients of such hospitals receiving services at the clinics, day surgery areas, or other settings within the hospital's license where the medications are administered in single doses; or

(b) Pharmacies operated by the department of corrections for the purpose of providing medications to offenders in department of corrections institutions who are receiving pharmaceutical services from a department of corrections pharmacy, except that the department of corrections must submit data related to each offender's current prescriptions for controlled substances upon the offender's release from a department of corrections institution.

(5) The department shall seek federal grants to support the activities described in chapter 259, Laws of 2007. The department may not require a practitioner or a pharmacist to pay a fee or tax specifically dedicated to the operation of the system. [2007 c 259 § 43.]

70.225.025 Rules. The department shall adopt rules to implement this chapter. [2007 c 259 § 47.]

70.225.030 Enhancement of program—Feasibility study. To the extent that funding is provided for such purpose through federal or private grants, or is appropriated by the legislature, the health care authority shall study the feasibility of enhancing the prescription monitoring program

established in RCW 70.225.020 in order to improve the quality of state purchased health services by reducing legend drug abuse, reducing duplicative and overprescribing of legend drugs, and improving legend drug prescribing practices. The study shall address the steps necessary to expand the program to allow those who prescribe or dispense prescription drugs to perform a web-based inquiry and obtain real time information regarding the legend drug utilization history of persons for whom they are providing medical or pharmaceutical care when such persons are receiving health services through state purchased health care programs. [2007 c 259 § 44.]

70.225.040 Confidentiality of prescription information—Procedures—Immunity when acting in good faith.

(1) Prescription information submitted to the department shall be confidential, in compliance with chapter 70.02 RCW and federal health care information privacy requirements and not subject to disclosure, except as provided in subsections (3) and (4) of this section.

(2) The department shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in subsections (3) and (4) of this section.

(3) The department may provide data in the prescription monitoring program to the following persons:

(a) Persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(b) An individual who requests the individual's own prescription monitoring information;

(c) Health professional licensing, certification, or regulatory agency or entity;

(d) Appropriate local, state, and federal law enforcement or prosecutorial officials who are engaged in a bona fide specific investigation involving a designated person;

(e) Authorized practitioners of the department of social and health services regarding medicaid program recipients;

(f) The director or director's designee within the department of labor and industries regarding workers' compensation claimants;

(g) The director or the director's designee within the department of corrections regarding offenders committed to the department of corrections;

(h) Other entities under grand jury subpoena or court order; and

(i) Personnel of the department for purposes of administration and enforcement of this chapter or chapter 69.50 RCW.

(4) The department may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients, dispensers, prescribers, and persons who received prescriptions from dispensers.

(5) A dispenser or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting, receiving, or using information from the program. [2007 c 259 § 45.]

70.225.050 Department may contract for operation of program. The department may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. Any contractor is bound to comply with the provisions regarding confidentiality of prescription information in RCW 70.225.040 and is subject to the penalties specified in RCW 70.225.060 for unlawful acts. [2007 c 259 § 46.]

70.225.060 Violations—Penalties—Disclosure exemption for health care providers. (1) A dispenser who knowingly fails to submit prescription monitoring information to the department as required by this chapter or knowingly submits incorrect prescription information is subject to disciplinary action under chapter 18.130 RCW.

(2) A person authorized to have prescription monitoring information under this chapter who knowingly discloses such information in violation of this chapter is subject to civil penalty.

(3) A person authorized to have prescription monitoring information under this chapter who uses such information in a manner or for a purpose in violation of this chapter is subject to civil penalty.

(4) In accordance with chapter 70.02 RCW and federal health care information privacy requirements, any physician or pharmacist authorized to access a patient's prescription monitoring may discuss or release that information to other health care providers involved with the patient in order to provide safe and appropriate care coordination. [2007 c 259 § 48.]

70.225.900 Severability—Subheadings not law—2007 c 259. See notes following RCW 41.05.033.

Chapter 70.230 RCW

AMBULATORY SURGICAL FACILITIES

Sections

70.230.010	Definitions.
70.230.020	Duties of secretary—Rules.
70.230.030	Operating without a license.
70.230.040	Exclusions from chapter.
70.230.050	Licenses—Applicants—Renewal.
70.230.060	Facility safety and emergency training.
70.230.070	Denial, suspension, or revocation of license—Investigating complaints—Penalties.
70.230.080	Coordinated quality improvement—Rules.
70.230.090	Ambulatory surgical facilities—Construction, maintenance, and operation—Minimum standards and rules.
70.230.100	Ambulatory surgical facilities—Surveys.
70.230.110	Ambulatory surgical facilities—Submission of data related to the quality of patient care.
70.230.120	Reports—Discipline of a health care provider for unprofessional conduct—Penalties.
70.230.130	Written records—Decisions to restrict or terminate privileges of practitioners—Penalties.
70.230.140	Information concerning practitioners—Disclosure.
70.230.150	Unanticipated outcomes—Notification.
70.230.160	Complaint toll-free telephone number—Notice.
70.230.170	Information received by department—Disclosure.
70.230.180	Ambulatory surgical facility account.
70.230.900	Effective date—2007 c 273.
70.230.901	Implementation—2007 c 273.

70.230.010 Definitions. (*Effective July 1, 2009.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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(1) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal social security act.

(2) "Department" means the department of health.

(3) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway.

(4) "Person" means an individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

(5) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(6) "Secretary" means the secretary of health.

(7) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cryogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of a disease, process, or injury through that branch of medicine that treats diseases, injuries, and deformities by manual or operative methods by a practitioner. [2007 c 273 § 1.]

70.230.020 Duties of secretary—Rules. (*Effective July 1, 2009.*) The secretary shall:

(1) Issue a license to any ambulatory surgical facility that:

(a) Submits payment of the fee established in *section 7, chapter 273, Laws of 2007;

(b) Submits a completed application that demonstrates the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statute and rule. An ambulatory surgical facility shall be deemed to have met the standards if it submits proof of certification as a medicare ambulatory surgical facility or accreditation by an organization that the secretary has determined to have substantially equivalent standards to those of the department; and

(c) Successfully completes the survey requirements established in RCW 70.230.100;

(2) Develop an application form for applicants for a license to operate an ambulatory surgical facility;

(3) Initiate investigations and enforcement actions for complaints or other information regarding failure to comply with this chapter or the standards and rules adopted under this chapter;

(4) Conduct surveys of facilities, including reviews of medical records and documents required to be maintained under this chapter or rules adopted under this chapter;

(5) By March 1, 2008, determine which accreditation organizations have substantially equivalent standards for purposes of deeming specific licensing requirements required in statute and rule as having met the state's standards; and

(6) Adopt any rules necessary to implement this chapter. [2007 c 273 § 2.]

***Reviser's note:** Section 7, chapter 273, Laws of 2007 requires identification of, and a report on, a reasonable fee schedule for licenses and renewal licenses.

70.230.030 Operating without a license. (Effective July 1, 2009.) Except as provided in RCW 70.230.040, after June 30, 2009, no person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, shall establish, maintain, or conduct an ambulatory surgical facility in this state or advertise by using the term "ambulatory surgical facility," "day surgery center," "licensed surgical center," or other words conveying similar meaning without a license issued by the department under this chapter. [2007 c 273 § 3.]

70.230.040 Exclusions from chapter. (Effective July 1, 2009.) Nothing in this chapter:

(1) Applies to an ambulatory surgical facility that is maintained and operated by a hospital licensed under chapter 70.41 RCW;

(2) Applies to an office maintained for the practice of dentistry;

(3) Applies to outpatient specialty or multispecialty surgical services routinely and customarily performed in the office of a practitioner in an individual or group practice that do not require general anesthesia; or

(4) Limits an ambulatory surgical facility to performing only surgical services. [2007 c 273 § 4.]

70.230.050 Licenses—Applicants—Renewal. (Effective July 1, 2009.) (1) An applicant for a license to operate an ambulatory surgical facility must demonstrate the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statute and rule, including:

(a) Submitting a written application to the department providing all necessary information on a form provided by the department, including a list of surgical specialties offered;

(b) Submitting building plans for review and approval by the department for new construction, alterations other than minor alterations, and additions to existing facilities, prior to obtaining a license and occupying the building;

(c) Demonstrating the ability to comply with this chapter and any rules adopted under this chapter;

(d) Cooperating with the department during on-site surveys prior to obtaining an initial license or renewing an existing license;

(e) Providing such proof as the department may require concerning the ownership and management of the ambulatory surgical facility, including information about the organization and governance of the facility and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(f) Submitting proof of operation of a coordinated quality improvement program in accordance with RCW 70.230.080;

(g) Submitting a copy of the facility safety and emergency training program established under RCW 70.230.060;

(h) Paying any fees established under *section 7, chapter 273, Laws of 2007; and

(i) Providing any other information that the department may reasonably require.

(2) A license is valid for three years, after which an ambulatory surgical facility must submit an application for renewal of license upon forms provided by the department and the renewal fee as established in *section 7, chapter 273, Laws of 2007. The applicant must demonstrate the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statutes, standards, and rules. The applicant must submit the license renewal document no later than thirty days prior to the date of expiration of the license.

(3) The applicant may demonstrate compliance with any of the requirements of subsection (1) of this section by providing satisfactory documentation to the secretary that it has met the standards of an accreditation organization or federal agency that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state. [2007 c 273 § 5.]

***Reviser's note:** Section 7, chapter 273, Laws of 2007 requires identification of, and a report on, a reasonable fee schedule for licenses and renewal licenses.

70.230.060 Facility safety and emergency training. (Effective July 1, 2009.) An ambulatory surgical facility shall have a facility safety and emergency training program. The program shall include:

(1) On-site equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate the management of any medical emergency that may arise in connection with services sought or provided;

(2) Written transfer agreements with local hospitals licensed under chapter 70.41 RCW, approved by the ambulatory surgical facility's medical staff; and

(3) A procedural plan for handling medical emergencies that shall be available for review during surveys and inspections. [2007 c 273 § 6.]

70.230.070 Denial, suspension, or revocation of license—Investigating complaints—Penalties. (Effective July 1, 2009.) (1) The secretary may deny, suspend, or revoke the license of any ambulatory surgical facility in any case in which he or she finds the applicant or registered entity knowingly made a false statement of material fact in the application for the license or any supporting data in any record required by this chapter or matter under investigation by the department.

(2) The secretary shall investigate complaints concerning operation of an ambulatory surgical facility without a license. The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed operation of an ambulatory surgical facility. If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secre-

tary. Any person operating an ambulatory surgical facility under this chapter without a license is guilty of a misdemeanor, and each day of operation of an unlicensed ambulatory surgical facility constitutes a separate offense.

(3) The secretary is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(4) Pursuant to chapter 34.05 RCW, the secretary may assess monetary penalties of a civil nature not to exceed one thousand dollars per violation. [2007 c 273 § 8.]

70.230.080 Coordinated quality improvement—

Rules. (Effective July 1, 2009.) (1) Every ambulatory surgical facility shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the ambulatory surgical facility, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise the policies and procedures of the ambulatory surgical facility;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the ambulatory surgical facility;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the ambulatory surgical facility's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the ambulatory surgical facility for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual practitioners within the practitioner's personnel or credential file maintained by the ambulatory surgical facility;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with

patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee is not subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence of information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the management of the ambulatory surgical facility, as identified in the facility's application, in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission, the board of osteopathic medicine and surgery, or the podiatric medical

board, as appropriate, may review and audit the records of committee decisions in which a practitioner's privileges are terminated or restricted. Each ambulatory surgical facility shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained is not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of an ambulatory surgical facility to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department and any accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of the ambulatory surgical facility. Information so obtained is not subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each ambulatory surgical facility shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents are not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 70.41.200(3), 74.42.640 (7) and (9), and 4.24.250.

(9) An ambulatory surgical facility that participates in a coordinated quality improvement program under RCW 43.70.510 shall be deemed to have met the requirements of this section.

(10) Violation of this section shall not be considered negligence per se. [2007 c 273 § 9.]

70.230.090 Ambulatory surgical facilities—Construction, maintenance, and operation—Minimum standards and rules. (Effective July 1, 2009.) The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of

ambulatory surgical facilities and rescind, amend, or modify such rules, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of patient care required for the safe and adequate care and treatment of patients. In establishing the format and content of these standards and rules, the department shall give consideration to maintaining consistency with such minimum standards and rules applicable to ambulatory surgical facilities in the survey standards of accrediting organizations or federal agencies that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state. [2007 c 273 § 10.]

70.230.100 Ambulatory surgical facilities—Surveys. (Effective July 1, 2009.) (1) The department shall make or cause to be made a survey of all ambulatory surgical facilities every eighteen months. Every survey of an ambulatory surgical facility may include an inspection of every part of the surgical facility. The department may make an examination of all phases of the ambulatory surgical facility operation necessary to determine compliance with all applicable statutes, rules, and regulations. In the event that the department is unable to make a survey or cause a survey to be made during the three years of the term of the license, the license of the ambulatory surgical facility shall remain in effect until the state conducts a survey or a substitute survey is performed if the ambulatory surgical facility is in compliance with all other licensing requirements.

(2) An ambulatory surgical facility shall be deemed to have met the survey standards of this section if it submits proof of certification as a medicare ambulatory surgical facility or accreditation by an organization that the secretary has determined to have substantially equivalent survey standards to those of the department. A survey performed pursuant to medicare certification or by an approved accrediting organization may substitute for a survey by the department if:

(a) The ambulatory surgical facility has satisfactorily completed a survey by the department in the previous eighteen months; and

(b) Within thirty days of learning the result of a survey, the ambulatory surgical facility provides the department with documentary evidence that the ambulatory surgical facility has been certified or accredited as a result of a survey and the date of the survey.

(3) Ambulatory surgical facilities shall make the written reports of surveys conducted pursuant to medicare certification procedures or by an approved accrediting organization available to department surveyors during any department surveys, upon request. [2007 c 273 § 11.]

70.230.110 Ambulatory surgical facilities—Submission of data related to the quality of patient care. (Effective July 1, 2009.) The department shall require ambulatory surgical facilities to submit data related to the quality of patient care for review by the department. The data shall be submitted every eighteen months. The department shall consider the reporting standards of other public and private organizations that measure quality in order to maintain consistency in reporting and minimize the burden on the ambulatory surgical facility. The department shall review the data to

determine the maintenance of quality patient care at the facility. If the department determines that the care offered at the facility may present a risk to the health and safety of patients, the department may conduct an inspection of the facility and initiate appropriate actions to protect the public. Information submitted to the department pursuant to this section shall be exempt from disclosure under chapter 42.56 RCW. [2007 c 273 § 12.]

70.230.120 Reports—Discipline of a health care provider for unprofessional conduct—Penalties. (Effective July 1, 2009.) (1) The chief administrator or executive officer of an ambulatory surgical facility shall report to the department when the practice of a health care provider licensed by a disciplining authority under RCW 18.130.040 is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the ambulatory surgical facility that the provider has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care provider licensed by a disciplining authority under RCW 18.130.040 while the provider is under investigation or the subject of a proceeding by the ambulatory surgical facility regarding unprofessional conduct, or in return for the ambulatory surgical facility not conducting such an investigation or proceeding or not taking action. The department shall forward the report to the appropriate disciplining authority.

(2) Reports made under subsection (1) of this section must be made within fifteen days of the date of: (a) A conviction, determination, or finding by the ambulatory surgical facility that the health care provider has committed an action defined as unprofessional conduct under RCW 18.130.180; or (b) acceptance by the ambulatory surgical facility of the voluntary restriction or termination of the practice of a health care provider, including his or her voluntary resignation, while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180.

(3) Failure of an ambulatory surgical facility to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

(4) An ambulatory surgical facility, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging that the conviction, determination, finding, or report was not made in good faith is entitled to recover the costs of litigation, including reasonable attorneys' fees.

(5) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify an ambulatory surgical facility that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of

charges, take informal action, or close the complaint without action against a provider. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by ambulatory surgical facilities under subsection (1) of this section. [2007 c 273 § 13.]

70.230.130 Written records—Decisions to restrict or terminate privileges of practitioners—Penalties. (Effective July 1, 2009.) Each ambulatory surgical facility shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records shall be made available to the medical quality assurance commission, the board of osteopathic medicine and surgery, or the podiatric medical board, within thirty days of a request, and all information so gained remains confidential in accordance with RCW 70.230.080 and 70.230.120 and is protected from the discovery process. Failure of an ambulatory surgical facility to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars. [2007 c 273 § 14.]

70.230.140 Information concerning practitioners—Disclosure. (Effective July 1, 2009.) (1) Prior to granting or renewing clinical privileges or association of any practitioner or hiring a practitioner, an ambulatory surgical facility approved pursuant to this chapter shall request from the practitioner and the practitioner shall provide the following information:

(a) The name of any hospital, ambulatory surgical facility, or other facility with or at which the practitioner had or has any association, employment, privileges, or practice;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the practitioner deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the practitioner deems appropriate;

(e) A waiver by the practitioner of any confidentiality provisions concerning the information required to be provided to ambulatory surgical facilities pursuant to this subsection; and

(f) A verification by the practitioner that the information provided by the practitioner is accurate and complete.

(2) Prior to granting privileges or association to any practitioner or hiring a practitioner, an ambulatory surgical facility approved under this chapter shall request from any hospital or ambulatory surgical facility with or at which the practitioner had or has privileges, was associated, or was employed, the following information concerning the practitioner:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals or ambulatory surgical facilities pursuant to RCW 18.130.070.

(3) The medical quality assurance commission, board of osteopathic medicine and surgery, podiatric medical board, or dental quality assurance commission, as appropriate, shall be advised within thirty days of the name of any practitioner denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital, ambulatory surgical facility, or other facility that receives a request for information from another hospital, ambulatory surgical facility, or other facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital, ambulatory surgical facility, or other facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital, ambulatory surgical facility, or facility. A hospital, ambulatory surgical facility, other facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(6) Ambulatory surgical facilities shall be granted access to information held by the medical quality assurance commission, board of osteopathic medicine and surgery, or podiatric medical board pertinent to decisions of the ambulatory surgical facility regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [2007 c 273 § 15.]

70.230.150 Unanticipated outcomes—Notification. (*Effective July 1, 2009.*) Ambulatory surgical facilities shall have in place policies to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgment or admission of liability, nor may the fact of notification, the content disclosed, or any and all statements, affirmations, gestures, or conduct expressing apology be introduced as evidence in a civil action. [2007 c 273 § 16.]

70.230.160 Complaint toll-free telephone number—Notice. (*Effective July 1, 2009.*) Every ambulatory surgical facility shall post in conspicuous locations a notice of the department's ambulatory surgical facility complaint toll-free telephone number. The form of the notice shall be approved by the department. [2007 c 273 § 17.]

70.230.170 Information received by department—Disclosure. (*Effective July 1, 2009.*) Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter may be disclosed publicly, as permitted under chapter 42.56 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the ambulatory surgical facility has received the resulting assessment report;

(2) Information regarding administrative action against the license [licensee] shall, as requested, be disclosed after the ambulatory surgical facility has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the ambulatory surgical facility and the complainant that the complaint did not warrant an investigation; and

(4) Information disclosed under this section shall not disclose individual names. [2007 c 273 § 18.]

70.230.180 Ambulatory surgical facility account. (*Effective July 1, 2009.*) The ambulatory surgical facility account is created in the custody of the state treasurer. All receipts from fees and penalties imposed under this chapter must be deposited into the account. Expenditures from the account may be used only for administration of this chapter. Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 273 § 19.]

70.230.900 Effective date—2007 c 273. Except for section 7 of this act, this act takes effect July 1, 2009. [2007 c 273 § 29.]

70.230.901 Implementation—2007 c 273. The secretary of health may take the necessary steps to ensure that this act is implemented on its effective date. [2007 c 273 § 30.]

Chapter 70.235 RCW

LIMITING GREENHOUSE GAS EMISSIONS

Sections

70.235.005	Findings—Intent.
70.235.010	Definitions.
70.235.020	Greenhouse gas emissions reductions—Reporting requirements.
70.235.030	Development of a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas—Information required to be submitted to the legislature.
70.235.040	Consultation with climate impacts group at the University of Washington—Report to the legislature.
70.235.900	Scope of chapter 14, Laws of 2008.
70.235.901	Severability—2008 c 14.

70.235.005 Findings—Intent. (1) The legislature finds that Washington has long been a national and international leader on energy conservation and environmental stewardship, including air quality protection, renewable energy development and generation, emission standards for fossil-fuel based energy generation, energy efficiency programs, natural resource conservation, vehicle emission standards, and the use of biofuels. Washington is also unique among most states in that in addition to its commitment to reduce emissions of greenhouse gases, it has established goals to grow the clean energy sector and reduce the state's expenditures on imported fuels.

(2) The legislature further finds that Washington should continue its leadership on climate change policy by creating accountability for achieving the emission reductions established in RCW 70.235.020, participating in the design of a regional multisector market-based system to help achieve those emission reductions, assessing other market strategies to reduce emissions of greenhouse gases, and ensuring the state has a well trained workforce for our clean energy future.

(3) It is the intent of the legislature that the state will: (a) Limit and reduce emissions of greenhouse gas consistent with the emission reductions established in RCW 70.235.020; (b) minimize the potential to export pollution, jobs, and economic opportunities; and (c) reduce emissions at the lowest cost to Washington's economy, consumers, and businesses.

(4) In the event the state elects to participate in a regional multisector market-based system, it is the intent of the legislature that the system will become effective by January 1, 2012, after authority is provided to the department for its implementation. By acting now, Washington businesses and citizens will have adequate time and opportunities to be well positioned to take advantage of the low-carbon economy and to make necessary investments in low-carbon technology.

(5) It is also the intent of the legislature that the regional multisector market-based system recognize Washington's unique emissions portfolio, including the state's hydroelectric system, the opportunities presented by Washington's abundant forest resources and agriculture land, and the state's leadership in energy efficiency and the actions it has already taken that have reduced its generation of greenhouse gas

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emissions and that entities receive appropriate credit for early actions to reduce greenhouse gases.

(6) If any revenues that accrue to the state are created by a market system, they must be used to further the state's efforts to achieve the goals established in RCW 70.235.020, address the impacts of global warming on affected habitats, species, and communities, and increase investment in the clean energy economy particularly for communities and workers that have suffered from heavy job losses and chronic unemployment and underemployment. [2008 c 14 § 1.]

70.235.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(2) "Climate advisory team" means the stakeholder group formed in response to executive order 07-02.

(3) "Climate impacts group" means the University of Washington's climate impacts group.

(4) "Department" means the department of ecology.

(5) "Direct emissions" means emissions of greenhouse gases from sources of emissions, including stationary combustion sources, mobile combustion emissions, process emissions, and fugitive emissions.

(6) "Director" means the director of the department.

(7) "Greenhouse gas" and "greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(8) "Indirect emissions" means emissions of greenhouse gases associated with the purchase of electricity, heating, cooling, or steam.

(9) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.

(10) "Program" means the department's climate change program.

(11) "Total emissions of greenhouse gases" means all direct emissions and all indirect emissions.

(12) "Western climate initiative" means the collaboration of states, Canadian provinces, Mexican states, and tribes to design a multisector market-based mechanism as directed under the western regional climate action initiative signed by the governor on February 22, 2007. [2008 c 14 § 2.]

70.235.020 Greenhouse gas emissions reductions—Reporting requirements. (1)(a) The state shall limit emissions of greenhouse gases to achieve the following emission reductions for Washington state:

(i) By 2020, reduce overall emissions of greenhouse gases in the state to 1990 levels;

(ii) By 2035, reduce overall emissions of greenhouse gases in the state to twenty-five percent below 1990 levels;

(iii) By 2050, the state will do its part to reach global climate stabilization levels by reducing overall emissions to fifty percent below 1990 levels, or seventy percent below the state's expected emissions that year.

(b) By December 1, 2008, the department shall submit a greenhouse gas reduction plan for review and approval to the

legislature, describing those actions necessary to achieve the emission reductions in (a) of this subsection by using existing statutory authority and any additional authority granted by the legislature. Actions taken using existing statutory authority may proceed prior to approval of the greenhouse gas reduction plan.

(c) Except where explicitly stated otherwise, nothing in chapter 14, Laws of 2008 limits any state agency authorities as they existed prior to June 12, 2008.

(d) Consistent with this directive, the department shall take the following actions:

(i) Develop and implement a system for monitoring and reporting emissions of greenhouse gases as required under RCW 70.94.151; and

(ii) Track progress toward meeting the emission reductions established in this subsection, including the results from policies currently in effect that have been previously adopted by the state and policies adopted in the future, and report on that progress.

(2) By December 31st of each even-numbered year beginning in 2010, the department and the department of community, trade, and economic development shall report to the governor and the appropriate committees of the senate and house of representatives the total emissions of greenhouse gases for the preceding two years, and totals in each major source sector. The department shall ensure the reporting rules adopted under RCW 70.94.151 allow it to develop a comprehensive inventory of emissions of greenhouse gases from all significant sectors of the Washington economy.

(3) Except for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood byproducts, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased. [2008 c 14 § 3.]

70.235.030 Development of a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas—Information required to be submitted to the legislature. (1)(a) The director shall develop, in coordination with the western climate initiative, a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas consistent with the emission reductions established in RCW 70.235.020(1).

(b) By December 1, 2008, the director and the director of the department of community, trade, and economic development shall deliver to the legislature specific recommendations for approval and request for authority to implement the preferred design of a regional multisector market-based system in (a) of this subsection. These recommendations must include:

(i) Proposed legislation, necessary funding, and the schedule necessary to implement the preferred design by January 1, 2012;

(ii) Any changes determined necessary to the reporting requirements established under RCW 70.94.151; and

(iii) Actions that the state should take to prevent manipulation of the multisector market-based system designed under this section.

(2) In developing the design for the regional multisector market-based system under subsection (1) of this section, the

department shall consult with the affected state agencies, and provide opportunity for public review and comment.

(3) In addition to the information required under subsection (1)(b) of this section, the director and the director of the department of community, trade, and economic development shall submit the following to the legislature by December 1, 2008:

(a) Information on progress to date in achieving the requirements of chapter 14, Laws of 2008;

(b) The final recommendations of the climate advisory team, including recommended most promising actions to reduce emissions of greenhouse gases or otherwise respond to climate change. These recommendations must include strategies to reduce the quantity of emissions of greenhouse gases per distance traveled in the transportation sector;

(c) A request for additional resources and statutory authority needed to limit and reduce emissions of greenhouse gas consistent with chapter 14, Laws of 2008 including implementation of the most promising recommendations of the climate advisory team;

(d) Recommendations on how projects funded by the green energy incentive account in RCW 43.325.040 may be used to expand the electrical transmission infrastructure into urban and rural areas of the state for purposes of allowing the recharging of plug-in hybrid electric vehicles;

(e) Recommendations on how local governments could participate in the multisector market-based system designed under subsection (1) of this section;

(f) Recommendations regarding the circumstances under which generation of electricity or alternative fuel from land-fill gas and gas from anaerobic digesters may receive an offset or credit in the regional multisector market-based system or other strategies developed by the department; and

(g) Recommendations developed in consultation with the department of natural resources and the department of agriculture with the climate advisory team, the college of forest resources at the University of Washington, and the Washington State University, and a nonprofit consortium involved in research on renewable industrial materials, regarding how forestry and agricultural lands and practices may participate voluntarily as an offset or other credit program in the regional multisector market-based system. The recommendations must ensure that the baseline for this offset or credit program does not disadvantage this state in relation to another state or states. These recommendations shall address:

(i) Commercial and other working forests, including accounting for site-class specific forest management practices;

(ii) Agricultural and forest products, including accounting for substitution of wood for fossil intensive substitutes;

(iii) Agricultural land and practices;

(iv) Forest and agricultural lands set aside or managed for conservation as of, or after, June 12, 2008; and

(v) Reforestation and afforestation projects. [2008 c 14 § 4.]

70.235.040 Consultation with climate impacts group at the University of Washington—Report to the legislature. Within eighteen months of the next and each successive global or national assessment of climate change science, the department shall consult with the climate impacts group

at the University of Washington regarding the science on human-caused climate change and provide a report to the legislature summarizing that science and make recommendations regarding whether the greenhouse gas emissions reductions required under RCW 70.235.020 need to be updated. [2008 c 14 § 7.]

70.235.900 Scope of chapter 14, Laws of 2008. Except where explicitly stated otherwise, nothing in chapter 14, Laws of 2008 alters or limits any authorities of the department as they existed prior to June 12, 2008. [2008 c 14 § 11.]

70.235.901 Severability—2008 c 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2008 c 14 § 12.]

Chapter 70.240 RCW

CHILDREN'S SAFE PRODUCTS

Sections

70.240.010	Definitions.
70.240.020	Prohibition on the manufacturing and sale of children's products containing lead, cadmium, or phthalates.
70.240.030	Identification of high priority chemicals—Report.
70.240.040	Notice that a children's product contains a high priority chemical.
70.240.050	Manufacturers of restricted products—Notice to sellers and distributors—Civil penalty.
70.240.060	Adoption of rules.

70.240.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Children's cosmetics" means cosmetics that are made for, marketed for use by, or marketed to children under the age of twelve. "Children's cosmetics" includes cosmetics that meet any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children; or

(c) Sold in any of the following:

(i) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(ii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(2) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to children under the age of twelve. "Children's jewelry" includes jewelry that meets any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children under the age of twelve;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children;

(c) Sized for children and not intended for use by adults; or

(d) Sold in any of the following:

(i) A vending machine;

(ii) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(iii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(3)(a) "Children's product" includes any of the following:

(i) Toys;

(ii) Children's cosmetics;

(iii) Children's jewelry;

(iv) A product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or

(v) Child car seats.

(b) "Children's product" does not include the following:

(i) Batteries;

(ii) Slings and catapults;

(iii) Sets of darts with metallic points;

(iv) Toy steam engines;

(v) Bicycles and tricycles;

(vi) Video toys that can be connected to a video screen and are operated at a nominal voltage exceeding twenty-four volts;

(vii) Chemistry sets;

(viii) Consumer electronic products, including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals;

(ix) Interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks;

(x) BB guns, pellet guns, and air rifles;

(xi) Snow sporting equipment, including skis, poles, boots, snow boards, sleds, and bindings;

(xii) Sporting equipment, including, but not limited to bats, balls, gloves, sticks, pucks, and pads;

(xiii) Roller skates;

(xiv) Scooters;

(xv) Model rockets;

(xvi) Athletic shoes with cleats or spikes; and

(xvii) Pocket knives and multitools.

(4) "Cosmetics" includes articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of such an article. "Cosmetics" does not include soap, dietary supplements, or food and drugs approved by the United States food and drug administration.

(5) "Department" means the department of ecology.

(6) "High priority chemical" means a chemical identified by a state agency, federal agency, or accredited research university, or other scientific evidence deemed authoritative by

the department on the basis of credible scientific evidence as known to do one or more of the following:

- (a) Harm the normal development of a fetus or child or cause other developmental toxicity;
 - (b) Cause cancer, genetic damage, or reproductive harm;
 - (c) Disrupt the endocrine system;
 - (d) Damage the nervous system, immune system, or organs or cause other systemic toxicity;
 - (e) Be persistent, bioaccumulative, and toxic; or
 - (f) Be very persistent and very bioaccumulative.
- (7) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a children's product or an importer or domestic distributor of a children's product. For the purposes of this subsection, "importer" means the owner of the children's product.

(8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

(9) "Toy" means a product designed or intended by the manufacturer to be used by a child at play.

(10) "Trade association" means a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit.

(11) "Very bioaccumulative" means having a bioconcentration factor or bioaccumulation factor greater than or equal to five thousand, or if neither are available, having a log Kow greater than 5.0.

(12) "Very persistent" means having a half-life greater than or equal to one of the following:

- (a) A half-life in soil or sediment of greater than one hundred eighty days;
- (b) A half-life greater than or equal to sixty days in water or evidence of long-range transport. [2008 c 288 § 2.]

70.240.020 Prohibition on the manufacturing and sale of children's products containing lead, cadmium, or phthalates. (1) Beginning July 1, 2009, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a children's product or product component containing the following:

- (a) Except as provided in subsection (2) of this section, lead at more than .009 percent by weight (ninety parts per million);
- (b) Cadmium at more than .004 percent by weight (forty parts per million); or
- (c) Phthalates, individually or in combination, at more than 0.10 percent by weight (one thousand parts per million).

(2) If determined feasible for manufacturers to achieve and necessary to protect children's health, the department, in consultation with the department of health, may by rule require that no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a children's product or product component containing lead at more than .004 percent by weight (forty parts per million). [2008 c 288 § 3.]

70.240.030 Identification of high priority chemicals—Report. (1) By January 1, 2009, the department, in consultation with the department of health, shall identify high priority chemicals that are of high concern for children after considering a child's or developing fetus's potential for exposure to each chemical. In identifying the chemicals, the department shall include chemicals that meet one or more of the following criteria:

(a) The chemical has been found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids;

(b) The chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

(c) The chemical has been added to or is present in a consumer product used or present in the home.

(2) By January 1, 2009, the department shall identify children's products or product categories that may contain chemicals identified under subsection (1) of this section.

(3) By January 1, 2009, the department shall submit a report on the chemicals of high concern to children and the children's products or product categories they identify to the appropriate standing committees of the legislature. The report shall include policy options for addressing children's products that contain chemicals of high concern for children, including recommendations for additional ways to inform consumers about toxic chemicals in products, such as labeling. [2008 c 288 § 4.]

70.240.040 Notice that a children's product contains a high priority chemical. Beginning six months after the department has adopted rules under *section 8(5) of this act, a manufacturer of a children's product, or a trade organization on behalf of its member manufacturers, shall provide notice to the department that the manufacturer's product contains a high priority chemical. The notice must be filed annually with the department and must include the following information:

- (1) The name of the chemical used or produced and its chemical abstracts service registry number;
- (2) A brief description of the product or product component containing the substance;
- (3) A description of the function of the chemical in the product;
- (4) The amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount;
- (5) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer; and
- (6) Any other information the manufacturer deems relevant to the appropriate use of the product. [2008 c 288 § 5.]

*Reviser's note: Section 8 of this act was vetoed by the governor.

70.240.050 Manufacturers of restricted products—Notice to sellers and distributors—Civil penalty. (1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product.

(3) A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(4) Retailers who unknowingly sell products that are restricted from sale under this chapter are not liable under this chapter. [2008 c 288 § 7.]

70.240.060 Adoption of rules. The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. [2008 c 288 § 9.]

